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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 322, and 360

[Docket No. APHIS–2011–0085]

RIN 0579–AD76

Consolidation of Permit Procedures; Denial and Revocation of Permits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are consolidating the regulations concerning the issuance of permits for the importation and interstate movement of a wide variety of regulated plants, plant products, and other articles. We are also making corresponding changes to the regulations concerning permits for the importation and interstate movement of noxious weeds and the importation of honeybees and other beekeeping articles. The regulations will also include new provisions for the denial of a permit and the revocation of a permit once issued. These changes will make our permit procedures more transparent and easier to use, allow us to evaluate a permit application more quickly and thoroughly, and help us hold permittees accountable for complying with permit conditions.

DATES: *Effective Date:* May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Senior Regulatory Policy Specialist, Regulatory Compliance and Coordination, RPM, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2114.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act, as amended, (PPA, 7 U.S.C. 7701 *et seq.*) states that it is the responsibility of the Secretary of Agriculture to facilitate exports, imports, and interstate commerce of agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce the risk of dissemination of plant pests or noxious weeds that could constitute a threat to crops and other plants or plant products and burden interstate or foreign commerce. The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, noxious weed, or article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or the dissemination of a plant pest or noxious weed within the United States.

To implement these prohibitions and restrictions, sections 7711 and 7712, among others, of the PPA further provide that the Secretary may issue regulations, including those that require that a permit be obtained for plants, plant products, noxious weeds, or other regulated articles prior to their importation or movement in interstate commerce. The Secretary has delegated the authority provided by the PPA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations issued under the authority of the PPA are primarily administered and enforced by APHIS' Plant Protection and Quarantine program (PPQ).

Requiring a written permit for the importation or interstate movement of plants, plant products, noxious weeds, or other regulated articles reduces the risk of the introduction or dissemination of a plant pest or noxious weed in the United States in several ways.

APHIS' regulations and Federal Orders, as well as permits, inform applicants of the requirements and conditions for importation or interstate movement of regulated articles that we have determined are necessary to mitigate the risk of introducing or disseminating a plant pest or noxious weed. Requiring a written permit also allows APHIS to hold permittees accountable for complying with permit conditions and to specify the plant products allowed into the United States or allowed to move interstate. A permit prescribes the binding conditions that the applicant for a permit, and the permittee, must adhere to under the permit and the pertinent regulations. The information contained in an application for a permit must also provide for clear and continuous accountability for the importation or movement of the plant, plant product, or other article.

The regulations contained in 7 CFR part 319, Foreign Quarantine Notices, prohibit or restrict the importation into the United States of certain plants, roots, bulbs, seeds, or other plant products to prevent plant pests and noxious weeds from being introduced and spread within the United States. The restricted or prohibited plant products include plants for planting, cut flowers, fruits and vegetables, foreign cotton and covers, sugarcane, citrus, corn and related plants, rice, wheat, logs and other unmanufactured wood articles, packing materials, and coffee.

The regulations in 7 CFR part 322 prohibit or restrict the importation of honeybees and honeybee semen in order to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species.

The regulations in 7 CFR part 360 restrict the importation and interstate movement of those plants that are designated as noxious weeds.

On June 21, 2013, we published in the **Federal Register** (78 FR 37481–37495, Docket No. APHIS–2011–0085) a proposal [1] to establish a new subpart in part 319 entitled ''Permits: Application, Issuance, Denial, and Revocation,'' which would include §§ 319.7 through 319.7–5 and would serve as generally applicable requirements in part 319 for obtaining a permit to import plants or plant products. The requirements contained in the proposed subpart would provide applicants for permits with more detailed information regarding the process for applying for a permit and indicate the type of information we would require in a permit application. We also proposed to make consistent and clear the provisions for how we will approve, deny, or revoke a permit and to apply the proposed provisions, as appropriate, to parts 322 and 360.

We solicited comments concerning our proposal for 60 days ending August

[1] To view the proposed rule and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0085.*

20, 2013. We received one comment by that date, from a private citizen. The comment expressed general opposition to the importation of plants from China, but did not address any provisions of the proposed rule. We are making no changes in response to this comment.

We are making several miscellaneous changes to the proposal in this final rule. Proposed § 319.7–1(c) would have required that permit applications specify the intended port of first arrival. However, PPQ permits often allow for a range of ports of first arrival to be used; indeed, proposed § 319.7–2(a), regarding the issuance of permits, indicated that the permit would specify the port of entry and, when needed, allowed ports of first arrival. Allowing importers to use multiple ports of first arrival offers flexibility in logistical arrangements, while continuing to allow PPQ to apply needed restrictions if an article should not be presented at a certain port of first arrival. (For example, an article that poses a risk of being infested with fruit flies would be limited to ports of first arrival where the fruit fly could not overwinter if it escaped into the surrounding environment.) To make the regulations consistent, we are allowing permit applications to specify multiple intended ports of first arrival.

In the proposed rule, § 319.7–2(f) set out proposed requirements for permittees. Paragraph (f)(7) would have required that permittees acknowledge in writing that in accordance with section 8313 of the PPA, the actions, omissions, or failures of any agent of the permittee may be deemed the actions, omissions, or failures of a permittee as well; and that failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee. (In the proposed rule, the section citation to the PPA was incorrect; we are changing it in this final rule to cite to section 7734.)

However, paragraph (f)(5) requires that the permittee provide written or electronic acknowledgment and acceptance of permit conditions only when APHIS requests such acknowledgment. This reflects the fact that, while APHIS normally requires written or electronic acknowledgment, oral acknowledgment is acceptable in some cases. It would be inconsistent to require written or electronic acknowledgment of the permit conditions only sometimes but require written acknowledgment of paragraph (f)(7) and thereby of section 7734 all the time. The most important thing is to clearly communicate the provisions of paragraph (f)(7) and section 7734 in the regulations, so that permittees and other regulated parties are aware that the actions of an agent of a permittee may be deemed the actions of a permittee. Therefore, we have decided not to include proposed paragraph (f)(7) in this final rule. Instead, we have added a paragraph communicating the provisions of section 7734 of the PPA as paragraph (m) of § 319.7–2.

In the proposed rule, paragraph (b) of § 319.7–3 set out reasons for denying a permit to import a regulated article. Paragraph (b)(3) indicated that we would deny a permit if APHIS concludes that the actions proposed under the permit would present an unacceptable risk to plants and plant products because of the introduction or dissemination of a plant pest, biological control organism, or noxious weed within the United States. The final rule indicates that the reason to deny a permit is the potential for the introduction or dissemination, rather than the introduction or dissemination itself; the introduction or dissemination would only happen if APHIS did issue the permit and the plant, plant product, or other article was imported or moved interstate. We are also removing the reference to biological control organisms, as permitting for the importation of such organisms is handled in 7 CFR part 330 and not in part 319.

Paragraph (b)(4) indicated that we would deny a permit if the importation is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS. However, States also conduct eradication, suppression, control, and regulatory programs, and APHIS often supports the States with their phytosanitary programs by providing technical and other assistance. While these programs are not APHIS programs as such, we need to be able to deny a permit based on the potential of the importation to adversely affect such a program. Accordingly, this final rule does not limit the programs to APHIS programs but rather refers to any eradication, suppression, control, or other phytosanitary programs of APHIS or ones recognized by APHIS.

Paragraph (a) of § 319.7–2 describes how APHIS will issue a permit if the regulated articles in question are eligible for importation. We have greatly simplified the wording of this paragraph in the final rule, although its substantive provisions are identical to those of proposed § 319.7–2(a). This final rule also includes several nonsubstantive changes to increase the clarity of the regulations and corrects several typographical errors in the proposed regulatory text.

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

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Entities that may be affected by the rule are importers of restricted plants and plant products, including flowers, nursery stock, fruits and vegetables, cotton, sugarcane, logs, packing materials, other manufactured wood articles, and coffee, as well as importers of plants designated as noxious weeds, honeybees and honeybee semen, and regulated articles allowed entry on a temporary basis, such as for transshipment. While nearly all of the entities that may be affected by the rule are small, none of the effects would be economically significant. The rule will make the permit procedures more transparent and easier to use, enable APHIS to evaluate a permit allocation more quickly and thoroughly, and allow for more efficient control of the issuance of permits and entry of regulated articles.

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 319

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

7 CFR Part 322

Bees, Honey, Imports, Reporting and recordkeeping requirements.

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

Accordingly, we are amending 7 CFR chapter III as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. In § 319.6, paragraph (g) is revised to read as follows:

§ 319.6 Controlled import permits.

* * * * *

(g) *Denial, withdrawal, cancellation, or revocation of permit.* The Administrator may deny a permit application in accordance with § 319.7–3, and a permit may be withdrawn, canceled, or revoked in accordance with § 319.7–4.

(1) *Action upon cancellation or revocation of permit.* Upon cancellation or revocation of a permit, the permittee must surrender, destroy, or remove all regulated plant material covered by the permit in accordance with § 319.7–4(e).

(2) *Appeal of denial or revocation.* Any person whose application for a permit has been denied or whose permit has been revoked may appeal the denial or revocation in accordance with § 319.7–5.

* * * * *

■ 3. A subpart consisting of §§ 319.7 through 319.7–5 is added to read as follows:

Subpart—Permits: Application, Issuance, Denial, and Revocation

Sec.

319.7 Definitions.
319.7–1 Applying for a permit.
319.7–2 Issuance of permits and labels.
319.7–3 Denial of permits.
319.7–4 Withdrawal, cancellation, and revocation of permits.
319.7–5 Appeal of denial or revocation.

Subpart—Permits: Application, Issuance, Denial, and Revocation

§ 319.7 Definitions.

The following definitions apply to this subpart:

Administrative instructions. Published documents related to the enforcement of this part and issued under authority of the Plant Protection Act, as amended (7 U.S.C. 7701 *et seq.*), by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Applicant. A person at least 18 years of age who, on behalf of him- or herself or another person, submits an application for a permit to import into the United States or move interstate a regulated article in accordance with this part.

Approved. Approved by the Administrator of the Animal and Plant Health Inspection Service.

Article. Any material or tangible objects that could harbor or be a vector of plant pests or noxious weeds.

Consignment. A quantity of plants, plant products, and/or other articles being moved from one country to another authorized when required, by a single permit. A consignment may be composed of one or more commodities or lots.

Country of origin. The country where the plants, or plants from which the plant products are derived, were grown or where the non-plant articles were produced.

Enter, entry. To move into, or the act of movement into, the commerce of the United States.

Import, importation. To move into, or the act of movement into, the territorial limits of the United States.

Inspector. Any individual authorized by the Administrator of the Animal and Plant Health Inspection Service or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Intended use. The purpose for the importation of the regulated article, including, but not limited to, consumption, propagation, or research purposes.

Lot. All the regulated articles on a single means of conveyance that are derived from the same species of plant or are the same type of non-plant article, were subjected to the same treatments prior to importation, and are consigned to the same person.

Means of conveyance. Any personal property used for or intended for use for the movement of any other personal property.

Move. To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the activities described in this definition.

Oral authorization. Verbal permission to import that may be granted by an inspector at the port of entry.

Permit. A written authorization, including by electronic methods, to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.

Permittee. The person who, on behalf of self or another person, is legally the importer of an article, meets the requirements of § 319.7–2(f), and is responsible for compliance with the conditions for the importation that is the subject of a permit issued in accordance with this part.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan; a nonhuman animal; a parasitic plant; a bacterium; a fungus; a virus or viroid; an infectious agent or other pathogen; or any article similar to or allied with any of the foregoing enumerated articles.

Plant product. Any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of *plant,* or any manufactured or processed plant or plant part.

Port of entry. A port at which a specified shipment or means of conveyance is accepted for entry or admitted without entry into the United States for transit purposes.

Port of first arrival. The area (such as a seaport, airport, or land border) where a person or means of conveyance first arrives in the United States, and where inspection of regulated articles may be carried out by inspectors.

PPQ. The Plant Protection and Quarantine Program, Animal and Plant Health Inspection Service of the United States Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines and regulations.

Regulated article. Any material or tangible object regulated by this part for entry into the United States or interstate movement.

Soil. The unconsolidated material from the earth's surface that consists of rock and mineral particles mixed with organic material and that supports or is capable of supporting biotic communities.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Treatment. A procedure approved by the Administrator for neutralizing infestations or infections of plant pests or diseases, such as fumigation, application of chemicals or dry or moist heat, or processing, utilization, or storage.

United States. All of the States.

§ 319.7–1 Applying for a permit.

(a) Persons who wish to import regulated articles into the United States must apply for a permit, unless the regulated articles are not subject to a requirement under this part that a permit be issued prior to a consignment's arrival. An applicant for a permit to import regulated articles into the United States in accordance with this part must be:

(1) Capable of acting in the capacity of the permittee in accordance with § 319.7–2(e), or must designate a permittee who is so capable should the permit be issued;

(2) Applying for a permit on behalf of self or on behalf of another person as permittee; and

(3) At least 18 years of age.

(b) Permit applications must be submitted by the applicant in writing or electronically through one of the means listed at *http://www.aphis.usda.gov/plant_health/permits/index.shtml* in advance of the action(s) proposed on the permit application.

(c) The application for a permit must contain the following information:

(1) Legal name, address, and contact information of the applicant, and affirmation by the applicant that the applicant is at least 18 years of age;

(2) The same information of the permittee if different from the applicant, and, if the permittee is an individual, affirmation by the permittee that the permittee is at least 18 years of age;

(3) Specific type of regulated article (common and scientific names, if applicable);

(4) Country of origin;

(5) Intended use of the regulated article;

(6) Intended port(s) of first arrival; and

(7) A description of any processing, treatment, or handling of the regulated article to be performed prior to or following importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemical employed in treatments of the regulated article.

(d) The application for a permit may also require the following information:

(1) Means of conveyance;

(2) Quantity of the regulated article;

(3) Estimated date of arrival;

(4) Name, address, and contact information of any broker or subsequent custodian of the regulated article;

(5) Exporting country from which the article is to be moved, when not the country of origin; and

(6) Any other information determined to be necessary by APHIS to inform the decision to issue the permit.

(e) Application for a permit to import regulated articles into the United States must be submitted at least 30 days prior to arrival of the article at the port of entry.

(1) If, through no fault of the importer, a consignment of regulated articles subject to a requirement under this part that a permit be issued prior to a consignment's arrival arrives at a U.S. port before a permit is received, the consignment may be held, under suitable safeguards prescribed by the inspector, in custody at the risk and expense of the importer pending issuance of a permit or authorization from APHIS.

(2) An oral authorization may be granted by an inspector at the port of entry for a consignment, provided that:

(i) All applicable entry requirements are met;

(ii) Proof of application for a written permit is provided to the inspector; and

(iii) PPQ verifies that the application for a written permit has been received and that PPQ intends to issue the permit.

§ 319.7–2 Issuance of permits and labels.

(a) Upon receipt of an application, APHIS will issue a permit if, after review of the application, APHIS determines that the regulated articles are eligible to be imported into the United States under any applicable conditions. The permit will specify the applicable conditions of entry and the port of entry, and a copy will be provided to the permittee. The permit will only be valid for the time period indicated on the permit.

(b) The applicant for a permit for the importation of regulated articles into the United States must designate the person who will be named as the permittee upon the permit's issuance. The applicant and the permittee may be the same person or different persons.

(c) The act, omission, or failure of the permittee as an officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office will be deemed also to be the act, omission, or failure of the other person.

(d) Failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee.

(e) The permittee will remain responsible for the consignment regardless of any delegation to a subsequent custodian of the importation.

(f) A permittee must:

(1) If an individual, be at least 18 years of age and have and maintain an address in the United States that is specified on the permit and be physically present during normal business hours at that address during any periods when articles are being imported or moved interstate under the permit; or

(2) If another legal entity, maintain an address or business office in the United States with a designated individual for service of process; and

(3) Serve as the contact for the purpose of communications associated with the movement of the regulated article for the duration of the permit. The PPQ Permit Unit must be informed of a change in contact information for the permittee within 10 business days of such change;

(4) Ensure compliance with the applicable regulatory requirements and permit conditions associated with the movement of the regulated article for the duration of the permit;

(5) Provide written or electronic acknowledgment and acceptance of permit conditions when APHIS requests such acknowledgment;

(6) Serve as the primary contact for communication with APHIS regarding the permit; and

(7) Maintain all conditions of the permit for the entirety of its prescribed duration.

(g) The regulated article may be imported only if all applicable requirements of the permit issued for the importation of the regulated article or any other documents or instructions issued by APHIS are met and complied with as determined by APHIS.

(h) In accordance with the regulations in this part, labels may be issued to the permittee for the importation of regulated articles. Such labels may contain information about the shipment's nature, origin, movement conditions, or other matters relevant to the permit and will indicate that the importation is authorized under the conditions specified in the permit.

(1) If issued, the quantity of labels will be sufficient for the permittee to attach one to each parcel. Labels must be affixed to the outer packaging of the parcel.

(2) Importations without such required labels will be refused entry into the United States, unless a label is not required and not issued for the importation.

(i) Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if an inspector at the port of entry determines that no remedial measures pursuant to the Plant Protection Act are necessary to mitigate or address any plant pest or noxious weed risks.[1]

(j) A permit application may be withdrawn at the request of the applicant prior to the issuance of the permit.

(k) A permit may be canceled after issuance at the request of the permittee.

(l) A permit may be amended if APHIS finds that the permit is incomplete or contains factual errors.

(m) In accordance with Section 7734 of the Plant Protection Act, as amended (7 U.S.C. 7701 *et seq.*), the actions, omissions, or failures of any agent of the permittee may be deemed the actions, omissions, or failures of a permittee as well; and that failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee.

[1] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, and other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

§ 319.7–3 Denial of permits.

(a) APHIS may deny an application for a permit to import a regulated article into the United States. A denial, including the reason for the denial, will be provided in writing, including by electronic methods, to the applicant as promptly as circumstances permit. The denial of a permit may be appealed in accordance with § 319.7–5.

(b) APHIS may deny an application for a permit to import a regulated article:

(1) If APHIS determines that the applicant is not likely to abide by permit conditions. Factors that may lead to such a determination include, but are not limited to, the following:

(i) The applicant, or a partnership, firm, corporation, or other legal entity in which the applicant has a substantial interest, financial or otherwise, has not complied with any permit that was previously issued by APHIS;

(ii) APHIS determines that issuing the permit would circumvent any order revoking or denying a permit under the Plant Protection Act;

(iii) APHIS determines that the applicant has previously failed to comply with any APHIS regulation;

(iv) APHIS determines that the applicant has previously failed to comply with any Federal, State, or local law, regulation, or instruction concerning the importation of prohibited or restricted foreign agricultural products;

(v) APHIS determines that the applicant has failed to comply with the laws or regulations of a national plant protection organization or equivalent body, as these pertain to plant health;

(vi) APHIS determines that the applicant has made false or fraudulent statements or provided false or fraudulent records to APHIS; or

(vii) The applicant has been convicted or has pled nolo contendere to any crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity.

(2) If the application for a permit contains information that is found to be materially false, fraudulent, deceptive, or misrepresentative;

(3) If APHIS concludes that the actions proposed under the permit would present an unacceptable risk to plants and plant products because of the potential for introduction or dissemination of a plant pest or noxious weed within the United States;

(4) If the importation is adverse to the conduct of an eradication, suppression, control, or phytosanitary program of APHIS or a program recognized by APHIS;

(5) If the importation is not in compliance with any applicable import regulations or any administrative instructions or measures, including, but not limited to, all the requirements of this part; or

(6) If a State executive official, or a State plant protection official authorized to do so, objects to the movement in writing and provides specific, detailed information that there is a risk the movement will result in the dissemination of a plant pest or noxious weed into the State, and APHIS determines that such plant pest risk cannot be adequately addressed or mitigated.

§ 319.7–4 Withdrawal, cancellation, and revocation of permits.

(a) *Withdrawal of an application.* If the applicant wishes to withdraw a permit application before issuance of a permit, he or she must provide the request in writing to APHIS. APHIS will provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.

(b) *Cancellation of permit by permittee.* If a permittee wishes to cancel a permit after its issuance, he or she must provide the request in writing to APHIS. APHIS will provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.

(c) *Revocation of permit by APHIS.* APHIS may revoke any outstanding permit to import regulated articles into the United States. A revocation, including the reason for the revocation, will be provided in writing, including by electronic methods, to the permittee as promptly as circumstances permit. The revocation of a permit may be appealed in accordance with § 319.7–5.

(d) APHIS may revoke a permit to import a regulated article if:

(1) Information is received subsequent to the issuance of the permit of circumstances that APHIS determines would constitute cause for the denial of an application under § 319.7–3; or

(2) APHIS determines that the permittee has failed to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations or administrative instructions, including,

but not limited to, all of the requirements of this part.

(e) Upon revocation of a permit, the permittee must, without cost to the Federal Government and in the manner and method APHIS considers appropriate, either:

(1) Surrender all regulated articles covered by the revoked permit and any other affected plant material to an inspector;

(2) Destroy, under the supervision of an inspector, all regulated articles covered by the revoked permit and any other affected plant material; or

(3) Remove all regulated articles covered by the revoked permit and any other affected plant material from the United States.

§ 319.7–5 Appeal of denial or revocation.

(a) All denials of an application for a permit, or revocations of an existing permit, will be provided in writing, including by electronic methods, as promptly as circumstances permit and will include the reasons for the denial or revocation.

(b) Any person whose application for a permit has been denied or whose permit has been revoked may appeal the decision in writing to APHIS within 10 business days from the date the communication of notification of the denial or revocation of the permit was received. The appeal must state all facts and reasons upon which the person is relying to show that the denial or revocation was incorrect.

(c) APHIS will grant or deny the appeal in writing and will state in writing the reason for the decision. The denial or revocation will remain in effect during the resolution of the appeal.

§ 319.8–1 [Amended]

■ 4. In § 319.8–1, the definition of *permit* is amended by adding the words ''and in §§ 319.7 through 319.7–5'' before the period.

§ 319.8–2 [Amended]

■ 5. Section 319.8–2 is amended as follows:

■ a. In paragraph (a), by removing, in the third sentence, the words ''stating the name and address of the importer, the country from which such material is to be imported, and the kind of cotton or covers it is desired to import'' and footnote 1, and adding the words ''for a permit in accordance with §§ 319.7 through 319.7–5'' in their place.

■ b. By redesignating footnote 2 as footnote 1.

■ c. By removing paragraphs (c) and (d) and redesignating paragraphs (e) and (f) as paragraphs (c) and (d), respectively.

■ d. In newly redesignated paragraph (d), in the first sentence, by removing the words ''with all requirements set forth therein and such additional requirements in this subpart as are in terms applicable thereto'' and adding the words ''with all of the conditions specified in the permit and any applicable regulations or administrative instructions of this part'' in their place, and by removing the second and third sentences of this paragraph.

■ e. By removing paragraph (g) and redesignating paragraph (h) as paragraph (e).

§ 319.8–8 [Amended]

■ 6. In § 319.8–8, footnote 3 is redesignated as footnote 2.

§ 319.8–11 [Amended]

■ 7. In § 319.8–11, footnote 4 is redesignated as footnote 3.

§ 319.8–17 [Amended]

■ 8. In § 319.8–17, footnote 5 is redesignated as footnote 4.

■ 9. Section 319.24–1 is revised to read as follows:

§ 319.24–1 Application for permits for importation of corn.

Persons contemplating the importation of corn into the United States shall obtain a permit in accordance with §§ 319.7 through 319.7–5.

(Approved by the Office of Management and Budget under control number 0579–0049)

§ 319.24–2 [Removed and Reserved]

■ 10. Section 319.24–2 is removed and reserved.

§ 319.24–4 [Removed and Reserved]

■ 11. Section 319.24–4 is removed and reserved.

§ 319.28 [Amended]

■ 12. Section 319.28 is amended by removing paragraphs (j) and (k).

■ 13. Section 319.37–3 is amended as follows:

■ a. In paragraph (a), introductory text, by adding the words ''in accordance with §§ 319.7 through 319.7–5'' after the word ''Programs''.

■ b. By removing and reserving paragraph (b) and removing footnote 4.

■ c. By redesignating footnote 5 as footnote 4.

■ d. By revising paragraph (d).

■ e. By removing paragraphs (e) and (f) and redesignating paragraphs (g) and (h) as paragraphs (e) and (f), respectively.

The revision reads as follows:

§ 319.37–3 Permits.

* * * * *

(d) Any permit that has been issued may be revoked by an inspector or APHIS in accordance with § 319.7–4.

* * * * *

§ 319.37–5 [Amended]

■ 14. In § 319.37–5, footnote 6 is redesignated as footnote 5.

§ 319.37–6 [Amended]

■ 15. In § 319.37–6, footnote 7 is redesignated as footnote 6.

§ 319.37–7 [Amended]

■ 16. In § 319.37–7, footnote 8 is redesignated as footnote 7.

§ 319.37–8 [Amended]

■ 17. In § 319.37–8, footnotes 9 through 11 are redesignated as footnotes 8 through 10, respectively.

§ 319.37–13 [Amended]

■ 18. In § 319.37–13, footnote 12 is redesignated as footnote 11.

■ 19. Section 319.40–4 is amended as follows:

■ a. By revising paragraph (a).

■ b. By removing paragraph (b)(3), paragraph (c) including footnote 2, and paragraph (d).

The revision reads as follows:

§ 319.40–4 Application for a permit to import regulated articles; issuance and withdrawal of permits.

(a) *Application procedure.* A written application for a permit must be obtained and submitted in accordance with §§ 319.7 through 319.7–5.

* * * * *

§ 319.40–5 [Amended]

■ 20. In § 319.40–5, footnote 3 is redesignated as footnote 1.

§ 319.40–9 [Amended]

■ 21. In § 319.40–9, footnotes 4 and 5 are redesignated as footnotes 2 and 3, respectively.

§ 319.40–10 [Amended]

■ 22. In § 319.40–10, footnote 6 is redesignated as footnote 4.

■ 23. Section 319.41–2 is revised to read as follows:

§ 319.41–2 Application for permits.

Persons contemplating the importation of any of the articles specified in § 319.41–1(b) shall first make application to the Plant Protection and Quarantine Program for a permit in accordance with §§ 319.7 through 319.7–5.

(Approved by the Office of Management and Budget under control number 0579–0049)

■ 24. Section 319.41–6 is revised to read as follows:

§ 319.41–6 Importations by mail.

In addition to entries by freight or express provided for in § 319.41–5, importations are permitted by mail of mature corn on the cob from the countries specified in § 319.41–1(b)(2), and clean shelled corn and clean seed of the other plants covered by § 319.41, provided that a permit has been issued for the importation in accordance with §§ 319.7 through 319.7–5 and all conditions of the permit are met.

(Approved by the Office of Management and Budget under control number 0579–0049)

■ 25. Section 319.55–2 is revised to read as follows:

§ 319.55–2 Application for permit.

Application for a permit to import seed or paddy rice from Mexico or rice straw or rice hulls from any country may be made to the Plant Protection and Quarantine Programs in accordance with §§ 319.7 through 319.7–5.

(Approved by the Office of Management and Budget under control number 0579–0049)

§ 319.55–4 [Removed and Reserved]

■ 26. Section 319.55–4 is removed and reserved.

■ 27. Section 319.55–7 is revised to read as follows:

§ 319.55–7 Importations by mail.

Importations of seed or paddy rice, rice straw, and rice hulls from all foreign countries and localities may be made by mail or cargo, provided that a permit has been issued for the importation in accordance with §§ 319.7 through 319.7–5 and all conditions of the permit are met.

(Approved by the Office of Management and Budget under control number 0579–0049)

■ 28. Section 319.56–3 is amended as follows:

■ a. By revising paragraph (b)(2).

■ b. By removing paragraphs (b)(3), (b)(4), (b)(5), and (b)(6).

■ c. In paragraph (c)(1), by removing the words ''under paragraph (b) of this section'' and adding in their place the words ''in accordance with this section and with §§ 319.7 through 319.7–5''.

The revision reads as follows:

§ 319.56–3 General requirements for all imported fruits and vegetables.

* * * * *

(b) * * *

(2) Persons contemplating the importation of any fruits or vegetables under this subpart must apply for a permit in accordance with §§ 319.7 through 319.7–5.

* * * * *

■ 29. Section 319.75 is amended as follows:

■ a. By revising the section heading.

■ b. In paragraphs (a) and (c), by removing the word ''restricted'' each time it appears and adding the word ''regulated'' in its place.

The revision reads as follows:

§ 319.75 Restrictions on importation of regulated articles; disposal of articles refused importation.

* * * * *

§ 319.75–1 [Amended]

■ 30. In § 319.75–1, the definition of *phytosanitary certificate of inspection* is amended by removing the word ''restricted'' each time it appears and adding the word ''regulated'' in its place.

■ 31. Section 319.75–2 is amended as follows:

■ a. By revising the section heading, including footnote 1.

■ b. In paragraph (a), introductory text, by removing the word ''restricted'' and adding the word ''regulated'' in its place.

The revisions read as follows:

§ 319.75–2 Regulated articles.[1]

* * * * *

[1] The importation of regulated articles may be subject to prohibitions or restrictions under other provisions of 7 CFR part 319. For example, fresh whole chilies (*Capsicum* spp.) and fresh whole red peppers (*Capsicum* spp.) from Pakistan are prohibited from being imported into the United States under the provisions of Subpart—Fruits and Vegetables of this part.

* * * * *

■ 32. Section 319.75–3 is revised to read as follows:

§ 319.75–3 Permits.

A regulated article may be imported only after issuance of a written permit or oral authorization by the Plant Protection and Quarantine Programs in accordance with §§ 319.7 through 319.7–5.

(Approved by the Office of Management and Budget under control number 0579–0049)

§ 319.75–4 [Amended]

■ 33. Section 319.75–4 is amended by removing the word ''restricted'' and adding the word ''regulated'' in its place.

§ 319.75–5 [Amended]

■ 34. In § 319.75–5, paragraphs (a) and (b) are amended by removing the word ''restricted'' each time it appears and adding the word ''regulated'' in its place.

§ 319.75–6 [Amended]

■ 35. Section 319.75–6 is amended by removing the word ''restricted'' and adding the word ''regulated'' in its place.

§ 319.75–7 [Amended]

■ 36. Section 319.75–7 is amended as follows:

■ a. By removing the word ''restricted'' and adding the word ''regulated'' in its place.

■ b. By redesignating footnote 3 as footnote 4.

§ 319.75–8 [Amended]

■ 37. Section 319.75–8 is amended by removing the word ''restricted'' both times it appears and adding the word ''regulated'' in its place.

§ 319.75–9 [Amended]

■ 38. In § 319.75–9, paragraphs (a), (b) and (c) are amended by removing the word ''restricted'' each time it appears and adding the word ''regulated'' in its place.

PART 322—BEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT

■ 39. The authority citation for part 322 continues to read as follows:

Authority: 7 U.S.C. 281; 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

■ 40. In § 322.13, paragraph (b) is revised to read as follows:

§ 322.13 General requirements; restricted organisms.

* * * * *

(b) Persons importing restricted organisms into the United States must be Federal, State, or university researchers; be at least 18 years of age; and be physically present during normal business hours at an address within the United States specified on the permit during any periods when articles are being imported or moved interstate under the permit. All such importations must be for research or experimental purposes and in accordance with this part.

§ 322.14 [Amended]

■ 41. In § 322.14, paragraph (a)(1) is amended by removing the second and third sentences.

■ 42. Section 322.15 is amended as follows:

■ a. By revising the section heading.

■ b. By adding a new paragraph (c)(5).

■ c. By revising paragraph (e).

The revisions and addition read as follows:

§ 322.15 APHIS review of permit applications; denial or revocation of permits.

* * * * *

(c) * * *

(5) APHIS may also deny a permit to import restricted organisms:

(i) To a person who has previously failed to comply with any APHIS regulation, except:

(A) A permit revoked in an investigation concerning that failure has been reinstated on appeal, at the discretion of APHIS; or

(B) All measures ordered by APHIS to correct the failure, including but not limited to, payment of penalties or restitution, have been complied with to the satisfaction of APHIS.

(ii) To a person who has previously failed to comply with any international or Federal regulation or instruction concerning the importation of prohibited or restricted foreign agricultural products; or

(iii) If the application for a permit contains information that is found to be materially false, fraudulent, deceptive, or misrepresentative.

* * * * *

(e) *Appealing the denial of permit applications or revocation of permits.* If your permit application has been denied or your permit has been revoked, APHIS will inform you in writing, including by electronic methods, as promptly as circumstances permit and will include the reasons for the denial or revocation. You may appeal the decision by writing to APHIS within 10 business days from the date you received the communication notifying you of the denial or revocation of the permit. Your appeal must state all facts and reasons upon which you are relying to show that your permit application was wrongfully denied or your permit was wrongfully revoked. APHIS will grant or deny the appeal in writing and will state in writing the reason for the decision. The denial or revocation will remain in effect during the resolution of the appeal.

* * * * *

PART 360—NOXIOUS WEED REGULATIONS

■ 43. The authority citation for part 360 continues to read as follows:

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

■ 44. Section 360.304 is amended as follows:

■ a. By revising the section heading.

■ b. In paragraph (a)(5), by removing the period at the end of the sentence and adding the word ''; or'' in its place.

■ c. By adding new paragraphs (a)(6) and (a)(7).

■ d. In paragraph (b), introductory text, by removing the word ''cancel'' and adding the word ''revoke'' in its place.

■ e. In paragraph (c), by removing the word ''canceled'' each time it appears and adding the word ''revoked'' in its place, and by removing the word ''cancellation'' and adding the word ''revocation'' in its place.

The revision and additions read as follows:

§ 360.304 Denial of an application for a permit to move a noxious weed; revocation of a permit to move a noxious weed.

(a) * * *

(6) The application for the permit contains information that is found to be materially false, fraudulent, or deceptive; or

(7) APHIS may deny a permit to a person who has previously failed to comply with any APHIS regulation.

* * * * *

■ 45. Section 360.305 is amended as follows:

■ a. By revising the section heading.

■ b. By removing the word ''canceled'' each time it appears and adding the word ''revoked'' in its place.

The revision reads as follows:

§ 360.305 Disposal of noxious weeds when permits are revoked.

* * * * *

Done in Washington, DC, this 4th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–08095 Filed 4–9–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27009; Directorate Identifier 2007–NE–02–AD; Amendment 39–17820; AD 2014–07–06]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2007–19–09R1 for all Turbomeca S.A. Arriel 2B1 turboshaft engines that do not have modification TU157 incorporated. AD 2007–19–09R1 required replacement of the hydromechanical metering unit (HMU) with a serviceable HMU. This AD requires HMU replacement; reduction of the compliance interval; and inclusion of the power turbine C2 cycle consumption rate when determining compliance times. This AD was prompted by reports of ruptures on HMU constant delta pressure valves that have less than 2,000 hours in service. We are issuing this AD to prevent failure of the HMU, which could lead to damage to the engine, and damage to the aircraft.

DATES: This AD is effective May 15, 2014.

ADDRESSES: For service information identified in this AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 5 59 74 40 00; telex: 570 042; fax: 33 5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2007–27009; 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 mandatory continuing airworthiness information (MCAI), 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 Gray, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–19–09R1, Amendment 39–16322 (75 FR 30687, June 2, 2010), (''AD 2007–19–09R1''). AD 2007–19–09R1 applied to the specified products. The NPRM published in the **Federal Register** on December 24, 2013 (78 FR 77614). The

NPRM proposed to continue to require HMU replacement. That NPRM also proposed to require reduction of the compliance interval; and inclusion of the power turbine C2 cycle consumption rate when determining compliance times.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 77614, December 24, 2013).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Costs of Compliance

We estimate that this AD affects 264 engines installed on airplanes of U.S. registry. We also estimate that it will take about one hour per engine to comply with this AD. The average labor rate is $85 per hour. Required parts cost about $5,000 per engine. Based on these figures, we estimate the cost of this AD to U.S. operators is $1,342,440.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska 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 part 39 of the Federal Aviation Regulations (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) 2007–19–09R1, Amendment 39–16322 (75 FR 30687, June 2, 2010), and adding the following new AD:

2014–07–06 Turbomeca S.A.: Amendment 39–17820; Docket No. FAA–2007–27009; Directorate Identifier 2007–NE–02–AD.

(a) Effective Date

This AD is effective May 15, 2014.

(b) Affected ADs

This AD supersedes AD 2007–19–09R1, Amendment 39–16322 (75 FR 30687, June 2, 2010).

(c) Applicability

This AD applies to Turbomeca S.A. Arriel 2B1 turboshaft engines that do not have modification TU157 incorporated.

(d) Unsafe Condition

This AD was prompted by reports of ruptures on hydromechanical metering unit (HMU) constant delta pressure valves that have less than 2,000 hours in service. We are issuing this AD to prevent failure of the HMU, which could lead to damage to the engine, and damage to the aircraft.

(e) Compliance

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

(1) HMU operating hours and power turbine C2 cycles are known:

(i) If on the effective date of this AD, the HMU C2 cycles are less than 900, then replace the HMU before the HMU accumulates 1,000 C2 cycles or 1,500 HMU operating hours, whichever occurs first;

(ii) If on the effective date of this AD, the HMU C2 cycles are 900 or more, then replace the HMU within 100 HMU C2 cycles after the effective date of this AD;

(iii) Thereafter, replace the HMU at every 1,000 HMU C2 cycles or 1,500 HMU operating hours, whichever comes first.

(2) HMU operating hours are known and C2 cycles are not known:

(i) If on the effective date of this AD, the HMU operating hours are less than 1,100, then replace the HMU before accumulating 1,200 HMU operating hours;

(ii) If on the effective date of this AD, the HMU operating hours are 1,100 or more, then replace the HMU within 100 HMU operating hours after the effective date of this AD;

(iii) Thereafter, replace the HMU at every 1,200 HMU operating hours.

(f) Definition

For the purpose of this AD, HMU operating hours or C2 cycles are defined as operating hours or C2 cycles since new, since overhaul, or since incorporation of Turbomeca S.A. Service Bulletin (SB) No. 292 73 2105, Version B, dated December 16, 2010, or earlier version, or Turbomeca S.A. Mandatory SB (MSB) No. 292 73 2818, Version D, dated June 24, 2013, or earlier version.

(g) Optional Terminating Action

Incorporation of Turbomeca S.A. SB No. 292 73 2157, Version C, dated July 17, 2013, or earlier version, is terminating action to the replacement and repetitive inspection requirements of this AD.

(h) Credit for Previous Actions

If you performed the actions required by paragraphs (e)(1) or (e)(2) of this AD using an earlier version of Turbomeca S.A. MSB No. 292 73 2818, Version D, dated June 24, 2013, you met the requirements of this AD. However, you must still repetitively replace the HMU as required by paragraphs (e)(1)(iii) and (e)(2)(iii) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

(1) For more information about this AD, contact James Gray, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2013–0171, dated July 30, 2013. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2007-27009-0015.*

(3) Turbomeca S.A. MSB No. 292 73 2818, Version D, dated June 24, 2013, Turbomeca S.A. SB No. 292 73 2157, Version C, dated July 17, 2013, and Turbomeca S.A. SB No.

292 73 2105, Version B, dated December 16, 2010, which are not incorporated by reference in this AD, can be obtained from Turbomeca S.A. using the contact information in paragraph (j)(4) of this AD.

(4) For service information identified in this AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 1.

(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.

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on April 2, 2014.

Colleen M. D'Alessandro,

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

[FR Doc. 2014–08008 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

[Docket No. FDA–2014–N–0002]

New Animal Drugs for Use in Animal Feeds; Withdrawal of Approval of New Animal Drug Applications; Bambermycins; Hygromycin B; Lincomycin; Pyrantel; Tylosin; Tylosin and Sulfamethazine; Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal of approval of 19 new animal drug applications (NADAs) for certain Type A medicated articles and Type B medicated feeds. This action is being taken at the sponsors' request because these products are no longer manufactured or marketed.

DATES: This final rule is effective April 21, 2014.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, *john.bartkowiak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following 5 sponsors have requested that FDA withdraw approval of the 19 NADAs listed in the following tables because the products are no longer manufactured or marketed:

• ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115:

NADA	Product name
091–582 [1]	Gilt Edge TYLAN (tylosin phosphate) Mix.
108–484 [1]	HFA Tylosin-10 Plus Sulfa (tylosin phosphate and sulfamethazine).
110–045 [1]	Good Life TYLAN 10 (tylosin phosphate) Premix.
110–439 [1]	HFA HYGROMIX 0.48 (hygromycin B) Medicated Premix.
128–411 [1]	TYLAN 5 Sulfa (tylosin phosphate and sulfamethazine) Premix.

• Micro Beef Technologies LTD, P.O. Box 9262, Amarillo, TX 79105:

NADA	Product name
138–187 [1]	TYLAN 40 or 100 (tylosin phosphate).

• Ridley USA, Inc. d/b/a Ridley Feed Ingredients, 1609 First Ave., P.O. Box 110, Mendota, IL 61342:

NADA	Product name
099–468 [1]	Waynextra for Swine (tylosin phosphate).
131–958 [1]	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).
132–136	Ban-A-Worm II (pyrantel tartrate).

• Provimi North America, Inc., 6531 State Rte. 503, Lewisburg, OH 45338:

NADA	Proprietary name
103–089 [1]	TYLAN 5, 10, 20, or 40 (tylosin phosphate).
118–814	WORM–BAN 5 or 10 (pyrantel tartrate).
127–508 [1]	HYGROMIX 0.6 (hygromycin B).
131–413	FLAVOMYCIN 0.4 or 2 (bambermycins).
133–333 [1]	STAFAC 10 (virginiamycin).

• Virbac AH, Inc., 3200 Meacham Blvd., Fort Worth, TX 76137:

NADA	Proprietary name
013–214 [1]	PURINA HYGROMIX (hygromycin B) for Swine.
042–660 [1]	PURINA Pork-Plus (tylosin phosphate and sulfamethazine).
043–387 [1]	PURINA Hog Plus II (tylosin phosphate).
099–767 [1]	PURINA TYLAN 40 (tylosin) Plus Sulfamethazine.
132–574 [1]	PURINA Check-R-Ton LI (lincomycin hydrochloride).

[1] The NADAs listed were identified as being affected by guidance for industry (GFI) #213, ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209,'' December 2013.

Elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of the NADAs listed in this document, and all supplements and amendments thereto, is withdrawn. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these voluntary withdrawals of approval.

In addition, FDA has noticed that conditions of use continue to be listed for an NADA that was voluntarily withdrawn in 1989. At this time, the regulations are being amended to remove the sponsor listing from the tables in 21 CFR 510.600(c) and the drug labeler code from 21 CFR 558.625. This action is being taken to improve the accuracy of the regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entries for ''Gossett Nutrition, Inc.'', ''Micro Beef Technologies LTD'', ''Provimi North America, Inc.'', and ''Wayne Feed Division, Continental Grain Co.''; and in the table in paragraph (c)(2), remove the entries for ''017790'', ''034936'', ''047126'', and ''050972''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.95 [Amended]

■ 4. In § 558.95, in paragraph (a)(2), remove ''Nos. 012286 and 017790'' and in its place add ''No. 012286''; and in paragraphs (d)(2)(i) and (ii), and paragraphs (d)(3)(i) and (ii), in the ''Sponsor'' column, remove ''017790''.

§ 558.274 [Amended]

■ 5. In § 558.274, in paragraph (a) introductory text, remove ''or Type B medicated feeds''; remove paragraphs (a)(2) and (a)(3); redesignate paragraph (a)(4) as paragraph (a)(2); and in paragraphs (c)(1)(i) and (c)(2)(i), in the ''Sponsor'' column, remove ''012286'' and ''017790''.

■ 6. In § 558.325, redesignate paragraphs (a) through (d) as paragraphs (b) through (e), add new paragraph (a), revise newly redesignated paragraph (b), and in newly redesignated paragraph (e)(2), in the ''Sponsor'' column, remove ''051311'' wherever it occurs.

The addition and revision read as follows:

§ 558.325 Lincomycin.

(a) *Specifications.* Type A medicated articles containing 20 or 50 grams per pound lincomycin as lincomycin hydrochloride.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

* * * * *

§ 558.485 [Amended]

■ 7. In § 558.485, remove and reserve paragraphs (b)(3) and (b)(6).

§ 558.625 [Amended]

■ 8. In § 558.625:

■ a. Remove paragraphs (b)(2) through (24), (b)(26) through (38), (b)(40) through (53), and (b)(55) through (88); and

■ b. Redesignate paragraphs (b)(25), (b)(39), (b)(54), (b)(89), and (b)(90) as paragraphs (b)(2) through (6).

■ 9. In § 558.630, revise paragraph (b) to read as follows:

§ 558.630 Tylosin and sulfamethazine.

* * * * *

(b) *Approvals.* See sponsor in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(1) No. 000986: 10 or 40 grams per pound each for use as in paragraph (e)(2)(i) of this section; 5, 10, 20, or 40 grams per pound each for use as in paragraph (e)(2)(ii) of this section; and 40 grams per pound each for use as in paragraph (e)(2)(iii) of this section.

(2) No. 054771: 5, 10, 20, or 40 grams per pound each for use as in paragraph (e)(2)(ii) of this section.

* * * * *

■ 10. In § 558.635, revise paragraph (a) to read as follows:

§ 558.635 Virginiamycin.

(a) *Approvals.* See sponsors in § 510.600(c) of this chapter:

(1) No. 066104: Type A medicated articles containing 5, 10, 20, 50, or 227 grams per pound virginiamycin for use as in paragraph (d) of this section; and 136.2 grams per pound for use as in paragraph (d)(3) of this section.

(2) No. 054771: Type A medicated articles containing 10 grams per pound virginiamycin for use as in paragraphs (d)(1)(iv) and (v) of this section.

* * * * *

Dated: April 4, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–08011 Filed 4–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

[Docket No. FDA–2014–N–0002]

Withdrawal of Approval of New Animal Drug Applications; Bambermycins; Hygromycin B; Lincomycin; Pyrantel; Tylosin; Tylosin and Sulfamethazine; Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 19 new animal drug applications (NADAs) for certain Type A medicated articles and Type B medicated feeds. This action is being taken at the sponsors' request because these products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective April 21, 2014.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, *john.bartkowiak@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The following 5 sponsors have requested that FDA withdraw approval of the 19 NADAs listed in the following tables because the products are no longer manufactured or marketed:

• ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115:

NADA	Product name
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110–045 [1]	Good Life TYLAN 10 (tylosin phosphate) Premix.
110–439 [1]	HFA HYGROMIX 0.48 (hygromycin B) Medicated Premix.
128–411 [1]	TYLAN 5 Sulfa (tylosin phosphate and sulfamethazine) Premix.

• Micro Beef Technologies LTD, P.O. Box 9262, Amarillo, TX 79105:

NADA	Product name
138–187 [1]	TYLAN 40 or 100 (tylosin phosphate).

• Ridley USA, Inc. d/b/a Ridley Feed Ingredients, 1609 1st Ave., P.O. Box 110, Mendota, IL 61342:

NADA	Product name
099–468 [1]	Waynextra for Swine (tylosin phosphate).
131–958 [1]	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).
132–136 ...	Ban-A-Worm II (pyrantel tartrate).

• Provimi North America, Inc., 6531 State Rte. 503, Lewisburg, OH 45338:

NADA	Proprietary name
103–089 [1]	TYLAN 5, 10, 20, or 40 (tylosin phosphate).
118–814 ...	WORM–BAN 5 or 10 (pyrantel tartrate).
127–508 [1]	HYGROMIX 0.6 (hygromycin B).
131–413 ...	FLAVOMYCIN 0.4 or 2 (bambermycins).
133–333 [1]	STAFAC 10 (virginiamycin).

• Virbac AH, Inc., 3200 Meacham Blvd., Fort Worth, TX 76137:

NADA	Proprietary name
013–214 [1]	PURINA HYGROMIX (hygromycin B) for Swine.
042–660 [1]	PURINA Pork-Plus (tylosin phosphate and sulfamethazine).
043–387 [1]	PURINA Hog Plus II (tylosin phosphate).
099–767 [1]	PURINA TYLAN 40 (tylosin) Plus Sulfamethazine.
132–574 [1]	PURINA Check-R-Ton LI (lincomycin hydrochloride).

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of the NADAs listed in this document, and all supplements and amendments thereto, is hereby withdrawn.

Elsewhere in this issue of the **Federal Register,** FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of these applications.

Dated: April 4, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–08010 Filed 4–9–14; 8:45 am]

BILLING CODE 4160–01–P

[1] The NADAs listed were identified as being affected by guidance for industry (GFI) #213, ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209'', December 2013.

PEACE CORPS

22 CFR Part 303

RIN 0420–AA29

Freedom of Information Act Administration

AGENCY: Peace Corps.

ACTION: Final rule.

SUMMARY: The final rule updates Peace Corps regulations on the Freedom of Information Act (FOIA) to implement guidance given by the President and the Attorney General regarding discretionary disclosures of records or information exempt from disclosure under the FOIA, whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. The final rule is based on language used by Department of Justice in its FOIA regulations. The Peace Corps received comments from the National Archives and Records Administration's Office of Government Information Services (OGIS).

DATES: This final rule is effective May 12, 2014.

FOR FURTHER INFORMATION CONTACT: Anne Hughes, Office of the General Counsel, Policy and Program Analyst, 1111 20th Street NW., Washington, DC 20526, and 202–692–2164.

SUPPLEMENTARY INFORMATION: The revisions to the Peace Corps' Freedom of Information Act (''FOIA'') regulations would incorporate the disclosure principles contained in President Obama's January 21, 2009 Memorandum regarding FOIA, the Attorney General's FOIA Guidelines to Favor Disclosure and Transparency dated March 19, 2009, and the Guide to the Freedom of Information Act promulgated by the Department of Justice's Office of Information Policy. The final rule deletes unnecessary and superfluous language and ensures the rule is consistent with current law. The final rule inserts additional contact information for the filing of initial FOIA requests; inserts additional contact information for the filing of administrative appeals; and adds two FOIA exemptions: 5 U.S.C. 552(b)8, Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and (b)9, Geological and geophysical information and data, including maps, concerning wells. The Peace Corps FOIA regulations were last revised May 14, 2007 (72 FR 27055).

Summary of Comments

The proposed rule was published for comments (78 FR 48083, August 7, 2013). The comment period closed September 6, 2013. The Peace Corps received comments about the proposed rule from the National Archives and Records Administration's Office of Government Information Services (OGIS) dated September 5, 2013. In general, OGIS commended the Peace Corps for updating its FOIA policies and procedures to reflect discretionary disclosure and to ensure consistency with current law. In accordance with its statutory mandate under FOIA, OGIS reviewed and commented on the Peace Corps' proposed changes to the rule and other sections of the existing rule. The Peace Corps addresses OGIS' comments on the proposed rule in more detail in the following section.

Analysis of Comments

§ 303.2 Definitions.

Comment: Suggested the Peace Corps consider adding several terms, including requester category and fee waiver, to the glossary.

Response: The Peace Corps has added the terms as suggested.

§ 303.3 Policy.

Comment: Suggested a minor edit in the interest of clarity as noted in italics in the following sentence: ''As a matter of policy, the Peace Corps makes discretionary disclosures of records or information *that may be* exempt from disclosure under FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.''

Response: The Peace Corps made the suggested change.

§ 303.6 Procedures for use of public reading room.

Comment: Suggested adding clarifying language to this section so as not to inadvertently indicate that FOIA requests may be made by telephone. Specifically, suggests the following change, noted in italics: ''Persons submitting a request by telephone *for a record in the public reading room* will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought.''

Response: The Peace Corps made the suggested change.

§ 303.8 Requests for records.

Comment: Regarding subsection (b), suggested changing ''shall be clearly marked 'Freedom of Information Act request' '' to ''*should* be clearly marked 'Freedom of Information Act request.' ''

Response: The Peace Corps made the suggested change.

Comment: Regarding subsection (h), suggested the Peace Corps provide requesters with an individualized tracking number and a brief description of the subject of the request.

Response: The Peace Corps provides an individualized tracking number to each requester and uses brief descriptions when appropriate. We will update the rule to reflect this.

§ 303.9 Exemptions for withholding records.

Comment: Regarding subsection (b), recommends the Peace Corps more fully address the requirements in 5 U.S.C. 552 § (b) that agencies shall (1) indicate, if technically feasible, the *precise* amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made, and (2) indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption.

Response: The Peace Corps concluded this comment does not require our comment. We add the word ''precise'' as suggested.

§ 303.10 Responsibilities and authorities.

Comment: Suggests that the agency also provide requesters with a point of contact within the receiving agency to whom the requester can speak regarding the referral.

Response: The Peace Corps has incorporated OGIS' suggestion in this section.

§ 303.12 Appeals.

Comment: Subsection (a), suggest the Peace Corps allow 30 or even 45 or 60 days for requesters to appeal. OGIS has observed that mail screening by Federal agencies may slow the amount of time it takes appeals to reach their destination. Thirty to 60 day deadlines are in line with other Federal agencies.

Response: The Peace Corps will allow 30 days for requesters to appeal.

Comment: With regard to subsection (b), suggests that the Peace Corps add language in accordance with the 2007 amendments to FOIA (5 U.S.C. § 552 (h)), regarding OGIS and its services.

Response: Peace Corps has incorporated language regarding OGIS and its services as suggested.

§ 303.13 Fees.

Comments: Regarding subsection (h), suggest providing requesters with an estimated amount of fees, including a breakdown of the fees for search, review and/or duplication. Also recommended that the Peace Corps allow documents to be released generally without any charge or at a reduced charge at its discretion and/or if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

Response: The Peace Corps concluded that the comment does not require a response or change to the final rule.

Preservation of Records and Records Management (This Not A Section in Current Rule)

Comment: Suggests agencies include information about the preservation of records and records management in its FOIA regulations.

Response: The Peace Corps concluded that such additional elaboration of a program objective would be duplicative of our current records management policy and unnecessary.

Executive Order 12866

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects in 22 CFR Part 303

Administrative practice and procedure, Freedom of information.

For the reasons set out in the preamble, the Peace Corps proposes to amend 22 CFR Part 303 as follows:

PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 5 U.S.C. 552; 22 U.S.C. 2501, et seq.; E.O. 12137, 44 FR 29023, 3 CFR, 1979 Comp., p. 389; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Amend § 303.2 by:
■ a. Redesignating paragraphs (d) through (g) as paragraphs (g) through (j), paragraph (h) as paragraph (l), and paragraph (i) as paragraph (m);
■ b. Adding new paragraphs (d), (e), and (f), and paragraphs (k) and (n); and
■ c. Revising newly redesignated paragraph (h).

The revisions read as follows:

§ 303.2 Definitions.

* * * * *

(d) *Expedited processing* means the process set forth in the FOIA that allows requesters to ask for expedited processing of their FOIA request if they can demonstrate a compelling need.

(e) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

(f) *FOIA Public Liaison* means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

* * * * *

(h) *OIG records* means those records as defined generally in this section which originated with or are in the possession and control of the Office of Inspector General (OIG) of the Peace Corps which have been compiled for law enforcement, audit, and investigative functions and/or any other purpose authorized under the IG Act of 1978, as amended.

* * * * *

(k) *Requester category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

* * * * *

(n) *Submitter* means any person or entity providing potentially confidential commercial information to an agency, which information may be subject to a FOIA request. The term submitter includes, but is not limited to, individuals, corporations, state governments, and foreign governments.

* * * * *

■ 3. Revise § 303.3 to read as follows:

§ 303.3 Policy.

The Peace Corps will make its records concerning its operations, activities, and business available to the public consistent with the requirements of the FOIA. As a matter of policy, the Peace Corps makes discretionary disclosures of records or information that may be exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

■ 4. Amend § 303.5 by:
■ a. Revising paragraphs (a), (b) introductory text, and (d); and
■ b. Removing paragraph (e).

The revisions read as follows:

§ 303.5 Public reading room.

(a) The Peace Corps maintains a public reading room at its headquarters at 1111 20th Street NW., Washington DC 20526. This room is supervised and is open to the public during Peace Corps' regular business hours for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the Peace Corps makes the following records available in the public reading room:

* * * * *

(d) *Electronic reading room.* Records required by the FOIA to be maintained and made available in the public reading room created by the Peace Corps on or after November 1, 1996, are made available electronically on the Peace Corps Web site at *http://www.peacecorps.gov*.

■ 5. Revise § 303.6 to read as follows:

§ 303.6 Procedures for use of public reading room.

Any member of the public may inspect or copy records described in § 303.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records shall arrange a time in advance, by telephone or letter request made to the Peace Corps FOIA Officer. Persons submitting a request by telephone for a record in the public reading room will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written requests should identify the records sought in the manner described in § 303.8(b) and should request a specific date for inspecting the records. The requester will be advised as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

■ 6. Amend § 303.8 by revising paragraphs (a), (b), (c), (h)(1), and (l)(1)(iv) to read as follows:

§ 303.8 Requests for records.

(a) Except for records required by the FOIA to be published in the **Federal Register** or to be made available in the public reading room, the Peace Corps will make its records promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA.

(b) *Requests.* Requests for records under this section shall be made in writing via regular mail, email, facsimile, or online web portal and, as applicable, the envelope and the letter or other form of request should be clearly marked ''Freedom of Information Request.'' All requests shall be addressed to the FOIA Officer. Requests by letter shall use the address given in § 303.5(a). Requests by email must be sent to the FOIA electronic mailbox, *foia@peacecorps.gov.* Regarding requests submitted via online web portal (accessible on the agency Web site, *www.peacecorps.gov*), requesters shall fill in all of the fields as required. Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as the request is properly identified. The request will be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set out in paragraph (h) of this section until it has been received by the FOIA Officer. Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. Requests by letter shall be stamped ''received'' on the date received by the FOIA Office. Requests by email shall be ''received'' on the date the email arrived, if a business day, or on the next business day. Requests by online web portal will be entered automatically in the FOIA

tracking system. Requests sent via mail or email will be entered manually in the FOIA tracking system. Requesters may utilize the online web portal for purpose of checking status of requests (open/closed) for requests from all sources.

(c) A request must reasonably describe the records requested so that employees of the Peace Corps who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Peace Corps personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph (c). If the Agency cannot identify the requested records after a 2 hour search, it may determine that the records were not adequately described and ask the requester to provide a more specific request.

* * * * *

(h) *Initial response/delays.* (1) The FOIA Officer, upon request for any records made in accordance with this section, except in the case of a request for OIG records, shall assign a tracking number to each individual request and send an acknowledgement letter or email to each requester. The acknowledgement letter or email will inform the requester of the assigned tracking number. The FOIA Officer will make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request. Peace Corps will acknowledge all FOIA requests within 20 working days, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

* * * * *

(l) * * *

(1) * * *

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Peace Corps' or the Federal government's integrity which affect public confidence.

* * * * *

■ 6. Amend § 303.9 by adding paragraphs (a)(8) and (9) and revising paragraph (b) to read as follows:

§ 303.9 Exemptions for withholding records.

(a) * * *

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) In the event that one or more of the above exemptions in paragraph (a) of this section apply, any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The Peace Corps shall indicate, if technically feasible, the precise amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made, and indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption. At the discretion of the Peace Corps officials authorized to grant or deny a request for records, it may be possible to provide a requester with:

(1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record.

* * * * *

■ 7. Amend § 303.10 by revising paragraphs (a), (c)(1)(i) and (ii), (c)(2)(ii), and (c)(3) to read as follows:

§ 303.10 Responsibilities and authorities.

(a) *Legal counsel.* The General Counsel (GC) shall furnish legal advice to Peace Corps officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Peace Corps. The OIG Legal Counsel will coordinate with GC, as appropriate and necessary, when furnishing legal advice to the OIG FOIA Officer and Inspector General.

* * * * *

(c) * * *

(1) * * *

(i) Consult with the other agency before responding to the request; or

(ii) Refer the responsibility for responding to the request for the record to the other agency (but only if the agency is subject to FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(2) * * *

(ii) Whenever a request is made for a record containing information that has been classified by another agency or may be appropriate for classification under Executive Order 13525 or any other executive order concerning the classification of records, the Peace Corps shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, should consider the information for classification, or has the primary interest in the information, as appropriate.

(3) *Notice of referral.* Whenever the Peace Corps refers all or any part of the responsibility for responding to a request to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and the part of the request that has been referred and provide the requester with a point of contact within the receiving agency to whom the requester can speak regarding the referral.

* * * * *

■ 8. Amend § 303.12 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraph (b) as paragraph (c); and

■ c. Adding new paragraph (b).

The addition read as follows.

§ 303.12 Appeals.

* * * * *

(a) Any person whose written request has been denied is entitled to appeal the denial within 30 business days by writing to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG Records, the Inspector General, at the address given in 303.5(a). An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued. If the appeal is sent via mail, the envelope and the letter should be clearly marked ''Freedom of Information Appeal'' and the appeal shall be addressed to the Associate Director, Office of Management. Appeals by letter shall use the address given in § 303.5(a). Appeals are accepted via email. Appeals by email must be sent to the FOIA electronic mailbox, *foia@peacecorps.gov*. In appeals submitted via online web portal (accessible on the agency Web site, *www.peacecorps.gov*), requesters shall fill in all of the fields as required. Appeals by online web portal will be entered automatically in the FOIA tracking system. Persons

submitting an appeal may utilize the online web portal for purpose of checking status of requests (open/closed) for requests from all sources.

(b) A response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways:

Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740, *ogis.archives.gov*, Email: *ogis@nara.gov*, Telephone: 202–741–5770, Facsimile: 202–741–5769, Toll-free: 1–877–684–6448.

* * * * *

■ 9. Amend § 303.13 by revising paragraph (b) to read as follows:

§ 303.13 Fees.

* * * * *

(b) For each commercial use request, fees will be limited to reasonable standard charges for document search, review, and duplication.

* * * * *

■ 10. Amend § 303.14 by revising paragraphs (a)(5)(i) and (ii) to read as follows:

§ 303.14 Procedures for responding to a subpoena.

(a) * * *

(5) * * *

(i) Congressional requests or subpoenas for testimony or documents;

(ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents or domestic relations). Any question regarding whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the Office of the General Counsel.

* * * * *

Dated: March 25, 2014.

Garry W. Stanberry,

Deputy Associate Director, Management.

[FR Doc. 2014–07178 Filed 4–9–14; 8:45 am]

BILLING CODE 6051–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0942; FRL–9908–23–Region 10]

Approval and Promulgation of Implementation Plans; State of Alaska; Revised Format of 40 CFR Part 52 for Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is revising the format for materials submitted by the State of Alaska that are incorporated by reference (IBR) into the Alaska State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by Alaska and approved by the EPA. This format revision will primarily affect the ''Identification of plan'' section, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at the EPA Headquarters in Washington, DC, and the EPA Regional Office. The EPA is also adding a table in the ''Identification of plan'' section which summarizes the approval actions that the EPA has taken on the non-regulatory and quasi-regulatory portions of the Alaska SIP.

DATES: This action is effective April 10, 2014.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

- US Environmental Protection Agency, Region 10, Office of Air, Waste, and Toxics (OAWT–107), 1200 Sixth Avenue, Seattle, Washington 98101;
- Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave. NW., Washington, DC 20460; and
- National Archives and Records Administration (NARA).

If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: 202–566–1742. 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.*

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, (206) 553–6357, *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

I. Background
A. What a SIP Is
B. How the EPA Enforces SIPs
C. How the State and the EPA Update the SIP
D. How the EPA Compiles the SIPs
E. How the EPA Organizes the SIP Compilation
F. Where You Can Find a Copy of the SIP Compilation
G. The Format of the New Identification of Plan Section
H. When a SIP Revision Becomes Federally Enforceable
I. The Historical Record of SIP Revision Approvals
II. What the EPA Is Doing in This Action
III. Statutory and Executive Order Review

I. Background

A. What a SIP Is

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

B. How the EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to the EPA as SIP revisions upon which the EPA must formally act. Once these control measures and strategies are approved by the EPA, after notice and comment, they are incorporated into the Federally-approved SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), title 40 of the Code of Federal Regulations (40 CFR part 52). The actual state regulations approved by the EPA are not reproduced in their entirety in 40 CFR part 52, but are ''incorporated by reference'' (IBR'd) which means that the EPA has approved a given state regulation with a specific effective date. This format allows both the EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows the EPA and the public to take enforcement action,

should a state not enforce its SIP-approved regulations.

C. How the State and the EPA Update the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, the EPA must, from time to time, take action on SIP revisions containing new and/or revised regulations in order to make them part of the SIP. On May 22, 1997 (62 FR 27968), the EPA revised the procedures for IBR'ing Federally-approved SIPs, as a result of consultations between the EPA and the Office of the Federal Register (OFR).

The EPA began the process of developing: (1) A revised SIP document for each state that would be IBR'd under the provisions of title 1 CFR part 51; (2) a revised mechanism for announcing the EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the ''Identification of Plan'' sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and ''Identification of Plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

D. How the EPA Compiles the SIPs

The Federally-approved regulations, source-specific permits, and nonregulatory provisions (entirely or portions of) submitted by each state agency have been compiled by the EPA into a ''SIP compilation.'' The SIP compilation contains the updated regulations, source-specific permits, and nonregulatory provisions approved by the EPA through previous rulemaking actions in the **Federal Register**.

E. How the EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the regulations, part two contains the source-specific requirements that have been approved as part of the SIP, and part three contains nonregulatory provisions that have been EPA-approved. Each part consists of a table of identifying information for each SIP-approved regulation, each SIP-approved source-specific permit, and each nonregulatory SIP provision. In this action, the EPA is publishing the tables summarizing the applicable SIP requirements for Alaska. The EPA Regional Offices have the primary responsibility for updating the compilations and ensuring their accuracy.

F. Where You Can Find a Copy of the SIP Compilation

The EPA Region 10 developed and will maintain the compilation for Alaska. A copy of the full text of Alaska's regulatory and source-specific SIP compilation will also be maintained at NARA and the EPA's Air Docket and Information Center.

G. The Format of the New Identification of Plan Section

In order to better serve the public, the EPA revised the organization of the ''Identification of Plan'' section and included additional information to clarify the enforceable elements of the SIP. The revised Identification of Plan section contains five subsections:

1. Purpose and scope.
2. Incorporation by reference.
3. EPA-approved regulations.
4. EPA-approved source-specific requirements.
5. EPA-approved nonregulatory and quasi-regulatory provisions.

H. When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of Plan section found in each subpart of 40 CFR part 52.

I. The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, the EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, the EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether or not to retain the Identification of Plan appendices for some further period. Although the EPA is retaining the original Identification of Plan section, other sections of part 52 are duplicative of the new Identification of Plan section. The EPA is therefore removing sections 52.97 ''Interstate Transport for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS'' and 52.98 ''Section 110(a)(2) infrastructure requirements'' as part of the general ''housekeeping'' discussed below.

II. What the EPA Is Doing in This Action

This action constitutes a ''housekeeping'' exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by the EPA regulations at 40 CFR part 51. When the EPA receives a formal SIP revision request, the EPA must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of

power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (63 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rules is discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. 5 U.S.C. 802(2). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective of April 10, 2014. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The changes in format to the ''Identification of plan'' section for Alaska are not a 'major rule' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

The EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Alaska SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these ''Identification of plan'' reorganization actions for Alaska.

List of Subjects in 40 CFR Part 52

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

Dated: March 10, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

Part 52 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTION PLANS

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

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

Subpart C—Alaska

§ 52.70 [Redesignated as § 52.74]

■ 2. Section 52.70 is redesignated as § 52.74 and the section heading and paragraph (a) are revised to read as follows:

§ 52.74 Original identification of plan section.

(a) This section identified the original ''Air Quality Implementation Plan for the State of Alaska'' and all revisions submitted by Alaska that were Federally-approved prior to March 4, 2014.

* * * * *

■ 3. New § 52.70 is added to read as follows:

§ 52.70 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State implementation plan for the State of Alaska under section 110 of the Clean Air Act, 42 U.S.C. 7401–7671q and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to March 4, 2014, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after March 4, 2014, will be incorporated by reference in the next update to the SIP compilation.

(2) The EPA Region 10 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of March 4, 2014.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10 Office at 1200 Sixth Avenue, Seattle WA, 98101; the EPA, Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave. NW., Washington, DC; or 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.*

(c) EPA approved regulations.

EPA-APPROVED ALASKA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50)				
18 AAC 50 Article 1. Ambient Air Quality Management				
18 AAC 50.005	Purpose and Applicability of Chapter.	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.010	Ambient Air Quality Standards.	10/1/04; 4/1/10	8/14/07, 72 FR 45378; 10/22/12, 77 FR 64425.	except subsections (7) and (8).
18 AAC 50.015	Air Quality Designations, Classifications, and Control Regions.	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.020	Baseline Dates and Maximum Allowable Increases.	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.025	Visibility and Other Special Protection Areas.	6/21/98	8/14/07, 72 FR 45378.	
18 AAC 50.035	Documents, Procedures and Methods Adopted by Reference.	12/3/05; 4/1/10	8/14/07, 72 FR 45378; 10/22/12, 77 FR 64425.	except (b)(4).
18 AAC 50.040	Federal Standards Adopted by Reference.	12/3/05; 12/9/10	8/14/07, 72 FR 45378; 2/9/11, 76 FR 7116; 10/22/12, 77 FR 64425.	except (a), (b), (c), (d), (e), (g), (h)(17), (h)(18), (h)(19), (i)(7), (i)(8), (i)(9), and (j).
18 AAC 50.045	Prohibitions	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.050	Incinerator Emission Standards.	5/3/02	8/14/07, 72 FR 45378.	
18 AAC 50.055	Industrial Processes and Fuel-Burning Equipment.	10/1/04	8/14/07, 72 FR 45378	except (d)(2)(B).
18 AAC 50.060	Pulp Mills	1/18/97	11/18/98, 63 FR 63983.	
18 AAC 50.065	Open Burning	1/18/97	11/18/98, 63 FR 63983.	
18 AAC 50.070	Marine Vessel Visible Emission Standards.	6/21/98	8/14/07, 72 FR 45378.	
18 AAC 50.075	Wood-Fired Heating Device Visible Emission Standards.	5/6/09	5/9/13, 78 FR 27078.	
18 AAC 50.080	Ice Fog Standards	1/18/97	8/14/07, 72 FR 45378.	
18 AAC 50.100	Nonroad Engines	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.110	Air Pollution Prohibited	5/26/72	5/31/72, 37 FR 10842.	
18 AAC 50 Article 2. Program Administration				
18 AAC 50.200	Information Requests	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.201	Ambient Air Quality Investigation.	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.205	Certification	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.215	Ambient Air Quality Analysis Methods.	10/1/04; 4/1/10	8/14/07, 72 FR 45378; 10/22/12, 77 FR 64425.	except (a)(3).
18 AAC 50.220	Enforceable Test Methods	10/1/04	8/14/07, 72 FR 45378	except (c)(2).
18 AAC 50.225	Owner-Requested Limits	1/29/05	8/14/07, 72 FR 45378.	
18 AAC 50.230	Preapproved Emission Limits.	1/29/05	8/14/07, 72 FR 45378	except (d).
18 AAC 50.240	Excess Emissions	1/18/97	11/18/98, 63 FR 63983.	
18 AAC 50.245	Air Episodes and Advisories.	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.250	Procedures and Criteria for Revising Air Quality Classifications.	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.260	Guidelines for Best Available Retrofit Technology under the Regional Haze Rule.	12/30/07	2/14/13, 78 FR 10546.	
18 AAC 50 Article 3. Major Stationary Source Permits				
18 AAC 50.301	Permit Continuity	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.302	Construction Permits	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.306	Prevention of Significant Deterioration (PSD) Permits.	10/1/04	8/14/07, 72 FR 45378	except (b)(2) and (b)(3).
18 AAC 50.311	Nonattainment Area Major Stationary Source Permits.	10/1/04	8/14/07, 72 FR 45378.	

EPA-APPROVED ALASKA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
18 AAC 50.345	Construction and Operating Permits: Standard Permit Conditions.	10/1/04	8/14/07, 72 FR 45378	except (b), (c)(3), and (l).
18 AAC 50 Article 5. Minor Permits				
18 AAC 50.502	Minor Permits for Air Quality Protection.	12/3/05	8/14/07, 72 FR 45378	except (g)(1) and (g)(2).
18 AAC 50.508	Minor Permits Requested by the Owner or Operator.	10/1/04	8/14/07, 72 FR 45378	except (1) and (2).
18 AAC 50.540	Minor Permit: Application	12/3/05	8/14/07, 72 FR 45378	except (f) and (g).
18 AAC 50.542	Minor Permit: Review and Issuance.	12/1/04	8/14/07, 72 FR 45378	except (b)(2), (f)(4), (f)(5), and (g)(1) but only with respect to clean units and pollution control projects.
18 AAC 50.544	Minor Permits: Content	1/29/05	8/14/07, 72 FR 45378	except (e).
18 AAC 50.546	Minor Permits: Revisions	10/1/04	8/14/07, 72 FR 45378	except (b).
18 AAC 50.560	General Minor Permits	10/1/04	8/14/07, 72 FR 45378	
18 AAC 50 Article 7. Conformity				
18 AAC 50.700	Purpose of 18 AAC 50.700–18 AAC 50.785.	9/4/98	12/29/99, 64 FR 72940.	
18 AAC 50.705	Coverage of 18 AAC 50.710–18 AAC 50.735: Obligations of Responsible Agency.	9/4/98	12/29/99, 64 FR 72940.	
18 AAC 50.710	Transportation Conformity: Incorporation by Reference of Federal Regulations.	9/4/98	12/29/99, 64 FR 72940	exceptions—IBR 93.102(c)&(d); 93.104(d)&(e)(2); 93.109(c)–(f); 93.118(e); 93.119(f)(3); 93.120(a)(2); 93.121(a)(1) & (b); 93.124(b).
18 AAC 50.715	Transportation Conformity: Interagency Consultation Procedures.	9/4/98	12/29/99, 64 FR 72940.	
18 AAC 50.720	Transportation Conformity: Public Involvement.	9/4/98	12/29/99, 64 FR 72940.	
18 AAC 50.725	General Conformity: Incorporation by Reference of Federal Regulations.	1/4/95	9/27/95, 60 FR 49765.	
18 AAC 50.730	General Conformity: Mitigation of Air Quality Impacts.	1/4/95	9/27/95, 60 FR 49765.	
18 AAC 50.735	General Conformity: Frequency of Conformity Determinations.	1/4/95	9/27/95, 60 FR 49765.	
18 AAC 50 Article 9. General Provisions				
18 AAC 50.900	Small Business Assistance Program.	10/1/04	8/14/07, 72 FR 45378.	
18 AAC 50.990	Definitions	10/1/04; 4/1/10; 12/9/10	8/14/07, 72 FR 45378; 10/22/12, 77 FR 64425.	except (21) and (77).
Alaska Administrative Code Title 18 Environmental Conservation, Chapter 52 Emissions Inspection and Maintenance Requirements (18 AAC 52)				
18 AAC 52 Article 1. Emissions Inspection and Maintenance Requirements				
18 AAC 52.005	Applicability and General Requirements.	5/17/08	3/22/10, 75 FR 13436.	
18 AAC 52.007	Suspension and Reestablishment of I/M Requirements.	5/17/08	3/22/10, 75 FR 13436.	
18 AAC 52.010	I/M Program Administration Office.	2/18/06	3/22/10, 75 FR 13436.	

EPA-APPROVED ALASKA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
18 AAC 52.015	Motor Vehicle Maintenance Requirements.	2/18/06	3/22/10, 75 FR 13436.	
18 AAC 52.020	Certificate of Inspection Requirements.	2/18/06	3/22/10, 75 FR 13436.	
18 AAC 52.025	Visual Identification of Certificate of Inspection, Waivers, and Exempt Vehicles.	2/18/06	3/22/10, 75 FR 13436.	
18 AAC 52.030	Department-Administered I/M Program.	2/1/94	4/5/95, 60 FR 17232.	
18 AAC 52.035	I/M Program Administered by an Implementing Agency.	3/27/02	3/22/10, 75 FR 13436.	
18 AAC 52.037	Reporting Requirements for an I/M Program Administered by an Implementing Agency.	2/18/06	3/22/10, 75 FR 13436.	
18 AAC 52.040	Centralized Inspection Program.	2/1/94	4/5/95, 60 FR 17232.	
18 AAC 52.045	Decentralized Inspection Program.	2/1/94	4/5/95, 60 FR 17232.	
18 AAC 52.050	Emissions Standards	3/27/02	3/22/10, 75 FR 13436.	
18 AAC 52.055	Alternative Requirements, Standards and Test Procedures.	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.060	Waivers	5/17/08	3/22/10, 75 FR 13436.	
18 AAC 52.065	Emissions-Related Repair Cost Minimum.	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.070	Referee Facility	3/27/02	3/22/10, 75 FR 13436.	
18 AAC 52.075	Kit Cars and Custom-Manufactured Vehicles.	2/1/94	4/5/95, 60 FR 17232.	
18 AAC 52.080	Grey Market Vehicles	3/27/02	3/22/10, 75 FR 13436.	
18 AAC 52.085	Vehicle Modifications	2/18/06	3/22/10, 75 FR 13436.	
18 AAC 52.090	Repair of Nonconforming Vehicles.	1/1/98	12/29/99, 64 FR 72940.	
18 AAC 52.095	Minimum Certification Requirements.	1/1/98	12/29/99, 64 FR 72940.	
18 AAC 52.100	Enforcement Procedures for Violations by Motorists.	12/14/06	3/22/10, 75 FR 13436.	
18 AAC 52.105	Enforcement Procedures for Violations by Certified Mechanics or Stations.	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52 Article 4. Certification Requirements				
18 AAC 52.400	Mechanic Certification	1/1/98	12/29/99, 64 FR 72940.	
18 AAC 52.405	Certified Mechanic Examinations.	3/27/02	3/22/10, 75 FR 13436.	
18 AAC 52.410	Training Course Certification.	2/18/06	3/22/10, 75 FR 13436.	
18 AAC 52.415	I/M Station Certification	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.420	Equipment Certification	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.425	Renewal of Certification	1/1/98	12/29/99, 64 FR 72940.	
18 AAC 52.430	Duty to Report Change in Status.	2/1/94	4/5/95, 60 FR 17232.	
18 AAC 52.440	Monitoring of Certified Mechanics and Stations.	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.445	Suspension or Revocation of Certification.	2/1/94	4/5/95, 60 FR 17232.	
18 AAC 52 Article 5. Certified Station Requirements				
18 AAC 52.500	General Operating Requirements.	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.505	Display of Certified Station Sign.	2/1/94	4/5/95, 60 FR 17232.	
18 AAC 52.510	Display of Certificates	2/18/06	3/22/10, 75 FR 13436.	
18 AAC 52.515	Inspection Charges	2/18/06	3/22/10, 75 FR 13436.	
18 AAC 52.520	Required Tools and Equipment.	2/18/06	3/22/10, 75 FR 13436.	

EPA-APPROVED ALASKA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
18 AAC 52.525	Remote Station Operation	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.527	Prescreening Prohibited	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.530	Preliminary Inspection	1/1/00	1/8/02, 67 FR 822.	
18 AAC 52.535	Test Abort Conditions	3/27/02	3/22/10, 75 FR 13436.	
18 AAC 52.540	Official I/M Testing	3/27/02	3/22/10, 75 FR 13436.	
18 AAC 52.545	Parts on Order	1/1/98	12/29/99, 64 FR 72940.	
18 AAC 52.546	Unavailable Parts	1/1/98	12/29/99, 64 FR 72940.	
18 AAC 52.550	Recordkeeping Requirements.	2/1/94	4/5/95, 60 FR 17232.	
18 AAC 52 Article 9. General Provisions				
18 AAC 52.990	Definitions	2/18/06	3/22/10, 75 FR 13436.	
Alaska Administrative Code Title 18 Environmental Conservation, Chapter 53 Fuel Requirements For Motor Vehicles (18 AAC 53)				
18 AAC 53 Article 1. Oxygenated Gasoline Requirements				
18 AAC 53.005	Purpose and Applicability; General Requirements.	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.007	Dispenser Labeling	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.010	Control Periods and Control Areas.	2/20/04	6/23/04, 69 FR 34935.	
18 AAC 53.020	Required Oxygen Content	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.030	Sampling, Testing and Oxygen Content Calculations.	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.035	Per Gallon Method of Compliance.	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.040	Averaging Oxygen Content Method of Compliance.	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.045	Oxygen Credits and Debits	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.060	Oxygenated Gasoline Blending.	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.070	Registration and Permit	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.080	Car Fees	12/30/00	1/08/02, 67 FR 822.	
18 AAC 53.090	Recordkeeping	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.100	Reporting	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.105	Product Transfer Document.	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.120	Inspection and Sampling	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.130	Liability for Violation	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.140	Defenses for Violation	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.150	Temporary Variances	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.160	Quality Assurance Program.	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.170	Attest Engagements	10/31/97	12/29/99, 64 FR 72940.	
18 AAC 53.190	Suspension and Reestablishment of Control Period.	2/20/04	6/23/04, 69 FR 34935.	
18 AAC 53 Article 9. General Provisions				
18 AAC 53.990	Definitions	10/31/97	12/29/99, 64 FR 72940.	
City and County Ordinances				
Anchorage Municipal Code 21.85.030.	Improvement Requirements by Improvement Area.	1/16/87 (City effective date).	8/13/93, 58 FR 43084	Eagle River PM Plan—Contingency Plan.
Anchorage Municipal Code 21.45.080.W.7.	Paving	9/24/91 (City effective date).	8/13/93, 58 FR 43084	Section W.7. Eagle River PM Plan—Contingency Plan.
Fairbanks North Star Borough Ordinance No. 2001–17.	Mandating a Fairbanks North Star Borough Motor Vehicle Plug-in Program.	4/12/01 (City adoption date).	2/4/02, 67 FR 5064	Fairbanks Transportation Control Program—Carbon Monoxide.

EPA-APPROVED ALASKA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Fairbanks North Star Borough Ordinance No. 2003–71.	An Ordinance amending the Carbon Monoxide Emergency Episode Prevention Plan including implementing a Woodstove Control Ordinance.	10/30/03 (City adoption date).	7/27/04, 69 FR 44601	Fairbanks Carbon Monoxide Maintenance Plan.
Ordinance of the City and Borough of Juneau, No. 91–52.	An Ordinance amending the Wood smoke control code to lower the particulate count threshold, and to prohibit the burning in woodstoves of substances other than paper, cardboard and untreated wood.	1/6/92 (City adoption date)	3/24/94, 59 FR 13884	Mendenhall Valley PM Plan.
Ordinance of the City and Borough of Juneau, No. 91–53.	An Ordinance amending the wood smoke control fine schedule to increase the fines for violations of the wood smoke control code.	1/6/92 (City adoption date)	3/24/94, 59 FR 13884	Mendenhall Valley PM Plan.
Ordinance of the City and Borough of Juneau No. 93–01.	Setting boundaries for regrading and surfacing.	2/8/93 (City adoption date)	3/24/94, 59 FR 13884	Mendenhall Valley PM Plan.
Ordinance of the City and Borough of Juneau, No. 93–06.	Setting boundaries for regrading and surfacing.	4/5/93 (City adoption date)	3/24/94, 59 FR 13884	Mendenhall Valley PM Plan.
Ordinance of the City and Borough of Juneau, No. 93–39am.	An Ordinance creating Local Improvement District No. 77 of the City and Borough, setting boundaries for drainage and paving of streets in the Mendenhall Valley.	11/17/93 (City adoption date).	3/24/94, 59 FR 13884	Mendenhall Valley PM Plan.
Anchorage Ordinance 2006–13.	An ordinance amending the Anchorage Municipal Code, Chapters 15.80 and 15.85 to comply with State I/M regulations and to comply with DMV Electronic Procedures.	2/14/06 (City approval date).	3/22/10, 75 FR 13436	Anchorage Transportation Control Program—Carbon Monoxide.
Ordinance of the City and Borough of Juneau, Serial No. 2008–28.	An Ordinance Amending the Woodsmoke Control Program Regarding Solid Fuel-Fired Burning Devices.	9/8/08 (City adoption date)	5/9/13, 78 FR 27071	Mendenhall Valley PM Limited Maintenance Plan.
Alaska Statutes				
Title 45 Trade and Commerce, Chapter 45.45. Trade Practices				
Sec. 45.45.400	Prohibited Transfer of Used Cars.	6/25/93	11/18/98, 63 FR 63983	except (b).
Title 46 Water, Air, Energy, and Environmental Conservation, Chapter 46.14. Air Quality Control				
Sec. 46.14.510	Motor Vehicle Pollution	6/25/93	11/18/98, 63 FR 63983	except (a), (c), and (d).
Sec. 46.14.550	Responsibilities of Owner and Operator.	6/25/93	11/18/98, 63 FR 63983.	
Sec. 46.14.560	Unavoidable Malfunctions and Emergencies.	6/25/93	11/18/98, 63 FR 63983.	
Sec. 46.14.990	Definitions	6/25/93	11/18/98, 63 FR 63983	except (4), (5), (9), (11), (12), (14), (19), (20), (21), and (23).

(d) EPA approved state source-specific requirements.

EPA-APPROVED ALASKA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Order/Permit No.	State effective date	EPA approval date	Explanation
None				

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
State of Alaska Air Quality Control Plan: Volume II. Analysis of Problems, Control Actions				
Section I Background				
A. Introduction	Statewide	1/8/97	12/29/99, 64 FR 72940.	
B. Air Quality Control Regions.	Statewide	1/8/97	12/29/99, 64 FR 72940.	
C. Attainment/nonattainment Designations.	Statewide	1/8/97	12/29/99, 64 FR 72940.	
D. Prevention of Significant Deterioration Designations.	Statewide	1/8/97	12/29/99, 64 FR 72940.	
E. New Source Review	Statewide	1/8/97	12/29/99, 64 FR 72940.	
Section II State Air Quality Control Program				
State Air Quality Control Program.	Statewide	7/9/12	10/22/12, 77 FR 64425.	
Section III Area wide Pollutant Control Program				
A. Statewide Carbon Monoxide Control Program.	Statewide	6/5/08	3/22/10, 75 FR 13436.	
State Transportation Control Program.	Statewide	1/1/00	1/08/02, 67 FR 822.	
B. Anchorage Transportation Control Program.	Anchorage	1/4/02	9/18/02, 67 FR 58711.	
Anchorage Carbon Monoxide Maintenance Plan.	Anchorage	9/20/11	3/3/14, 79 FR 11707.	
Anchorage Second 10-year Carbon Monoxide Limited Maintenance Plan.	Anchorage	4/22/13	3/3/14, 79 FR 11707.	
C. Fairbanks Transportation Control Program.	Fairbanks	8/30/01	5/25/01, 66 FR 28836.	
Fairbanks Carbon Monoxide Maintenance Plan.	Fairbanks	9/29/10	1/10/12, 77 FR 1414.	
Fairbanks Second 10-year Carbon Monoxide Limited Maintenance Plan.	Fairbanks	4/22/13	8/9/13, 78 FR 48611.	
D. Particulate Matter	Statewide	10/15/91	8/13/93, 58 FR 43084.	
Eagle River PM_{10} Control Plan.	Eagle River	10/15/91	8/13/93, 58 FR 43084.	
Eagle River PM_{10} Limited Maintenance Plan.	Eagle River	9/29/10	1/7/13, 78 FR 900.	
Mendenhall Valley PM_{10} Control Plan.	Mendenhall Valley	6/22/93	3/24/94, 59 FR 13884.	
Mendenhall Valley PM_{10} Limited Maintenance Plan.	Mendenhall Valley	5/14/09	5/9/13, 78 FR 27071.	
E. Ice Fog	Statewide	1/18/80	7/5/83, 48 FR 30623.	
F. Open Burning	Statewide	4/4/11	2/14/13, 78 FR 10546.	
G. Wood Smoke Pollution Control.	Statewide	11/15/83	4/24/84, 49 FR 17497.	
H. Lead Pollution Control	Statewide	11/15/83	1/3/84, 49 FR 67.	
I. Transportation Conformity.	Statewide	12/05/94	9/27/95, 60 FR 49765.	
J. General Conformity	Statewide	12/05/94	9/27/95, 60 FR 49765.	

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
K. Area Wide Pollutant Control Program for Regional Haze.	Statewide	4/4/11	2/14/13, 78 FR 10546.	
Section IV Point Source Control Program				
A. Summary	Statewide	11/15/83	4/24/84, 49 FR 17497.	
B. State Air Quality Regulations.	Statewide	11/15/83	4/24/84, 49 FR 17497.	
C. Local Programs	Statewide	11/15/83	4/24/84, 49 FR 17497.	
D. Description of Source Categories and Pollutants.	Statewide	11/15/83	4/24/84, 49 FR 17497.	
E. Point Source Control	Statewide	11/15/83	4/24/84, 49 FR 17497.	
F. Facility Review Procedures.	Statewide	9/12/88	7/31/89, 54 FR 31522.	
G. Application Review and Permit Development.	Statewide	11/15/83	4/24/84, 49 FR 17497.	
H. Permit Issuance Requirements.	Statewide	11/15/83	4/24/84, 49 FR 17497.	
Section V Ambient Air Monitoring				
A. Purpose	Statewide	1/18/80	4/15/81, 46 FR 21994.	
B. Completed Air Monitoring Projects.	Statewide	1/18/80	4/15/81, 46 FR 21994.	
C. Air Monitoring Network	Statewide	1/18/80; 7/11/94	4/15/81, 46 FR 21994; 4/5/95, 60 FR 17237.	
E. Annual Review	Statewide	1/18/80	4/15/81, 46 FR 21994.	
State of Alaska Air Quality Control Plan: Volume III. Appendices				
Section II State Air Quality Control Program				
A. State Air Statutes	Statewide	12/11/06	3/22/10, 75 FR 13436	except 46.03.170.
In Situ Burning Guidelines	Statewide	4/4/11	2/14/13, 78 FR 10546.	
State Attorney General Opinions on Legal Authority.	Statewide	12/11/06	3/22/10, 75 FR 13436.	
B. Municipality of Anchorage.	Anchorage	4/22/13	3/3/14, 79 FR 11707.	
C. Fairbanks North Star Borough.	Fairbanks	12/11/06	3/22/10, 75 FR 13436.	
CAA Section 110 Infrastructure Certification Documentation and Supporting Documents.	Statewide	7/9/12	10/22/12, 77 FR 64425.	
Section III Area wide Pollutant Control Program				
A. I/M Program Manual	Statewide	6/5/08	3/22/10, 75 FR 13436.	
B. Municipality of Anchorage.	Anchorage	4/22/13	3/3/14, 79 FR 11707.	
C. Fairbanks	Fairbanks	4/22/13	8/9/13, 78 FR 48611.	
D. Particulate Matter—PM_{10} Supporting Documents.	Anchorage, Eagle River, Mendenhall Valley.	10/15/91; 9/29/10; 5/14/09	8/13/93, 58 FR 43084; 1/7/13, 78 FR 900; 5/9/13, 78 FR 27071.	
G. Ordinance of the City and Borough of Juneau.	Juneau	11/15/83	4/24/84, 49 FR 17497.	
H. Support Documents for Lead Plan.	Statewide	11/15/83	1/3/84, 49 FR 67.	
Section IV Point Source Control Program				
1. PSD Area Classification and Reclassification.	Statewide	11/15/83	4/24/84, 49 FR 17497.	
2. Compliance Assurance	Statewide	11/15/83	4/24/84, 49 FR 17497.	
3. Testing Procedures	Statewide	11/15/83	4/24/84, 49 FR 17497.	

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Section V Ambient Air Monitoring				
ADEC Ambient Analysis Procedures.	Statewide	11/15/83	4/24/84, 49 FR 17497.	
Section VI Small Business Assistance Program				
Section VI Small Business Assistance Program.	Statewide	4/18/94	9/5/95, 60 FR 46024.	
Section 128 Requirements				
Public Official Financial Disclosure (2 AAC 50.010–2 AAC 50.200).	Statewide	7/9/12	10/22/12, 77 FR 64425.	
Executive Branch Code of Ethics (9 AAC 52.010–9 AAC 52.990).	Statewide	7/9/12	10/22/12, 77 FR 64425.	
Section 110(a)(2) Infrastructure and Interstate Transport				
Interstate Transport Requirements—1997 8-Hour Ozone and $PM_{2.5}$ NAAQS.	Statewide	2/7/08	10/15/08, 73 FR 60957	Approves SIP for purposes of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.
110(a)(2) Infrastructure Requirements—1997 ozone standard.	Statewide	7/9/12	10/22/12, 77 FR 64425	Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 1997 8-hour ozone NAAQS.

§ 52.97 [Removed and Reserved]

■ 4. Remove and reserve § 52.97.

§ 52.98 [Removed and Reserved]

■ 5. Remove and reserve § 52.98.

[FR Doc. 2014–08048 Filed 4–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R04–UST–2013–0679; FRL–9909–12–Region 4]

Underground Storage Tank Program: Codification of Approved State Program for South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the United States Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. The EPA codifies its decision to approve state underground storage tank programs and incorporate by reference those provisions of the state statutes and regulations that EPA has approved. This action codifies the prior approval of South Carolina's underground storage tank program, which EPA approved on August 28, 2002, and incorporates by reference approved provisions of South Carolina's statutes and regulations.

DATES: This direct final rule is effective June 9, 2014, unless EPA publishes a prior **Federal Register** notice withdrawing this direct final rule. All comments on the codification of South Carolina's underground storage tank program must be received by the close of business May 12, 2014. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of June 9, 2014, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Comments may be submitted, identified by Docket ID No. EPA–R04–UST–2013–0679, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: Truman.bill@epa.gov.* Include Docket ID No. EPA–R04–UST–2013–0679 in the subject line of the message.
- *Fax:* (404) 562–8689/8439 (prior to faxing, please notify EPA contact listed below).
- *Mail:* Send written comments to Mr. Bill Truman, Chief, Underground Storage Tank Section, Restoration and Underground Storage Tank Branch, RCRA Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960.
- *Hand Delivery or Courier:* Deliver your comments to Mr. Bill Truman, Chief, Underground Storage Tank Section, Restoration and Underground Storage Tank Branch, RCRA Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960.

Instructions: Comments should reference Docket ID No. EPA–R04–UST–2013–0679. 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 statue. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any materials 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *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 materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the following locations: EPA, Region 4, RCRA Division, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–9457; the South Carolina Department of Health and Environmental Control (SCDHEC), 2600 Bull Street, Columbia SC 29201, by email at *foi@dhec.sc.gov* or call (803) 898–3882; and the National Archives and Records Administration (NARA). For the availability of this material at NARA, call 202–741–6030, or go *http://archives.gov/federal-register/cfr/ibr-locations.html.* Interested persons wanting to examine these documents should make an appointment with the office in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Truman, Chief, Underground Storage Tank Section, Restoration and Underground Storage Tank Branch, RCRA Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960; telephone number: (404) 562–9457; fax number: (404) 562–8689/8439; email address: *Truman.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA, 42 U.S.C. 6991c, authorizes EPA to approve a state underground storage tank program to operate in the state in lieu of the federal underground storage tank program. EPA published a notice of final determination in the **Federal Register** announcing its decision to grant approval to South Carolina on August 28, 2002, and approval was effective on September 27, 2002 (67 FR 55160–55162).

EPA codifies its approval of state programs in 40 CFR Part 282, and incorporates by reference therein the state's statutes and regulations. Today's action codifies EPA's prior approval of South Carolina's underground storage tank program. This codification reflects the state program in effect at the time EPA granted South Carolina approval under Section 9004(a), 42 U.S.C. 6991c, for its underground storage tank program. Notice and opportunity for comment were provided earlier on EPA's decision to approve the South Carolina program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in South Carolina. By codifying the approved South Carolina program and by amending the Code of Federal Regulations (CFR) whenever a new or different set of requirements is approved in South Carolina, the status of federally-approved requirements of the South Carolina program will be readily discernible. Only those provisions of the South Carolina underground storage tank program EPA has approved will be incorporated by reference.

To codify EPA's approval of South Carolina's underground storage tank program, EPA has added Section 282.90 to Title 40 of the CFR. Section 282.90(d)(1)(i) incorporates by reference the State's statutes and regulations that make up the approved program. Section 282.90(d) also references the Attorney General's Statement, the Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which were evaluated as part of the approval process of the underground storage tank program, in accordance with Subtitle I of RCRA.

EPA retains the authority, in accordance with Sections 9003(h), 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions, to undertake corrective actions, inspections and enforcement actions in approved States. With respect to such an enforcement action, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogues to these provisions. Therefore, the South Carolina inspection and enforcement authorities are not incorporated by reference, nor are they part of South Carolinas's approved state program which operates in lieu of the federal program. These authorities, however, are listed in Section 282.90(d)(1)(ii) for informational purposes, and also because EPA considered them in determining the adequacy of South Carolina's enforcement authority. South Carolina's authority to inspect and enforce the State's underground storage tank requirements continues to operate independently under State law.

Some provisions of South Carolina's underground storage tank program are not part of the federally approved State program. These non-approved provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are ''broader in scope'' than the federal program are not incorporated by reference in 40 CFR Part 282. Section 282.90(d)(1)(iii) of the codification simply lists for reference and clarity the South Carolina statutory and regulatory provisions which are ''broader in scope'' than the federal program and which are not, therefore, part of the approved State program being codified today. ''Broader in scope'' provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

When the phrases, ''insofar'' and ''except insofar,'' are used in Appendix A (which provides an informational listing of the state requirements incorporated by reference in CFR Part 282), refer to the binders in the codification materials for specifics as to any words, phrases, sentences, paragraphs, or subsections that are ''crossed-out'' in the binders. These crossed-out materials are not incorporated by reference in Part 282 of the Code of Federal Regulations.

B. Statutory and Executive Order Review

This action codifies South Carolina's underground storage tank program that

EPA has previously approved pursuant to RCRA Section 9004, and imposes no requirements other than those imposed by State law. This action complies with applicable executive orders and statutory provisions as follows: 1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (E.O.) 12866. 2. Paperwork Reduction Act—This action does not impose an information collection burden under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this action does not establish or modify any information or recordkeeping requirements for the regulated community, and only seeks to codify the pre-existing and previously approved requirements under State law and imposes no additional requirements beyond those imposed by State law. 3. Regulatory Flexibility Act and Unfunded Mandates Reform Act—After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities because the action will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. 4. Unfunded Mandates Reform Act—Because this action codifies pre-existing requirements under South Carolina state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. Executive Order 13132: Federalism—E.O. 13132 does not apply to this action because it will 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 various levels of government. 6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—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. This action merely incorporates by reference the South Carolina underground storage tank program requirements that EPA has already approved. South Carolina is not approved to implement RCRA underground storage tank program in Indian Country. This action has no effect on the underground storage tank program that EPA implements in Indian Country. Thus, Executive Order 13175 does not apply to this action. 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it will codify a previously approved state program. 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to E.O. 13211 because it is not a ''significant regulatory action'' as defined in E.O. 12866. 9. National Technology Transfer And Advancement Act—EPA has previously addressed the non-applicability of the National Technology Transfer and Advancement Act in its final approval of this state program. See 67 FR 55160. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), (15 U.S.C. 272 note), 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, Section 12(d) of the National Technology Transfer and Advancement Act does not apply to this action. 10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations—Executive Order 12898 (59 FR 7629, February 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 action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This action does not affect the level of protection provided to human health or the environment because this action simply codifies pre-existing and previously approved State rules which are no less stringent than existing Federal requirements. 11. Congressional Review Act—EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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).

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Authority: This document is issued under the authority of Section 9004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991c.

Dated: March 10, 2014.

A. Stanley Meiburg,

Deputy Regional Administrator, U.S. EPA Region 4.

For the reasons set forth in the preamble, 40 CFR Part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

■ 2. Subpart B is amended by adding § 282.90 to read as follows:

§ 282.90 South Carolina State-Administered Program.

(a) The State of South Carolina is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the South Carolina Department of Health and Environmental Control, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA published the notice of final determination approving the South

Carolina underground storage tank program on August 28, 2002, and that approval became effective on September 27, 2002.

(b) South Carolina has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection and enforcement authorities under sections 9003(h), 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, South Carolina must revise its approved program to adopt new changes to the federal Subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If South Carolina obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) South Carolina has final approval for the following elements submitted to EPA in the State's program application for final approval as of August 28, 2002. Copies of South Carolina's program application may be obtained from the South Carolina Department of Health and Environmental Control, Underground Storage Tank Program, 2600 Bull Street, Columbia, SC 29201; or the Underground Storage Tank Section, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960.

(1) *State statutes and regulations.* (i) The provisions cited in paragraph (d)(1)(i) of this section are incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.,* with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal register/code of federal regulations/ibr locations.html.* Copies of South Carolina's program application may be obtained from the Underground Storage Tank Program, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

(A) South Carolina Statutory Requirements Applicable to the Underground Storage Tank Program, 2000.

(B) South Carolina Regulatory Requirements Applicable to the Underground Storage Tank Program, 2000.

(ii) EPA considered the following statutes and regulations in evaluating the State program, but is not incorporating them by reference.

(A) The statutory provisions include:

(*1*) *Code of Laws of South Carolina, Title 44. Health, Chapter 2. State Underground Petroleum Environmental Response Bank Act (SUPERB Act):*

(*i*) Sec. 44–2–40 SUPERB Account and SUPERB Financial Responsibility Fund created; purposes and uses. Insofar as it provides for the creation of a SUPERB Account and SUPERB Financial Responsibility Fund, and insofar as it establishes criteria for accessing the funds.

(*ii*) Sec. 44–2–50 Regulations to be promulgated; cost of rehabilitation. Insofar as it provides for compliance monitoring and enforcement of the chapter and regulations promulgated thereunder.

(*iii*) Sec. 44–2–60 Registration of underground storage tanks; environmental impact fee. Insofar as this statute places requirements on petroleum distributors, prohibiting them from placing petroleum and petroleum products into an underground storage tank for which the owner or operator does not hold a currently valid registration, and insofar as it requires registration and the payment for registration fees and environmental impact fees for underground storage tanks.

(*iv*) Sec. 44–2–75 Insurance pools. Insofar as its provides for a means of establishing insurance pools to demonstrate financial responsibility.

(*v*) Sec. 44–2–90 Accrued interest; prospective abolition of environmental interest fee; use of residual funds for site rehabilitation. Insofar as it refers to interest collected on state fund accounts and the sunset date of the state funds.

(*vi*) Sec. 44–2–110 Early detection incentive program. Insofar as it establishes criteria for qualified expenditure of funds from the SUPERB Account.

(*vii*) Sec. 44–2–115 Eligibility requirements to be applied to favor eligibility; qualified site remains qualified until correction and compensation; petition for matter to be heard as contested case; reconsideration by mediation panel. Insofar as is regulates eligibility for state funds.

(*viii*) Sec. 44–2–120 Use of contractors, subcontractors, and employees for rehabilitation or cleanup. Insofar as this statute establishes requirements for site rehabilitation contractors.

(*ix*) Sec. 44–2–130 Compensation from SUPERB Account; other insurance or financial responsibility mechanism; deadline for submission; site rehabilitation not a state contract; criteria and restrictions; application, certification, approval, denial, appeal; records; rehabilitation plan; payments; federal government sites exempt. Insofar as it establishes criteria for access to state funds.

(*x*) Sec. 44–2–140 Enforcement of chapter or department order, penalties for violations. Insofar as it provides for compliance monitoring and enforcement of the underground storage tank requirements.

(*xi*) Sec. 44–2–150 SUPERB Advisory Committee; establishment; purposes; composition; terms; officers; quorum; operating procedures; facilities; duties and responsibilities; reports. Insofar as it establishes provisions for an advisory committee to study the implementation and administration of the SUPERB program.

(*2*) *Code of Laws of South Carolina, Title 15, Civil Remedies and Procedures.*

(*i*) Rule 24(a)(2) Appeals from department decisions giving rise to contested case; procedures. Insofar as it provides for compliance monitoring and enforcement of the underground storage tank requirements.

(B) The regulatory provisions include:

(*1*) *South Carolina Underground Storage Tank Control Regulations, R. 61–92, Part 280.*

(*i*) Sec. 280.301 Violations and Penalties. Insofar as it provides for notice to violators, assessment of penalties, criminal prosecution, and appeals under the SUPERB Act.

(*ii*) Sec. 280.302 Appeals. Insofar as it provides for appeal of any determination by the Department pursuant to R. 61–92 under the provisions of R. 61–72, Procedures for Contested Cases, and the Administrative Procedures Act.

(*2*) SUPERB Site Rehabilitation and Fund Access Regulations, R.61–98.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) *Code of Laws of South Carolina, Title 44. Health, Chapter 2. State*

Underground Petroleum Environmental Response Bank Act (SUPERB Act):

(*1*) Sec. 44–2–60 Registration of underground storage tanks; environmental impact fee. Insofar as it places requirements on petroleum distributors, prohibiting them from placing petroleum and petroleum products into an underground storage tank for which the owner or operator does not hold a currently valid registration, and insofar as it requires registration and the payment of registration fees for underground storage tanks.

(*2*) Sec. 44–2–80 (B) and (C) Release of regulated substance; containment, removal, and abatement. Insofar as it places requirements that exceed the scope of the federal requirements applicable to a person who holds indicia of ownership to protect their security interests in an underground storage tank.

(*3*) Sec. 44–2–120 Use of contractors, subcontractors, and employees for rehabilitation or cleanup. Insofar as it establishes requirements for site rehabilitation contractors.

(B) *South Carolina Underground Storage Tank Control Regulations, R.61–92, Part 280:*

(*1*) Sec. 280.10(e) Applicability. Insofar as it places requirements on persons other than owners and operators.

(*2*) Sec. 280.23 New Tanks—permits required. Insofar as it requires issuance of permits to install and operate for all new tanks.

(*3*) Sec. 280.300 Variances. Insofar as it exceeds the scope of the federal program.

(2) *Statement of legal authority.* (i) ''General Counsel's Statement,'' signed by the State General Counsel on September 5, 2000, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Adequate Enforcement Procedures'' submitted as part of the original application on September 5, 2000, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on September 5, 2000, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and the South Carolina Department of Health and Environmental Control, Underground Storage Tank Program, signed by EPA Regional Administrator on December 20, 2001, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to Part 282 is amended by adding in alphabetical order ''South Carolina'' and its listing to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

South Carolina

(a) The statutory provisions include:

(1) *Code of Laws of South Carolina, Title 44. Health, Chapter 2. State Underground Petroleum Environmental Response Bank Act (SUPERB Act)*

44–2–10 Short Title
44–2–20 Definitions
44–2–70 Financial responsibility of underground storage tank owners and operators
44–2–80 Release of regulated substance; containment, removal, and abatement

(b) The regulatory provisions include:

(1) *South Carolina Underground Storage Tank Control Regulations, R.61–92, Part 280*

280.10 Applicability
280.11 Interim prohibition for deferred UST systems
280.12 Definitions
280.20 Performance standards for new UST systems
280.21 Upgrading of Existing UST systems
280.22 Notification requirements
280.23 New tanks—B permits required
280.24 Testing
280.25 Secondary containment required
280.30 Spill and overfill control
280.31 Operation and maintenance of corrosion protection
280.32 Compatibility
280.33 Repairs allowed
280.34 Reporting and recordkeeping
280.40 General requirements for all UST systems
280.41 Requirements for petroleum UST systems
280.42 Requirements for hazardous substance UST systems
280.43 Methods of release detection for tanks
280.44 Methods of release detection for piping
280.45 Release detection recordkeeping
280.50 Reporting of suspected releases
280.51 Investigation due to off-site impacts
280.52 Release investigation and confirmation steps
280.53 Reporting and cleanup of spills and overfills
280.60 General
280.61 Initial response
280.62 Initial abatement measures and site check
280.63 Initial site characterization
280.64 Free product removal
280.65 Investigations for soil and ground-water cleanup
280.66 Corrective action plan
280.67 Public participation
280.70 Temporary closure
280.71 Permanent closure and changes-in-service
280.72 Assessing the site at closure or change-in-service and reporting requirements
280.73 Applicability to previously closed UST systems
280.74 Closure records
280.90 Applicability
280.91 Compliance dates
280.92 Definition of terms
280.93 Amount and scope of required financial responsibility
280.94 Allowable mechanisms and combinations of mechanisms
280.95 Financial test of self-assurance
280.96 Guarantee
280.97 Insurance and risk retention group coverage
280.98 Surety Bond
280.99 Letter of credit
280.101 State Underground Petroleum Environmental Response Bank (SUPERB) or other state assurance
280.102 Trust Fund
280.103 Standby trust fund
280.104 Local government bond rating test
280.105 Local government financial test
280.106 Local government guarantee
280.107 Local government fund
280.108 Substitution of financial assurance mechanism by owner or operator
280.109 Cancellation or non-renewal by a provider of financial assurance
280.110 Reporting by owner or operator
280.111 Recordkeeping
280.112 Drawing on financial assurance mechanisms
280.113 Release from requirements
280.114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance
280.115 Replenishment of guarantees, letters of credit, or surety bonds
280.116 Suspension of enforcement (reserved)
280.200 Definitions
280.210 Participation in management
280.220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located
280.230 Operating an underground storage tank or underground storage tank system

* * * * *

[FR Doc. 2014–08049 Filed 4–9–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 85a

[Docket No. CDC–2014–0001; NIOSH–271]

RIN 0920–AA51

Occupational Safety and Health Investigations of Places of Employment

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice confirming effective date of direct final rule.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) is publishing this notice to confirm the effective date of the direct final rule, published on January 16, 2014 (79 FR 2789).

DATES: The direct final rule published at 79 FR 2789, January 16, 2014, will become effective on April 16, 2014.

FOR FURTHER INFORMATION CONTACT: Teresa Schnorr Ph.D., Director NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS); 4676 Columbia Parkway, Cincinnati, OH 45226; 513–841–4428 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On January 16, 2014, HHS published a direct final rule (DFR) to make minor technical amendments to the regulatory text in 42 CFR Part 85a (79 FR 2789). On the same date, HHS simultaneously published a companion notice of proposed rulemaking (NPRM) that proposed identical amendments. In the preambles to both documents, HHS indicated that if no significant adverse comments on the DFR were received by March 17, 2014, the agency would publish a document in the **Federal Register** withdrawing the NPRM and confirming the effective date of the DFR within 30 days of the conclusion of the comment period. HHS received one public comment that was not a significant adverse comment, but rather was in support of the companion NPRM. Because HHS did not receive any significant adverse comments to the NPRM within the specified comment period, we have published a notice to withdraw the NPRM [INSERT CITATION FOR NOTICE TO WITHDRAWAL NPRM]. Therefore, consistent with the DFR, the technical amendments to 42 CFR Part 85a will become effective on April 16, 2014.

Dated: April 3, 2014.

Kathleen Sebelius,

Secretary.

[FR Doc. 2014–07988 Filed 4–9–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

Rescission of Certain Emergency Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of rescission.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA), after consultation with representatives of the governors of the affected States, rescinds certain covered emergency exemptions. The exemptions originally took effect automatically upon declaration of an emergency by various governors or FMCSA, and were extended by FMCSA after consultation with representatives of the governors. The President signed the ''Home Heating Emergency Assistance Through Transportation Act of 2014'' (HHEATT Act, or ''the Act'') on March 21, 2014. The Act extends until May 31, 2014, all ''covered emergency exemptions'' created between February 5, 2014, and March 21, 2014, to provide regulatory relief to commercial motor vehicle operators directly supporting the delivery of propane and other home heating fuels. In accordance with the Act, FMCSA has consulted with representatives of each of the governors to determine whether emergency circumstances still exist and has determined that certain covered emergency exemptions created under the HHEATT Act are no longer necessary and should be rescinded.

DATES: This decision is effective April 10, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 2014, the President signed the HHEATT Act. The Act extends until May 31, 2014, all ''covered emergency exemptions'' issued (or extended) by the Federal Motor Carrier Safety Administration (FMCSA) under 49 CFR 390.23 or 390.25 between February 5, 2014, and March 21, 2014, to provide regulatory relief to commercial motor vehicle operators directly supporting the delivery of propane and other home heating fuels ''. . . unless the Secretary of Transportation, after consultation with the Governors of the affected States, determines that the emergency for which the exemption was provided ends before that date'' [Section 2(a)].

The HHEATT Act revived or extended the Agency's emergency exemptions for 36 States and the District of Columbia. FMCSA has contacted the chief executives of these jurisdictions, or their designees, to inquire whether critical shortages of propane and other home heating fuels still persist, or whether the exemptions may no longer be needed.

Thirty States plus DC have replied that they are no longer experiencing shortages of propane and other home heating fuels. Six governors have indicated that fuel supplies in their States have not yet returned to normal and that they want the exemption to remain in effect [Illinois, Maryland, Minnesota, North Carolina, Pennsylvania and Virginia].

In accordance with Section 2(a) of the HHEATT Act, FMCSA rescinds, effective immediately, the emergency declarations or extensions issued between February 5, 2014, and March 21, 2014, for the following States and DC, which have reported that the exemptions are no longer needed:

Alabama
Arkansas
Connecticut
Delaware
District of Columbia
Florida
Georgia
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Massachusetts
Michigan
Mississippi
Missouri
Nebraska
New Hampshire
New Jersey
New York
North Dakota
Ohio
Oklahoma
Rhode Island
South Carolina
South Dakota
Tennessee
Vermont
West Virginia

Wisconsin

The emergency declaration extension will remain in effect until further notice, but in no circumstances, beyond May 31, 2014, for the following six States:

Illinois
Maryland
Minnesota
North Carolina
Pennsylvania
Virginia

Issued under authority delegated in 49 CFR 1.87.

Issued on: April 3, 2014.

Anne S. Ferro,

Administrator.

[FR Doc. 2014–08021 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130312235–3658–02]

RIN 0648–XD173

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2014 Commercial Accountability Measure and Closure for South Atlantic Vermilion Snapper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial sector for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for vermilion snapper, as estimated by the Science Research Director (SRD), are projected to reach the commercial annual catch limit (ACL) for the January 1 through June 30, 2014, fishing period on April 19, 2014. Therefore, NMFS closes the commercial sector for vermilion snapper in the South Atlantic EEZ on April 19, 2014, and it will remain closed until the start of the July 1 through December 31, 2014, fishing period. This closure is necessary to protect the vermilion snapper resource.

DATES: This rule is effective 12:01 a.m., local time, April 19, 2014, until 12:01 a.m., local time, July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes vermilion snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for vermilion snapper in the South Atlantic is divided into two quotas for two 6-month time periods, and is 401,874 lb (182,287 kg), gutted weight [446,080 lb (202,338 kg), round weight], for the current fishing period of January 1 through June 30, 2014, as specified in 50 CFR 622.190(a)(4)(i)(B).

On March 7, 2014, NMFS published a temporary rule (79 FR 12957) to reduce the commercial trip limit for vermilion snapper in or from the EEZ of the South Atlantic to 500 lb (227 kg), gutted weight, effective 12:01 a.m., local time, March 11, 2014, until July 1, 2014, or until the quota is reached and the commercial sector closes, whichever occurs first.

In accordance with regulations at 50 CFR 622.193(f)(1), NMFS is required to close the commercial sector for vermilion snapper when its commercial ACL (commercial quota) for that portion of the fishing year applicable to the respective commercial ACL (commercial quota) has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL (commercial quota) for South Atlantic vermilion snapper for the January–June fishing period will have been reached by April 19, 2014. Accordingly, the commercial sector for South Atlantic vermilion snapper is closed effective 12:01 a.m., local time, April 19, 2014, until 12:01 a.m., local time, July 1, 2014. The commercial ACL (commercial quota) for vermilion snapper in the South Atlantic is 401,874 lb (182,287 kg), gutted weight [446,080 lb (202,338 kg), round weight], for the July 1 through December 31, 2014, fishing period, as specified in 50 CFR 622.190(a)(4)(ii)(B).

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, April 19, 2014. During the closure, the bag limit specified in 50 CFR 622.187(b)(5) and the possession limits specified in 50 CFR 622.187(c)(1), apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ. During the closure, the sale or purchase of vermilion snapper taken from the EEZ is prohibited. As specified in 50 CFR 622.190(c)(1)(i), the prohibition on sale or purchase does not apply to the sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, April 19, 2014, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limits and the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic vermilion snapper and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

This action is taken under 50 CFR 622.193(f)(1) and is exempt from review under Executive Order 12866.

This action responds to the best available scientific information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for vermilion snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect vermilion snapper since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL (commercial quota). Prior notice and opportunity for public comment would require time and would likely result in a harvest well in excess of the established commercial ACL (commercial quota).

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 7, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–08060 Filed 4–9–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 69
Thursday, April 10, 2014

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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2013–0057]

RIN 0579–AD84

Expansion of Areas in the Philippines Considered Free of Mango Seed Weevil and Mango Pulp Weevil and Establishment of a Lower Irradiation Dose as a Treatment for Mango Pulp Weevil

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the list of designated pest-free areas for mango seed weevil and mango pulp weevil within the Philippines. We are also advising the public that we have determined that it is necessary to amend the Plant Protection and Quarantine Treatment Manual to establish a specific approved dose of irradiation as an authorized treatment for mango pulp weevil. These actions are necessary because surveys have determined that additional areas within the Philippines are free of mango seed weevil and mango pulp weevil. Additionally, we have determined that the mango pulp weevil can be neutralized with a lower dose of irradiation than the current generic dose for most plant pests of the class Insecta.

DATES: We will consider all comments that we receive on or before June 9, 2014.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0057*.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2013–0057, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0057* or in our reading Room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Juan A. (Tony) Román, Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2242.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–66, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Under the regulations in § 319.56–5, APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standards for Phytosanitary Measures (ISPM) No. 4, ''Requirements For the Establishment of Pest Free Areas.'' [1] The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in our regulations in 7 CFR 300.5. In addition, APHIS must also approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

APHIS has received a request from the Government of the Philippines to recognize additional areas of that country as being free of *Sternochetus mangiferae* (mango seed weevil) and *Sternochetus frigidus* (mango pulp weevil). Specifically, the Government of the Philippines asked that we recognize the mango growing regions of Luzon, Visayas, and Mindanao as free of mango seed weevil and mango pulp weevil and the island of Palawan as free of mango seed weevil. Hawaii and Guam are infested with mango seed weevil. Section 319.56–33 of the regulations sets out the requirements for the importation into the United States of mangoes from the Philippines. This section currently specifies that mangoes from the Philippines may be imported into the United States to areas other than Hawaii and Guam only from the island of Guimaras, which is considered free of both mango seed weevil and mango pulp weevil. Mangoes from the island of Palawan are currently prohibited entry into all areas of the United States due to the presence of mango pulp weevil.

In accordance with our regulations and the criteria set out in ISPM No. 4, we have reviewed and approved the survey protocols and other information provided by the Philippines relative to its system to establish freedom, phytosanitary measures to maintain freedom, and system for the verification of the maintenance of freedom. Therefore, we are proposing to recognize the mango growing regions of Luzon, Visayas, and Mindanao as free of mango seed weevil and mango pulp weevil and the island of Palawan as free of mango seed weevil. Rather than amending the regulations to add these areas to the list of pest-free areas in § 319.56–33, we would instead amend the regulations to allow the importation of mangoes from pest-free areas in the Philippines in accordance with the criteria set forth in § 319.56–5. We are also proposing to amend the box labeling restriction in § 301.56–33(d) and the additional declaration requirement in § 319.56–33(e) to refer to areas that are free of mango seed weevil and mango pulp weevil in accordance with the regulations in § 319.56–5 rather than to specific areas. In the event that additional pest-free areas within the Philippines are recognized in the future, these changes would allow us to update the list of pest-free areas through a notice published in the **Federal Register**

[1] The IPPC's Web site may be viewed at *https://www.ippc.int/*.

in accordance with § 319.56–5 rather than a proposed rule.

Because this action concerns the expansion of a currently recognized pest-free area in the Philippines from which fruits and vegetables are authorized for importation into the United States, our review of the information presented by the Philippines in support of its request is examined in a commodity import evaluation document (CIED) titled ''Recognition of Mango Production Sites That are Free of Mango Seed Weevil, *Sternochetus mangiferae* and Mango Pulp Weevil, *Sternochetus frigidus* in the Philippines.'' The CIED may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the CIED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Treatment

The phytosanitary treatments regulations contained in part 305 of 7 CFR chapter III set out standards for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual.[2] Section 305.3 sets out a process for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (a) sets out the process for adding, revising, or removing treatment schedules when there is no immediate need to make a change.

The PPQ Treatment Manual currently provides a generic treatment of 400 Gy of irradiation for all pests of the class Insecta, except pupae and adults of the order Lepidoptera. This class includes the mango pulp weevil. However, the Treatment Manual also specifies lower doses for certain pests in this class. It is important that required irradiation doses be set at the lowest effective level. Higher doses cost more to administer and may affect the marketability of the product.

Therefore, in accordance with § 305.3(a)(1), we are providing notice of a new pest-specific irradiation dose of 165 Gy that we have determined is effective against mango pulp weevil in mangoes. The reasons for this determination are described in a treatment evaluation document (TED) we have prepared to support this action. The TED may be viewed on the Regulations.gov Web site or in our reading room. You may also request paper copies of the TED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. We welcome public comment on this new pest-specific irradiation treatment.

Currently, the Treatment Manual also lists a pest-specific irradiation dose of 300 Gy for mango seed weevil. However, this treatment option is not reflected in the regulations. Therefore, we are proposing to amend the regulations to allow for the importation of mangoes from areas of the Philippines that are either free of mango pulp weevil or that have been treated for that pest with the new pest-specific irradiation dose. This would allow the importation of mangoes from Palawan. We are also proposing to amend the regulations to allow for the importation of mangoes from areas of the Philippines that are either free of mango seed weevil or that have been treated for that pest, either in the Philippines or at the port of first arrival within the United States, in accordance with the authorized pest-specific irradiation dose listed in the Treatment Manual.

Currently, the regulations require treatment of mangoes from the Philippines for fruit flies of the genus *Bactrocera* with vapor heat prior to importation into the United States. We are proposing to amend the regulations to allow the use of any approved treatments for *Bactrocera* fruit flies. This would allow for the treatment of mangoes from the Philippines with the new irradiation dose for mango pulp weevil or the current irradiation dose for mango seed weevil, both of which exceed the minimum irradiation dose approved for the treatment of *Bactrocera* fruit flies.

Executive Order 12866 and Regulatory Flexibility Act

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

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

This proposed rule is in response to a request from the Philippines to recognize additional areas (regions in Luzon, Visayas, and Mindanao) as free of mango seed and mango pulp weevils, and the island of Palawan as free of mango seed weevil. Currently, fresh mango from the Philippines is enterable into the United States from the island of Guimaras, which is considered free of these weevils, subject to treatment to mitigate the risk associated with fruit flies of the genus *Bactrocera.*

In addition, APHIS is proposing to amend the PPQ Treatment Manual by adding irradiation at 165 Gy as an option to mitigate the risk associated with mango pulp weevil. This dosage also mitigates the risk associated with fruit flies of the genus *Bactrocera*.

In 2010 and 2011, fresh mango exports to the United States from the Philippines averaged about 42,000 pounds per year. U.S. mango imports from all sources averaged more than 3.3 billion pounds per year between 2009 and 2012, with most coming from Mexico, Peru, Ecuador, Brazil, and Guatemala. Thus, imports from the Philippines comprise a negligible share of total fresh mango imports, less than 0.002 percent. Given the Philippines' current very small share and the proximity of major Latin American sources, the additional quantity of fresh mango that may be imported from the Philippines because of this rule is unlikely to make an appreciable difference in the total quantity imported.

U.S. mango production, about 6.6 million pounds per year, is equivalent to 0.2 percent of imports. Most if not all mango farms are small entities in Florida, California, Texas, and Hawaii, where the fruit is primarily marketed locally. Any effect for these farms and for mango importers of additional fresh mango imports from the Philippines would be inconsequential, given the very small change expected to total imports.

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

Executive Order 12988

This proposed rule would allow mangoes to be imported into the United States from additional areas of the Philippines that APHIS has determined to be pest-free. If this proposed rule is adopted, State and local laws and

[2] The PPQ Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

regulations regarding mangoes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. Section 319.56–33 is amended by revising paragraphs (a), (b), (d), and (e) to read as follows:

§ 319.56–33 Mangoes from the Philippines.

* * * * *

(a) *Limitation of origin.* The mangoes must have been grown in an area that the Administrator has determined to be free of mango seed weevil (*Sternochetus mangiferae*) and mango pulp weevil (*Sternochetus frigidus*) in accordance with sect; 319.56–5 or be treated for mango seed weevil and mango pulp weevil in accordance with the requirements in paragraph (b) of this section. Mangoes from areas of the Philippines that are not free of mango seed weevil or that are not treated for mango seed weevil are eligible for importation into Hawaii and Guam only.

(b) *Treatment.* The mangoes must be treated for fruit flies of the genus *Bactrocera* in accordance with part 305 of this chapter. Mangoes from areas that are not considered to be free of mango pulp weevil in accordance with § 319.56–5 must be treated for that pest in accordance with part 305 of this chapter. Mangoes from areas that are not considered to be free of mango seed weevil in accordance with § 319.56–5 must be treated for that pest in accordance with part 305 of this chapter or they are eligible for importation into Hawaii and Guam only.

* * * * *

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56–5(e)(1). Consignments originating from areas that do not meet the requirements in paragraph (a) of this section for freedom from or treatment for mango seed weevil must be labeled ''For distribution in Guam and Hawaii only.''

(e) *Phytosanitary certificate.* Mangoes originating from all approved areas must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains an additional declaration stating that the mangoes have been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section either in the Philippines or at the port of first arrival within the United States. Phytosanitary certificates accompanying consignments of mangoes originating from pest-free mango growing areas within the Philippines must also contain an additional declaration stating that the mangoes were grown in an area that the Administrator has determined to be free of mango seed weevil and mango pulp weevil or have been treated in accordance with paragraph (b) of this section.

* * * * *

Done in Washington, DC, this 4th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–08020 Filed 4–9–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2013–0059]

RIN 0579–AD85

Importation of Fresh Unshu Oranges From Japan Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of citrus fruit to remove certain restrictions on the importation of Unshu oranges from Japan that are no longer necessary. Specifically, we propose to remove requirements for the fruit to be grown in specified canker-free export areas with buffer zones and for joint inspection in the groves and packinghouses by the Government of the Republic of Japan and the Animal and Plant Health Inspection Service. We would also clarify that surface sterilization of the fruit must be conducted in accordance with our regulations. Finally, we would require that each shipment be accompanied by a phytosanitary certificate containing an additional declaration stating that the fruit was given the required surface sterilization. These proposed changes would make the regulations concerning the importation of Unshu oranges from Japan consistent with our domestic regulations concerning the interstate movement of citrus fruit from areas quarantined because of citrus canker.

DATES: We will consider all comments that we receive on or before June 9, 2014.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0059*.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2013–0059, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0059* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Jones, Regulatory Policy Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737; (301) 851–2289.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that is caused by a complex of *Xanthomonas* spp. bacteria and that affects plants and

plant parts of citrus and citrus relatives (Family Rutaceae). The regulations in ''Subpart-Citrus Fruit'' (7 CFR 319.28) prohibit the importation of fruit from areas infected with certain citrus diseases, including citrus canker, unless the fruit is imported under conditions specified in that section.

Currently, the regulations in paragraph (b) of § 319.28 (referred to below as the regulations) allow the importation of Unshu oranges (*Citrus reticulata* Blanco var. *unshu*) from certain areas in Japan, into the United States under permit and after the specified safeguards of a preclearance program have been met to prevent the introduction of citrus canker, the citrus fruit fly (*Bactrocera tsuneonis*), and other quarantine plant pests such as mealybugs, mites, disease vectors, and armored scale pests. We last updated these requirements in a final rule published in the **Federal Register** on February 1, 2002 (67 FR 4873–4877, Docket No. 99–099–2). The amendments we made in the 2002 final rule were based on a pest risk assessment (PRA) that identified these pests as quarantine pests of Japanese citrus and identified measures to prevent their introduction into the United States.

Certain requirements in the preclearance program are directed specifically towards citrus canker. Under the current regulations, Unshu oranges intended for export to the United States from Japan must be grown and packed in isolated, canker-free export areas established by the national plant protection organization (NPPO) of Japan. The regulations also require the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture and the NPPO of Japan to inspect fruit in the groves prior to and during harvest, and in the packinghouses during packing operations, to ensure that the fruit are free of citrus canker. Surface sterilization of the fruit, as prescribed by APHIS, is required prior to packing.

Other requirements address the other pests that we have identified as affecting Unshu oranges from Japan. These include trapping for the citrus fruit fly and exclusion of imports from areas where the fly is found and requirements that the fruit either be fumigated with methyl bromide for pests or that its distribution be restricted to States other than commercial citrus-producing States, to ensure that the pests are not introduced into those States.

The NPPO of Japan has requested that APHIS reanalyze the pest risk associated with the importation of Unshu oranges from Japan. In response to that request, we have developed an updated PRA, which incorporates new scientific evidence found since the preparation of the earlier PRA. The updated PRA can be viewed on the Internet on the Regulations.gov Web site [1] or in our reading room.

The updated PRA, titled ''Importation of Japanese Unshu Orange, *Citrus reticulata* Blanco var. Unshu, Fruit into the Continental United States: A Pathway-Initiated Risk Analysis'' (April 23, 2013), identifies 26 arthropods as quarantine pests that could follow the pathway of imported Unshu oranges from Japan. However, these pests are adequately mitigated by the existing systems approach conditions specific to arthropod pests.

The PRA identifies two diseases as pests of Unshu oranges from Japan: Citrus canker and citrus greening, ''*Candidatus* Liberobacter asiaticus.'' However, the PRA determined that citrus greening is highly unlikely to be introduced into the United States via the importation of fruit for consumption, and thus did not analyze this pest further.

The PRA rates citrus canker as having a medium risk potential. Pests receiving a rating within the medium range may require specific phytosanitary measures in addition to standard port-of-entry inspection.

Based on the conclusions of the PRA, we prepared a risk management document outlining the conditions under which Unshu oranges from Japan could safely be imported into the continental United States. The conditions include:

- Importation of the fruit in commercial consignments that are practically free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. APHIS has defined commercial consignments as consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Excluding leaves and stems from consignments of imported Unshu oranges would help to prevent citrus canker from being introduced into the United States, since canker lesions on leaves harbor much higher bacterial populations than canker lesions on fruit.
- Surface treatment of the fruit in accordance with 7 CFR part 305 prior to packing, registration of the packinghouse in which the treatment is applied and the fruit is packed with the NPPO of Japan, and certification that the fruit has been treated in accordance with the regulations.

We are therefore proposing to incorporate those requirements into the regulations pertaining to the importation of Unshu oranges from Japan. (As noted above, the existing regulations do require surface sterilization of the fruit as prescribed by APHIS. Because we have determined that the use of a post-harvest disinfectant in accordance with 7 CFR part 305 is the most effective mitigation for citrus canker, we are proposing to state explicitly that the treatment must be conducted in accordance with part 305.) [2]

We are also proposing to remove requirements associated with the importation of Unshu oranges from Japan that we consider no longer to be necessary. Specifically, we would remove the requirements for the oranges to be grown in specified canker-free areas and for joint inspection of the fruit by the NPPO of Japan and APHIS prior to and during harvest and in the packinghouses during packing operations. These changes are based on our conclusions in a final rule published in the **Federal Register** and effective on October 22, 2009 (74 FR 54431–54445, Docket No. APHIS–2009–0023). That final rule amended the conditions under which fruit may be moved interstate from an area quarantined for citrus canker by removing certain restrictions that we considered to be no longer necessary.

In that final rule, we determined that commercially packed and disinfected fresh citrus fruit, even fruit with visible citrus canker lesions, is not an epidemiologically significant pathway for the spread of *Xanthomonas* spp.

[1] Instructions on accessing Regulations.gov and information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES**. You may also request paper copies of the PRA by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**.

[2] Part 305 contains requirements for administering approved treatments. As noted in § 305.2(b), approved treatment schedules are set out in the Plant Protection and Quarantine Treatment Manual, available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf*. The approved citrus canker treatment schedule for imported citrus fruit is the same as that for domestic citrus fruit.

bacteria. Accordingly, we removed a requirement for an APHIS inspector to be in the packinghouse and inspect fruit leaving an area quarantined for citrus canker to ensure that it was free of citrus canker lesions, as well as a prohibition on the interstate movement of citrus fruit from quarantined areas to commercial citrus-producing States. Considering our determination about the epidemiological significance of fruit as a pathway for citrus canker, it is similarly unnecessary to ensure that Unshu orange orchards and the fruit produced from those orchards are free of citrus canker before the Unshu oranges are exported to the United States.

Our proposed removal of the requirements for Unshu oranges exported to the United States to have been produced in specified canker-free areas and jointly inspected by the NPPO of Japan and APHIS in the groves and packinghouses would parallel the changes we made in 2009 to the domestic citrus canker regulations and thus harmonize these regulations with our domestic regulations. Similarly, our proposed requirement that Japanese packinghouses be registered with the NPPO of Japan would also contribute to harmonizing our import requirements with our domestic ones by paralleling a requirement in § 301.75–7 that owners or operators of packinghouses where packing of fruit regulated for citrus canker occurs must enter into compliance agreements with APHIS. Like domestic compliance agreements, registration of packinghouses by the NPPO of Japan will allow for oversight in conducting the required treatment and adhering to other requirements related to packing (for example, box marking to reflect distribution restrictions).

Changes to the Regulations

Paragraph (b)(1) of § 319.28 currently sets out the requirement that Unshu oranges from Japan be exported to the United States only from canker-free areas. We are proposing to replace this requirement with a requirement that the fruit must be imported in commercial consignments that are practically free of leaves, twigs, and other plant parts, as discussed earlier.

Paragraph (b)(2) sets out trapping requirements related to the citrus fruit fly for production areas on Kyushu Island. These requirements refer to trapping both in orange export areas and in buffer zones, which are currently described in paragraph (b)(1) as 400 meters wide. We would amend paragraph (b)(2) to remove the requirement for trapping in buffer zones. The paragraph requires trapping to be conducted as prescribed by the NPPO of Japan and APHIS. Removing the specific distance requirement from the regulations would allow the NPPO of Japan and APHIS to determine how big a buffer zone around each Unshu export area needs to be incorporated into the trapping, based on local conditions, and to adjust the zone if circumstances change or new information is found. The requirement would otherwise remain unchanged.

Paragraph (b)(3) requires joint inspection of Unshu oranges in the groves and in the packinghouses by the NPPO of Japan and APHIS. We are proposing to remove this requirement. Instead, the current requirement in paragraph (b)(4) that the fruit be given a surface sterilization would be moved to paragraph (b)(3), with the changes discussed above. Paragraph (b)(4) would indicate that the packinghouse in which the surface sterilization treatment is applied and the fruit is packed must be registered with the NPPO of Japan.

We are proposing to add a new paragraph (b)(5) indicating that the Unshu oranges from Japan must be accompanied by a phytosanitary certificate issued by the NPPO of Japan with an additional declaration that the Unshu oranges were packed and produced in accordance with 7 CFR 319.28. We would renumber current paragraphs (b)(5), (b)(6), and (b)(7) as paragraphs (b)(6), (b)(7), and (b)(8), respectively.

Executive Order 12866 and Regulatory Flexibility Act

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

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

APHIS received a request from the Government of Japan to reassess the requirements for importing Unshu oranges into the continental United States. The proposed rule would harmonize our regulations that allow importation of Unshu oranges from Japan with our domestic citrus canker regulations.

Easy-peel, sweet, juicy, seedless mandarin varieties, including Unshu oranges, are gaining popularity in the United States. The United States does not commercially produce Unshu oranges, but does produce various similar mandarin varieties. U.S. production of these mandarin varieties doubled in 6 years, from a quarter million metric tons (MT) in 2007 to almost half a million MT in 2012. Production values of mandarin varieties more than doubled, from $141 million in 2007 to $336 million in 2012. In general, harvesting and marketing activities are most active between January 1 and March 31 in California and between November 15 and March 15 in Florida. U.S. imports of mandarin varieties averaged about 142,000 MT per year, valued at $178 million, between 2010 and 2012, with Chile, Spain, Peru, and Morocco the main sources. Net imports (imports minus exports) averaged about 100,000 MT per year.

In 2012, Japan exported 2,400 MT of Unshu oranges valued at $4.5 million. Canada was the main destination, accounting for 83 percent of Japan's exports (2,000 MT). Unshu oranges have not been imported from Japan into the United States for the last 3 years. Between 1996 and 2009, the United States imported about 200 MT of Unshu oranges from Japan annually, valued at about $340,000, only during the months of November and December. They were typically sold at a premium in ethnic specialty stores and through small-package direct delivery to customers who celebrated the New Year's holidays.

Reportedly, up to 500 MT of Unshu oranges may be imported from Japan under the proposed rule. Given the much lower volumes and restricted seasonality of past Unshu orange imports from Japan (about 200 MT annually imported, and only during the months of November and December), 500 MT may be an ambitious goal. The 500 MT would be equivalent to less than one-tenth of 1 percent of the U.S. supply of mandarin varieties in 2012.

Korea is currently the principal source of Unshu oranges imported by the United States. Even if imports from Japan were to reach 500 MT, we expect any product displacement that would occur would be largely borne by Korean Unshu orange suppliers. The extent to which U.S. producers of other mandarin varieties may be affected would depend upon the quantity imported, the degree to which consumers may substitute Unshu oranges for the other mandarin varieties, and their price competitiveness. The Japanese Unshu orange share of the U.S. market for mandarin varieties is expected to be negligible; past imports have served a specialty market during a limited time

of the year; and they garner a premium price. Collectively, these conditions lead to the conclusion that any effect of the proposed rule for U.S. producers of other mandarin varieties would be small.

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

Executive Order 12988

This proposed rule would change the requirements for Unshu oranges to be imported into the continental United States from Japan. If this proposed rule is adopted, State and local laws and regulations regarding Unshu oranges imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2013–0059. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Implementing this rule will require phytosanitary certificates and registration of packinghouses.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: The NPPO of Japan and Unshu orange packinghouses.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 8.

Estimated annual number of responses: 16.

Estimated total annual burden on respondents: 8 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. Section 319.28 is amended as follows:

■ a. In paragraph (b) introductory text, by removing the words ''paragraph (b)(7)'' and adding the words ''paragraph (b)(8)'' in their place.

■ b. By revising paragraphs (b)(1) through (b)(4).

■ c. By redesignating current paragraphs (b)(5), (b)(6), and (b)(7) as paragraphs (b)(6), (b)(7), and (b)(8), respectively.

■ d. By adding a new paragraph (b)(5).

The addition and revisions read as follows:

§ 319.28 Notice of quarantine.

* * * * *

(b) * * *

(1) The Unshu oranges must be imported in commercial consignments that are practically free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.

(2) In Unshu orange export areas on Kyushu Island, Japan, trapping for the citrus fruit fly (*Bactrocera tsuneonis*) must be conducted as prescribed by the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries and the U.S. Department of Agriculture. If fruit flies are detected, then shipping will be suspended from the export area until negative trapping shows the problem has been resolved.

(3) Before packing, the oranges must be given a surface sterilization in accordance with part 305 of this chapter.

(4) The packinghouse in which the surface sterilization treatment is applied and the fruit is packed must be registered with the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries.

(5) Unshu oranges imported from Japan must be accompanied by a phytosanitary certificate issued by the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries with an additional declaration that the Unshu oranges were packed and produced in accordance with 7 CFR 319.28.

* * * * *

Done in Washington, DC, this 4th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–08019 Filed 4–9–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2011–BT–TP–0024]

RIN 1904–AC46

Energy Conservation for Certain Industrial Equipment: Alternative Efficiency Determination Methods and Test Procedures for Walk-In Coolers and Walk-In Freezers; Extension of Public Comment Period

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

ACTION: Extension of public comment period.

SUMMARY: The U.S. Department of Energy (DOE) is reopening of the comment period for interested parties to submit comments on the February 20, 2014 supplemental notice of proposed rulemaking for walk-in cooler and walk-in freezer alternative efficiency determination methods and test procedures. The comment period is extended to April 25, 2014.

DATES: *Comments:* DOE will accept comments, data, and information regarding the supplemental notice of proposed rulemaking (SNOPR) for walk-in cooler and walk-in freezer alternative efficiency determination methods and test procedures no later than April 25, 2014.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Alternatively, interested persons may submit comments, identified by docket number EERE–2011–BT–TP–0024 and/or RIN 1904–AC46, by any of the following methods:

• *Email: AED-ARM-2011-TP-0024@ee.doe.gov.* Include EERE–2011–BT–TP–0024 and/or RIN 1904–AC46in 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 Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. 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 Office, 950 L'Enfant Plaza SW., 6th Floor, 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.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-TP-0024.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On February 20, 2014 DOE issued a supplemental notice of proposed rulemaking (SNOPR) that proposed to revise its existing regulations for walk-in coolers and walk-in freezers regarding the use of methods other than testing for certifying compliance and reporting ratings in accordance with energy conservation standards. DOE also proposed clarifications to its test procedures for this equipment. 79 FR 9817. In today's notice, the Department is reopening the comment period for the February 20, 2014 SNOPR to allow interested parties additional time to provide the Department with comments, data, and information. The Department will accept comments regarding the February 20, 2014 SNOPR received no later than April 25, 2014.

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–08070 Filed 4–9–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0159; Directorate Identifier 2014–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corporation Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain serial number Pratt & Whitney Canada Corporation (P&WC) model PW150A turboprop engines. This proposed AD was prompted by reports of damage to a high-pressure fuel line, which could result in a high-pressure fuel leak into the engine nacelle. This proposed AD would require rerouting of the igniter cables and installation of new support brackets. We are proposing this AD to prevent high-pressure fuel leaks, which could cause engine fire and damage to the engine and the airplane.

DATES: We must receive comments on this proposed AD by June 9, 2014.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

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

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Internet: *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* by searching for and locating Docket No. FAA–2014–0159; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0159; Directorate Identifier 2014–NE–01–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Transport Canada AD CF–2014–09, dated February 12, 2014, (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been reports of damage in excess of acceptable criteria to the high pressure fuel line from the P&WC PW150A engine flowmeter to the flow divider. Damage has included fretting wear through contact with the engine igniter cables. The contact is the result of incorrectly routed igniter cables. While there has been no report of associated fuel leakage, the fretting wear, if undetected, could progress to a point where high pressure fuel would leak into the engine nacelle.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0159.

Relevant Service Information

P&WC has issued Service Bulletin (SB) No. PW150–72–35274, Revision 1, dated May 3, 2012. The SB describes procedures for rerouting the igniter cables and installing new support brackets.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Canada, and is approved for operation in the United States. Pursuant to our bilateral agreement with Canada, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by Transport Canada Civil Aviation and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require rerouting of the igniter cables and installation of new support brackets.

Costs of Compliance

We estimate that this proposed AD affects 180 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 hour per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $682 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $138,060.

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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada Corporation: Docket No. FAA–2014–0159; Directorate Identifier 2014–NE–01–AD.

(a) Comments Due Date

We must receive comments by June 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Canada Corporation (P&WC) model PW150A turboprop engines, serial number PCE–FA0916 and earlier.

(d) Reason

This AD was prompted by reports of damage to a high-pressure fuel line, which could result in a high-pressure fuel leak into the engine nacelle. We are issuing this AD to prevent high-pressure fuel leaks, which could cause engine fire and damage to the engine and the airplane.

(e) Actions and Compliance

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

(1) At the next shop visit, but before 36 months from the effective date of this AD, reroute the igniter cables and install new support brackets in accordance with Accomplishment Instructions, paragraph 3.B., of P&WC Service Bulletin (SB) No. PW150–72–35274, Revision 1, dated May 3, 2012.

(2) Reserved.

(f) Definition

For the purpose of this AD, a shop visit is when the engine is disassembled to the extent necessary to gain access to the igniter cables.

(g) Credit for Previous Action

If you performed the actions of paragraph (e) of this AD before the effective date of this AD using P&WC SB No. PW150–72–35274, Initial Issue, dated March 23, 2012, you met the requirements of this AD.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to MCAI Transport Canada AD CF–2014–09, dated February 12, 2014, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0159.

(3) P&WC SB No. PW150–72–35274, Revision 1, dated May 3, 2012, pertains to the subject of this AD and can be obtained from P&WC using the contact information in paragraph (i)(4) of this AD.

(4) 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; Internet: *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.

Issued in Burlington, Massachusetts, on April 3, 2014.

Colleen M. D'Alessandro,

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

[FR Doc. 2014–08009 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0193; Directorate Identifier 2013–NM–234–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by a report of a crack found in the fuselage during a fatigue test campaign. This proposed AD would require repetitive rototest inspections for cracking; corrective actions if necessary; and modification of the torsion box, which would terminate the repetitive inspections. We are proposing this AD to prevent cracking in the side box beam flange of the fuselage, which could affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by May 27, 2014.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0193; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0193; Directorate Identifier 2013–NM–234–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0261, dated October 28, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During the full scale fatigue test campaign of the A320 family type design, a crack was reported in the fuselage side box beam flange at frame (FR) 43 level, both sides.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> For the reason describe above, this [EASA] AD requires repetitive inspections of the fuselage side box beam flange at FR43, and, depending on findings, corrective action(s) [repair]. This [EASA] AD also requires a modification, which constitutes terminating action for the repetitive inspections.

The modification includes related investigative and corrective actions. The related investigative actions include a rotoprobe inspection of the holes for cracks, and a high frequency eddy current (HFEC) inspection for cracks. The corrective action includes repair. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0193.

Relevant Service Information

Airbus has issued Service Bulletin A320–53–1251, Revision 01, dated October 18, 2013, and Service Bulletin A320–53–1258, dated October 18, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Repair Approvals

In many FAA transport ADs, when the service information specifies to contact the manufacturer for further instructions if certain discrepancies are found, we typically include in the AD a requirement to accomplish the action using a method approved by either the FAA or the State of Design Authority (or its delegated agent).

We have recently been notified that certain laws in other countries do not allow such delegation of authority, but some countries do recognize design approval organizations. In addition, we have become aware that some U.S. operators have used repair instructions that were previously approved by a State of Design Authority or a Design Approval Holder (DAH) as a method of compliance with this provision in FAA ADs. Frequently, in these cases, the previously approved repair instructions come from the airplane structural repair manual or the DAH repair approval statements that were not specifically developed to address the unsafe condition corrected by the AD. Using repair instructions that were not specifically approved for a particular AD creates the potential for doing repairs that were not developed to address the unsafe condition identified by the MCAI AD, the FAA AD, or the applicable service information, which could result in the unsafe condition not being fully corrected.

To prevent the use of repairs that were not specifically developed to correct the unsafe condition, certain requirements of this proposed AD would require that the repair approval specifically refer to the FAA AD. This change is intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we use the phrase ''its delegated agent, or the DAH with State of Design Authority design organization approval, as applicable'' in this proposed AD to refer to a DAH authorized to approve certain required repairs for this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 851 airplanes of U.S. registry.

We also estimate that it would take about 178 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $31,334 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $39,540,864, or $46,464 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2014–0193; Directorate Identifier 2013–NM–234–AD.

(a) Comments Due Date

We must receive comments by May 27, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers on which Airbus modification 21202 has been embodied in production, except those on which modification 152569 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report of a crack found in the side box beam flange of the fuselage at the frame (FR) 43 level during a fatigue test campaign. We are issuing this AD to prevent cracking in the side box beam flange of the fuselage, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Inspection

At the time specified in paragraph (g)(1) or (g)(2) of this AD, whichever occurs later: Do a rototest inspection for cracking of the beam flange of the stiffener 15 side box on the left- and right-hand sides in the FR43 area, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1258, dated October 18, 2012. Repeat the inspection thereafter at intervals not to exceed 7,500 flight cycles or 15, 000 flight hours, whichever occurs first.

(1) Before exceeding 24,000 flight cycles or 48,000 flight hours, whichever occurs first since the airplane's first flight.

(2) Within 3,000 flight cycles or 6,000 flight hours, whichever occurs first after the effective date of this AD.

(h) Corrective Action

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder (DAH) with EASA design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(i) Modification

Before exceeding 48,000 flight cycles or 96,000 flight hours, whichever occurs first since the airplane's first flight: Modify the fittings on the left- and right-hand sides of the torsion box, including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1251, Revision 01, dated October 18, 2013; except where Airbus Service Bulletin A320–53–1251, Revision 01, dated October 18, 2013, specifies to contact Airbus for repair, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder (DAH) with EASA design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(j) Terminating Action

Modification of the airplane as required by paragraph (i) of this AD constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1251, November 16, 2012, which is not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227 1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0261, dated October 28, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0193.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 1, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–08071 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 85a

[Docket No. CDC–2014–0001; NIOSH–271]

RIN 0920–AA51

Occupational Safety and Health Investigations of Places of Employment

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) is withdrawing a previously published notice of proposed rulemaking that solicited public comment on minor technical amendments to regulatory text.

DATES: The notice of proposed rulemaking published at 79 FR 2809,

January 16, 2014, is withdrawn, effective immediately.

FOR FURTHER INFORMATION CONTACT: Teresa Schnorr Ph.D., Director NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS); 4676 Columbia Parkway, Cincinnati, OH 45226; 513–841–4428 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On January 16, 2014, HHS published a notice of proposed rulemaking (NPRM) to make minor technical amendments to the regulatory text in 42 CFR Part 85a (79 FR 2809). On the same date, HHS simultaneously published a companion direct final rule (DFR) that offered identical updates because the agency believed that the revisions were non-controversial and unlikely to generate significant adverse comment (79 FR 2789). In the NPRM preamble, HHS stated that if no significant adverse comments were received by March 17, 2014, the NPRM would be withdrawn and the effective date of the final rule would be confirmed within 30 days of the conclusion of the comment period. HHS received one public comment that was not a significant adverse comment, but rather was in support of the companion NPRM. Because HHS did not receive any significant adverse comments to the NPRM within the specified comment period, we hereby withdraw this NPRM from rulemaking.

Dated: April 3, 2014.

Kathleen Sebelius,

Secretary.

[FR Doc. 2014–07987 Filed 4–9–14; 8:45 am]

BILLING CODE 4163–18–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 10–71; FCC 14–29]

Network Non-Duplication and Syndicated Exclusivity Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether to eliminate or modify the network non-duplication and syndicated exclusivity rules in light of changes in the video marketplace in the more than 40 years since these rules were adopted. The Commission seeks comment on whether the exclusivity rules are still needed to protect broadcasters' ability to compete in the video marketplace and to ensure that program suppliers have sufficient incentives to develop new and diverse programming and on the impact of eliminating of the exclusivity rules.

DATES: Comments for this proceeding are due on or before May 12, 2014; reply comments are due on or before June 9, 2014.

ADDRESSES: You may submit comments, identified by MB Docket No. 10–71, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Kathy Berthot, *Kathy.Berthot@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–7454.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking,* FCC 14–29, adopted on March 31, 2014 and released on March 31, 2014. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This document contains no proposed information collection requirements.

SUMMARY:

I. Introduction

1. We are issuing this *FNPRM* to solicit additional comment on whether we should eliminate or modify our network non-duplication and syndicated exclusivity rules. We received numerous comments on this issue in response to the *NPRM.* However, the record developed in this proceeding to date is not sufficient for us to yet make a determination whether the exclusivity rules are still needed in today's competitive video marketplace or to assess the potential impact on affected parties of eliminating these rules. Given the complex issues involved, we believe it is necessary and appropriate to undertake a more comprehensive review of the exclusivity rules and to compile a more complete record.

II. Background

2. A broadcaster may carry network and syndicated programming on its local television station(s) only with the permission of the networks or syndicators that own or hold the rights to that programming, as reflected in network/affiliate agreements or syndication agreements. In addition, the ability of broadcasters to grant retransmission consent for MVPD carriage may be constrained by the network/affiliate agreement or by the syndication agreement because such agreements generally limit the geographical area in which the station holds exclusive rights to network or syndicated programming. The Commission's network non-duplication and syndicated exclusivity rules are designed to serve as a means of enforcing contractual exclusivity agreements entered into between broadcasters, which purchase the distribution rights to programming, and networks and syndicators, which supply the programming. Thus, the network non-duplication and syndicated exclusivity rules require that the broadcaster have contractual exclusivity rights and provide proper notice to the relevant MVPD, requesting that an MVPD delete duplicative network or syndicated programming. The rules may be invoked by stations that elect retransmission consent in their local markets, even if they are not actually carried by the MVPD, to prevent an MVPD from carrying programming of a distant station that duplicates local broadcast station programming. By requiring MVPDs to delete duplicative network or syndicated programming

carried on any distant signals they import into a local market, the Commission's network non-duplication and syndicated exclusivity rules provide an extra-contractual mechanism for broadcasters to enforce their contractual exclusivity rights against MVPDs, which are not parties to those exclusivity agreements.

A. Network Non-Duplication

3. The network non-duplication rules protect a local commercial or non-commercial broadcast television station's right to be the exclusive distributor of network programming within a specified zone, and require programming subject to the rules to be blacked out on request when carried on another station's signal imported by an MVPD into the local station's zone of protection. A television station's rights under the network non-duplication rules are governed by the terms of the contractual agreement between the station and the holder of the rights to the program. The Commission's rules allow commercial and non-commercial television stations to protect the exclusive distribution rights they have negotiated with broadcast networks, not to exceed a specified geographic zone of 35 miles (55 miles for network programming in smaller markets). For purposes of these rules, it is these specified zones that distinguish between ''local'' and ''distant.''

4. *Cable.* Network non-duplication rules for cable were first promulgated by the Commission in 1965. Throughout the 1960s and 1970s the Commission continually refined the rules, but the policy behind them remained the same. The purpose of the rules was to protect the exclusive contractual rights of local broadcasters in network programming from the importation of non-local network stations by cable systems, thereby protecting local stations from what was perceived as the potential harm from the growth of cable systems. In this regard, the Commission was concerned that because broadcasters and cable systems were on an unequal footing with respect to the market for programming, a cable system's duplication of local programming via the signals of distant stations was not a fair method of competition with broadcasters. Prior to 1988, network non-duplication protection applied only to programming being broadcast simultaneously in the local market by a distant signal. In 1988, the Commission modified the rule to extend exclusivity protection to any time period specified in the contractual agreement between the network and the affiliate.

5. The Commission's rules contain several exceptions to application of the network non-duplication rules. First, because of the cost of the equipment necessary to delete programming, the Commission exempts cable systems having fewer than 1,000 subscribers. The rule also does not apply if the out-of-market station's signal is deemed ''significantly viewed'' in a relevant community. This latter exception was intended to prevent the deletion of programs on stations which the viewers could receive off-the-air.

6. *Satellite.* The Satellite Home Viewer Improvement Act of 1999 (''SHVIA'') directed the Commission to apply the cable network non-duplication rules to direct broadcast satellite (''DBS''), but only with respect to the retransmission of nationally distributed superstations. These nationally distributed superstations may be offered to any satellite subscriber, without the ''unserved household'' restriction that applies to other distant network stations. SHVIA directed the Commission to implement new exclusivity rules for satellite that would be ''as similar as possible'' to the rules applicable to cable operators. In general, the network non-duplication rules apply when a satellite carrier retransmits a nationally distributed superstation to a household within a local broadcaster's zone of protection and the nationally distributed superstation carries a program to which the local station has exclusive rights. In contrast to the mileage-based specified zones used in the cable context, zip codes are used to determine the areas to which the zone of protection applies for satellite carriers. As in the cable context, the broadcast station licensees may exercise their network non-duplication rights in accordance with the terms specified in a contractual agreement between the network and its affiliate within the zone of protection. The rules for satellite carriers also have exceptions for significantly viewed stations and for areas in which the satellite carrier has fewer than 1,000 subscribers in a protected zone.

7. *Open Video Systems.* The Telecommunications Act of 1996 (the ''1996 Act'') established the open video system as a new framework for entry into the video programming distribution market. Congress's intent in establishing the open video system framework was ''to encourage telephone companies to enter the video programming distribution market and to deploy open video systems in order to 'introduce vigorous competition in entertainment and information markets' by providing a competitive alternative to the incumbent cable operator.'' As an incentive for telephone company entry into the video programming distribution market, the 1996 Act provides for reduced regulatory burdens for open video systems subject to the systems' compliance with certain non-discrimination and other requirements. However, the 1996 Act directed the Commission to extend its network non-duplication rules to the distribution of video programming over open video systems. Accordingly, the Commission amended its rules in 1996 to directly apply the existing network non-duplication rules to open video systems.

B. Syndicated Exclusivity

8. The syndicated exclusivity rules are similar in operation to the network non-duplication rules, but they apply to exclusive contracts for syndicated programming, rather than for network programming. In addition, the syndicated exclusivity rules apply only to commercial stations. The syndicated exclusivity rules allow a local commercial broadcast television station or other distributor of syndicated programming to protect its exclusive distribution rights within a 35-mile geographic zone surrounding a television station's city of license, although the zone may not be greater than that provided for in the exclusivity contract between the station and syndicator. Unlike the network non-duplication rule, however, the zone of protection is the same for smaller markets as it is for the top-100 markets. With only a few exceptions, a station that has obtained syndicated exclusivity rights in a program may request a cable operator to black out that program as broadcast by any other television station, and may request a satellite operator to provide such protection against any nationally distributed superstation. The cable or satellite system must comply if properly notified in accordance with the rules.

9. *Cable.* The Commission adopted the first syndicated exclusivity rules in 1972, consistent with a ''Consensus Agreement'' that was negotiated among the cable, broadcast, and program production industries in order to facilitate the passage of copyright legislation. These rules were considered necessary to ''protect local broadcasters and to ensure the continued supply of television programming.'' Shortly after Congress established a copyright compulsory license system in 1976, the Commission began an inquiry to review the ''purpose, effect, and desirability of'' the syndicated exclusivity rules. In 1979, the Commission adopted the Report on Cable Television Syndicated

Exclusivity Rules, which performed a cost-benefit analysis to determine whether retaining the syndicated exclusivity rules would be in the public interest. The Commission found that eliminating the rules would have negligible effects on the size of local station audiences and consequently would not significantly harm any broadcaster. The Commission concluded that, when weighed against the minimal negative impact on broadcasters and program supply, the increase in diversity and number of new cable systems that the rules' elimination would allow supported their repeal. Therefore, in 1980, the Commission repealed the syndicated exclusivity rules.

10. In 1988, however, the Commission reversed its decision, finding that the reasoning that shaped the 1980 decision to repeal the syndicated exclusivity rules was flawed in two significant respects. First, the Commission found that its prior inquiry had incorrectly examined the effects of repeal or retention on individual competitors rather than how the competitive process operates. Second, the Commission found that it had failed to analyze the effects on the local television market of denying broadcasters the ability to enter into contracts with enforceable exclusive exhibition rights when they had to compete with cable operators, who could enter into such contracts. The Commission concluded that the absence of syndicated exclusivity rules both hurt the supply of programs to broadcasters and unfairly handicapped competition between broadcasters and cable systems to meet viewers' preferences in the distribution of existing programming. The Commission therefore reinstated its syndicated exclusivity rules.

11. The Commission's current cable syndicated program exclusivity rules allow commercial stations to protect their exclusive distribution rights for syndicated programming against local cable systems in a local market. Distributors of syndicated programming are allowed to seek protection for one year from the initial licensing of such programming anywhere in the United States, except where the relevant programming has already been licensed. The exceptions to application of the syndicated program exclusivity rules are similar to those that apply to the network non-duplication rules. Cable systems with fewer than 1,000 subscribers are exempt because of the cost of the equipment necessary to carry out deletions. The rules also do not apply if the distant station's signal is ''significantly viewed'' in a relevant cable community. In addition, the syndicated programming of a distant station need not be deleted if that station's Grade B signal encompasses the relevant cable community.

12. *Satellite.* SHVIA directed the Commission to apply its cable syndicated exclusivity rules to DBS providers only with respect to retransmission of nationally distributed superstations. The Commission implemented this using zip codes rather than community units to determine zones of protection. The rules for satellite carriers also provide exceptions for significantly viewed stations and for areas in which the satellite carrier has fewer than 1,000 subscribers in a protected zone.

13. *Open Video Systems.* The 1996 Act also directed the Commission to apply its cable syndicated exclusivity rules to the distribution of video programming over open video systems. The Commission amended its rules in 1996 to apply the existing cable syndicated exclusivity rules directly to open video systems.

C. The Compulsory Copyright License

14. Under the Copyright Act, unlicensed retransmission of the copyrighted material in a broadcast signal constitutes copyright infringement. At the time the Commission initially adopted the exclusivity rules, cable systems were permitted under the Copyright Act to retransmit the signals of broadcast television stations without incurring any copyright liability for the copyrighted programs carried on those signals. In 1976, Congress enacted amendments to the Copyright Act which impose copyright liability on cable systems for retransmission of broadcast signals, but also create a permanent compulsory license under which cable systems may retransmit the signals of all local broadcast stations and distant broadcast stations to the extent that carriage of such distant stations is permitted under FCC rules. In 1988, Congress amended the Copyright Act to create a temporary compulsory license for satellite carriers. In 1999, a new temporary compulsory license was enacted to permit satellite carriers to retransmit the signals of local stations to any subscriber within a station's local market (''local-into-local'' service). The temporary compulsory license granted to satellite carriers under the Copyright Act for distant stations is more limited than that granted to cable systems. Satellite carriers may retransmit signals of nationally distributed superstations to any household but may retransmit the signals of distant network stations to subscribers only if local network stations are unavailable to the subscribers as part of a satellite carrier's local-into-local package and over the air, and only to the extent that carriage of such superstations and distant stations is permitted under the FCC rules.

D. Petitions for Rulemaking

15. In 2005, ACA filed a rulemaking petition asserting that broadcasters use exclusivity and network affiliation agreements to extract ''supracompetitive prices'' for retransmission consent from small companies, and that this practice harms competition and consumers. Similarly, the 2010 Petition argued that the network non-duplication and syndicated exclusivity rules provide broadcasters with a ''one-sided level of protection'' that is no longer justified. The *NPRM* in this proceeding sought comment on the potential benefits and harms of eliminating the Commission's rules concerning network non-duplication and syndicated programming exclusivity. While the Commission received numerous comments on this issue, the record in this proceeding to date does not provide a sufficient basis on which to make a determination whether the exclusivity rules are still needed in today's video marketplace and whether these rules should be eliminated. Accordingly, we are issuing this *FNPRM* to compile a more complete record on whether the exclusivity rules should be eliminated.

III. Discussion

16. We seek further comment on whether we should eliminate or modify the network non-duplication and syndicated exclusivity rules. Settled case law confirms that the Commission has jurisdiction under the Communications Act to impose the cable exclusivity rules. We tentatively conclude that Congress has not withdrawn from the Commission the authority to amend or repeal the cable rules. In addition, we tentatively conclude that the Commission has the authority to eliminate the exclusivity rules for satellite carriers and open video systems. We request comment on whether the exclusivity rules are still needed to protect broadcasters' ability to compete in the video marketplace and to ensure that program suppliers have sufficient incentives to develop new and diverse programming. We seek comment on whether the Commission should eliminate these rules as an unnecessary regulatory intrusion in the marketplace if we determine that they are no longer needed to serve their intended purposes. In particular, we seek comment on the impact that elimination

of the exclusivity rules would have on all interested parties, including broadcasters, MVPDs, program suppliers, and consumers.

A. Legal Authority

17. We tentatively conclude that the Commission has authority to eliminate the exclusivity rules for cable operators, satellite carriers, and open video systems. As discussed above, Congress did not explicitly mandate that the Commission adopt the network non-duplication and syndicated exclusivity rules for cable. Rather, the Commission adopted these rules to provide a mechanism for broadcasters to enforce their exclusive contractual rights in network and syndicated programming by preventing cable systems from importing distant network station programming. Case law confirms that the Commission has the authority to impose exclusivity rules on cable operators under its broad grant of authority under the Communications Act. Section 653(b)(1)(D) of the Act, as codified by the 1996 Act, directed the Commission to extend to open video systems ''the Commission's regulations concerning . . . network non-duplication (47 CFR 76.92 et seq.), and syndicated exclusivity (47 CFR 76.151 et seq.).'' Similarly, Section 339(b) of the Communications Act, as codified by SHVIA in 1999, directed the Commission to ''apply network nonduplication protection (47 CFR 76.92) [and] syndicated exclusivity protection (47 CFR 76.151) . . . to the retransmission of the signals of nationally distributed superstations by satellite carriers.'' Reflecting the language used in these statutory provisions, the legislative history of Section 339(b) states that Congress's intent was to place satellite carriers on an equal footing with cable operators with respect to the availability of television programming.

18. Some broadcasters argue that eliminating the exclusivity rules for cable operators would be inconsistent with congressional intent and beyond the Commission's authority, given the longstanding Commission precedent involving the rules and a statement in the legislative history of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Act'') that the exclusivity rules were integral to achieving congressional objectives. As the Commission has previously stated, however, ''[i]f the [exclusivity] rules should ultimately prove unnecessary or need modification in light of the passage of time, congressional action or other factors, they can be modified or rescinded.'' And we see no statutory provision that requires the Commission to keep the exclusivity rules on the books. Indeed, over the years, the Commission has made significant adjustments to the exclusivity regulatory scheme based on changed circumstances, for example, promulgating the syndicated exclusivity rules in 1972, repealing the syndicated exclusivity rules in 1980, and then reinstating the syndicated exclusivity rules in 1988. We tentatively conclude that, with full knowledge of these regulatory shifts, Congress nonetheless left intact the Commission's general rulemaking power with respect to the cable exclusivity rules, including the authority to revisit its rules and modify or repeal them should it conclude such action is appropriate. We seek comment on this tentative conclusion. We also tentatively conclude that we have the authority to eliminate the exclusivity rules for DBS and OVS and seek comment on this tentative conclusion. We note that, in enacting Sections 339(b) and 653(b)(1)(D) of the Act, Congress directed the Commission to apply to DBS and OVS the non-duplication and syndicated exclusivity protections that the Commission applied to cable, set forth in 47 CFR 76.92 and 76.151, rather than simply enacting exclusivity protection for those services or even directing the Commission to adopt exclusivity rules for those services. The statute does not withdraw the Commission's authority to modify its cable exclusivity rules at some point in the future, nor is there any indication in the legislative history that Congress intended to withdraw this authority. Given that the DBS and OVS provisions are expressly tied to the cable exclusivity rules, we tentatively conclude that this evinces an intent on the part of Congress that the Commission should accord the same regulatory treatment to DBS and OVS as cable, and seek comment on that tentative conclusion. Alternatively, are Congress's directives to the Commission regarding the application of network non-duplication and syndicated exclusivity protections to open video systems and to satellite carriers best interpreted to mean that the Commission does not have the authority to repeal the exclusivity rules for these types of entities, even if we decide to eliminate these rules for cable? Would elimination of the exclusivity rules for cable but not for DBS and/or OVS create undue regulatory disparities or disadvantages for these entities?

B. Assessing the Continued Need for Network Non-Duplication and Syndicated Exclusivity Rules

19. In this section, we seek comment on the extent to which the network non-duplication and syndicated exclusivity rules are still needed to serve their intended purposes in light of changes in the video marketplace and the legal landscape in the decades since their adoption. As discussed above, the network non-duplication and syndicated exclusivity rules were both intended in part to facilitate broadcasters' ability to compete in the video marketplace by protecting their exclusive contractual rights in network and syndicated programming from cable systems' importation of distant stations. We seek comment on how changes in the video marketplace have impacted local broadcasters' ability to compete fairly with cable operators and other MVPDs. At the time the exclusivity rules were adopted, the Commission was concerned that cable systems' importation of distant stations carrying network or syndicated programming would adversely impact local broadcast stations by diverting the station's audience to the distant station, resulting in a reduction of the local station's advertising revenues, essentially the only source of revenue for the stations at the time. To what extent would local broadcast stations' audiences likely be diverted to distant stations carried on cable systems if the exclusivity rules were eliminated? In this regard, we note that when the exclusivity rules were initially adopted, the Communications Act prohibited a broadcast station from rebroadcasting another station's signal without permission, but did not prohibit cable retransmission of broadcast stations without permission. In the 1992 Cable Act, Congress extended this restriction on unauthorized retransmission of broadcast stations to cable operators. The restriction on unauthorized retransmission of broadcast stations was later extended to all MVPDs. Thus, in general, an MVPD may not carry a broadcast station's signal today without the consent of the broadcaster. We seek comment on whether, given the extension of the prohibition on unauthorized retransmission of broadcast stations to MVPDs, the exclusivity regulations continue to be necessary or whether the retransmission consent requirement adequately addresses the Commission's regulatory goals and thus undercuts the basis for the exclusivity rules. Commenters argue that MVPDs are unlikely to seek to import a distant station's signal today unless they are

faced with the blackout of a local station as a result of a retransmission dispute, and that any such importation would likely be limited in duration. We seek comment on this view, and we request that commenters quantify or estimate any costs associated with importation of a distant station's signal and submit data supporting their positions. If MVPDs are unlikely to import distant stations except during an impasse in retransmission consent negotiations, does this support the view that the exclusivity rules are no longer needed? We further note that, given the prohibition on unauthorized retransmission of broadcast stations, a distant station would have to agree to be imported in such circumstances and that contractual arrangements between networks and their affiliates may bar a broadcaster from agreeing to the importation of its distant signal. To what extent do existing network/affiliate agreements prohibit a local broadcaster from allowing its signal to be imported by a distant cable operator without reference to the existence of a Commission prohibition? Similarly, we seek comment on whether judicial enforcement of an exclusivity provision in a network affiliation or syndication agreement would be sufficient to protect the interests of local broadcasters and whether the public interest would be served by requiring such enforcement to proceed through normal contractual means, subject to the normal grounds on which the enforcement of exclusive contracts can be challenged. Additionally, broadcasters have increasingly sought and received monetary compensation in exchange for retransmission consent. Would such demands for compensation or higher copyright license fees associated with carrying distant stations discourage an MVPD from importing duplicative programming? To the extent that an MVPD can import a distant station in an adjacent market for a lower retransmission consent fee, is the MVPD likely to carry that station instead of the local station? If an MVPD did choose to import duplicative programming, to what extent would such duplication likely result in diversion of the local station's audience?

20. We also seek comment on the likely impact that any diversion of a local station's audience to a distant station would have on the station's advertising revenues. Would any such impact be different for a distant station in an adjacent market than for a distant station in a market that is very far away and with no connection to the local area? To the extent possible, we request that commenters quantify or estimate the likely effect of any such audience diversion on a station's advertising revenues and provide data supporting their positions. Moreover, we seek comment on the extent to which changes in the sources of local broadcast station revenues may impact the need for retaining the exclusivity rules. At the time the exclusivity rules were adopted, on-air advertising revenues were essentially the only source of revenue for broadcasters. Today, on-air advertising revenues still constitute about 85 percent of broadcasters' revenues, but they are increasingly turning to additional revenue sources, including retransmission consent fees from MVPDs and advertising sold on their Web sites. Do the existence of those alternative revenue sources provide any new basis for either the abolition or retention of the exclusivity rules? That is, what effect, if any, do these changes in local broadcasters' sources of revenue have on the need for the exclusivity rules? What effect would repeal of the exclusivity rules have on the retransmission consent fees received by broadcasters and what are the public interests implications of any such effect?

21. As discussed above, the exclusivity rules were based in part on the Commission's concern that a cable system's duplication of local programming via the signals of distant stations was not a fair method of competition with broadcasters because broadcasters and cable systems were on an unequal footing with respect to the market for programming. Is this reasoning still valid today, given that MVPDs now do compete with broadcasters for access to programming? Additionally, we invite comment on whether and how the growth in the number of video programming options available to consumers since the exclusivity rules were first adopted impacts the need for the exclusivity rules. Specifically, while a consumer seeking to purchase video programming service previously had one cable operator as the only video service option, today consumers may choose among several MVPDs and also may access video programming on the Internet. Do broadcasters' demands for larger retransmission consent fees from the MVPDs in their market suggest a significant increase in their leverage in the marketplace? Would such an increase in broadcasters' leverage and market power suggest that the exclusivity rules are no longer needed to protect broadcasters' ability to compete with MVPDs? Why or why not? Would broadcasters' increase in leverage and market power be attributed to the exclusivity rights broadcasters have with respect to network and syndicated programming? Are there any other changes in the video marketplace that are relevant to whether the exclusivity rules are still needed to ensure fair and open competition between broadcasters and MVPDs?

22. Further, we seek comment on the extent to which the exclusivity rules are still needed to provide incentives for program suppliers to produce syndicated and network programming and promote program diversity. In reinstating the syndicated exclusivity rules in 1988, the Commission concluded that financial incentives for program suppliers to develop new programming are greater with syndicated exclusivity rules than they are without them. Specifically, the Commission found that duplication of syndicated programming diverts a substantial portion of the local broadcast audience to a distant station carried on a cable system, thereby lessening the value of syndicated programming to broadcast stations and lowering the price that syndicated program suppliers receive for their programming, which in turn reduces incentives for syndicated program suppliers to develop new programs. Such reduced incentives, the Commission stated, translate into a reduction in the diversity of programming available to the public. Are the Commission rules still necessary to the effectuation of that goal, or are alternative remedies available to private parties?

23. Commenters have argued that MVPDs would be unlikely to seek to import a distant station's signal unless they are faced with a blackout situation during an impasse in retransmission consent negotiations and that any such importation would probably be of limited duration. If this argument is valid, we would not expect to see significant duplication of syndicated programming if we repeal our exclusivity rules. We seek comment on this view and the extent to which it should inform the Commission's decision. To the extent that duplication of syndicated and network programming is unlikely in today's competitive marketplace, are the exclusivity rules still needed to provide incentives for program suppliers to produce syndicated and network programming? In particular, we seek input from suppliers of syndicated programming on how elimination of our exclusivity rules would affect their incentives to develop new and diverse programming. One

commenter notes that, unlike when the exclusivity rules were adopted, some program suppliers today ''dilute'' broadcasters' exclusive rights by selling DVDs or downloads of popular programs, by making programming available on mobile devices and online, in some cases at no charge to the audience but with associated advertising, and by licensing programs for distribution over cable networks at the same time they are distributed through broadcast stations. We seek comment on the extent to which program suppliers currently dilute broadcasters' exclusive rights by making their programming available through multiple outlets. Does this existing duplication of programming undercut arguments that repeal of the exclusivity rules would adversely affect program suppliers' incentives to produce new and diverse programming? Are there other factors that we should consider in determining whether eliminating the exclusivity rules would adversely impact the diversity and supply of syndicated and network programming? Are there any factors or theories that would support retention of one set of exclusivity rules and not the other?

24. We note that the Commission previously relied in part on economic studies and other empirical data in considering the need for the syndicated exclusivity rules. We seek evidence to assist in our determination as to whether the exclusivity rules are still needed today and to assess the potential impact of eliminating the exclusivity rules. To the extent commenters support repealing or maintaining the rules, we seek empirical data and other evidence to support elimination or retention of the exclusivity rules. To the extent that economic studies or other empirical data relevant to our inquiries in this proceeding are available, we urge commenters to submit such data.

C. Impact of Eliminating Network Non-Duplication and Syndicated Exclusivity Rules

25. If we determine that the network non-duplication and syndicated exclusivity rules are no longer needed to ensure fair competition between local broadcasters and MVPDs and to ensure the diversity and supply of syndicated programming, would there be any reason to retain these rules? In particular, we seek comment on the costs and benefits of eliminating the exclusivity rules on all interested parties, including broadcasters, MVPDs, and program suppliers, and, of course, consumers. To the extent possible, commenters are requested to quantify any costs or benefits and submit supporting data. How should we weigh the costs and benefits of eliminating the exclusivity rules? Would any costs associated with eliminating the exclusivity rules outweigh the benefits of eliminating unnecessary or obsolete rules?

26. We seek comment on the impact of eliminating the exclusivity rules on retransmission consent negotiations. Would eliminating the rules merely eliminate a government-imposed barrier to free market negotiations? We note, in this regard, that broadcasters assert that eliminating the exclusivity rules would give MVPDs unfair leverage in retransmission consent negotiations. The Commission has previously found that ''Congress intended that local stations electing retransmission consent should be able to invoke network nonduplication protection and syndicated exclusivity rights, whether or not these stations are actually carried by a cable system.'' In support of this finding, the Commission cited the legislative history of the 1992 Act, which states that

> the Committee has relied on the protections which are afforded local stations by the FCC's network non-duplication and syndicated exclusivity rules. Amendments or deletions of these rules in a manner which would allow distant stations to be submitted [sic] on cable systems for carriage or [sic] local stations carrying the same programming would, in the Committee's view, be inconsistent with the regulatory structure created in [the 1992 Act].

We seek comment on the relationship between exclusivity protection and the retransmission consent regime and whether elimination of the exclusivity rules would be ''inconsistent with the regulatory structure created in [the 1992 Act].'' As discussed above, Congress appeared to be concerned with the importation of distant programming that would compete with local programming carried by the cable system. Arguably, that concern does not extend to retransmission consent negotiation impasses, where the local broadcaster pulls its station from a cable system or other MVPD. We seek comment on this proposition. What effect would the compulsory licenses have on broadcasters' ability to obtain through market-based negotiations the same exclusivity protection currently provided by our rules? One commenter suggests that, because most broadcast network affiliation and syndicated exclusivity agreements grant exclusivity in the entire Designated Market Area, which is beyond the scope of exclusivity protected by the FCC rules, elimination of the exclusivity rules would likely result in a substantial expansion of exclusivity. We seek comment on this view. If elimination of the exclusivity rules would likely result in expansion of exclusivity, does this argue in favor of or against elimination?

27. We seek comment on how elimination of the exclusivity rules would affect existing exclusivity contracts and broadcasters' ability to enforce those contracts. We note that upon elimination of our exclusivity rules, free market negotiations between broadcasters and networks or syndicated program suppliers would continue to determine the exclusivity terms of affiliation and syndicated programming agreements, and broadcasters and MVPDs would continue to conduct retransmission consent negotiations in light of these privately negotiated agreements, but without Commission intrusion in the form of a regulatory enforcement mechanism. Thus, parties seeking to enforce contractual network non-duplication and syndicated exclusivity provisions would need to seek recourse from the courts (or, if contracts permit, alternative dispute resolution mechanisms) rather than the Commission. While some commenters assert that judicial enforcement of exclusive arrangements would be too difficult or costly, they have not provided specific, detailed data in support of their assertions. To the extent that commenters assert that judicial enforcement of exclusivity agreements would be too difficult or costly, we request that they quantify or estimate any costs associated with judicial enforcement and submit data supporting their positions. We also specifically request comment on the impact that broadcasters' lack of direct privity of contract with MVPDs with respect to the exclusivity rights arising from network affiliation or syndication agreements would likely have on broadcasters' judicial recourse. As a practical matter, in the absence of the exclusivity rules, how would a local station seeking to enforce an exclusivity agreement proceed against an MVPD that is importing the duplicative programming of a distant station, and how difficult and costly would that be? In this regard, one commenter suggests that a local station seeking to enforce an exclusivity agreement would have to proceed against the network or distant station (assuming that all network affiliates are made parties to all affiliation agreements with that network), which in turn would have to proceed against the MVPD. Is this accurate? What costs would the local station incur? Could the local station instead, if made a party to

other stations' affiliation agreements, bring a court action against the distant station that allowed its signal to be carried in the local station's market? If the record demonstrates that judicial enforcement of exclusivity agreements is too unwieldy and expensive, is there some other enforcement mechanism that could serve in the Commission's stead? Is there any legitimate reason that the Commission should provide a regulatory mechanism for enforcement of private exclusivity agreements?

28. Time Warner Cable suggests that exclusivity agreements could be viewed as unreasonable restraints on trade under traditional antitrust principles if subjected to judicial scrutiny. We seek comment on how application of antitrust principles might impact exclusivity agreements. Would the prospect of antitrust review of exclusivity agreements make broadcasters reluctant to seek recourse from the courts? And, if so, should this be a factor in our consideration of whether to retain these rules? Or should the possibility that exclusivity agreements could be anti-competitive in some circumstances militate against providing an enforcement mechanism that bypasses judicial review?

29. The NBC Affiliates assert that exclusivity rights are not free-standing rights that affiliates could enforce in the courts because network affiliation agreements grant exclusivity rights in terms of the Commission's rules. Specifically, the NBC Affiliates state that its standard affiliation agreement provides that an affiliate is ''entitled to invoke protection against the simultaneous duplication of NBC's network programming . . . to the maximum geographic extent from said community of license permitted under the present Sections 76.92 and 73.658(m) of the FCC's Rules and in accordance with the terms and conditions of said Rules.'' The NBC Affiliates note, in this regard, that the Commission requires specific language referencing its rules in order for broadcasters to obtain network non-duplication and syndicated exclusivity rights with respect to DBS and to obtain syndicated exclusivity rights with respect to cable. We seek comment on the impact of eliminating the exclusivity rules on such language in existing exclusivity agreements. To what extent do contracts for network and syndicated programming include such language? To what extent do such contracts include change of law provisions? If we eliminate the exclusivity rules, would it be necessary or appropriate to grandfather existing exclusivity contracts to ensure that such contracts are enforceable by the Commission for a period of time sufficient to allow existing contracts to be reformed, if the parties wish to retain the exclusivity provisions? If we grandfather existing exclusivity contracts, what would be a reasonable period of time to accord such contracts grandfathered status? Should we allow a period of time for renegotiation of contracts before the rule goes into effect? On the other hand, does the reference to Commission rules signal an intent by the contracting parties that exclusivity provisions should not exist if the Commission concludes that the exclusivity rules should not be maintained? Additionally, we seek comment on whether network affiliation agreements typically grant broadcasters exclusive distribution rights for any multicast streams of network programming that they air and how these multicast streams should figure in our analysis of whether to eliminate the exclusivity rules.

30. We also seek comment on whether and how our analysis of the issues should differ for any subset of the affected parties, such as small market stations. Should the costs and benefits of eliminating the exclusivity rules be weighed differently for different sized broadcast stations? Two commenters assert that elimination of the exclusivity rules would be particularly harmful to small market stations, many of which operate in communities adjacent to larger markets with powerful stations. We seek comment on the impact of elimination of the exclusivity rules on small market stations. We request that commenters quantify or estimate any costs of eliminating the exclusivity rules on small market stations and provide data supporting their submission. If we decide to eliminate the exclusivity rules, should the rules be retained, either permanently or for some period of time, for a class of smaller market stations? If so, how should we define that class and for what period of time should we retain the rules? Are there other classes of entities that warrant different treatment? We further note that the exclusivity rules currently exempt certain small MVPDs. Should those exemptions be retained if we decide to retain the exclusivity rules? We also seek comment on how these exemptions have worked in practice. Do small systems often import distant broadcast stations? Does the experience of small systems shed any light on what is likely to happen if we eliminate our exclusivity rules? If so, does that experience suggest that the rules should be eliminated or retained?

31. In addition, we request comment on the impact of eliminating the exclusivity rules on localism. A number of broadcasters have suggested that eliminating the exclusivity rules would have a negative impact on localism. For example, the NBC Affiliates assert that ''the loss of exclusivity would severely impair local broadcasters' ability to underwrite the costs associated with providing news and other locally responsive programming. This, in turn, would harm local businesses and local economies generally, given the importance of local broadcasting in connecting businesses with potential customers.'' As discussed above, however, commenters claim MVPDs would be unlikely to seek to import a distant station's signal unless they are faced with a blackout situation in the context of a retransmission consent negotiation impasse. If this is the case, is localism likely or unlikely to suffer if we eliminate the exclusivity rules? We invite comment on arguments in the record that elimination of the exclusivity rules is unlikely to harm localism. We ask commenters to quantify as specifically as possible the economic impact, if any, of the elimination of the exclusivity rules on broadcasters' ability to provide news and other locally responsive programming. Moreover, we seek comment on whether elimination of the exclusivity rules would lead to migration of network and syndicated programming to non-broadcast networks and what that would mean in practical terms for local broadcasters, syndicators, networks, MVPDs, and consumers.

32. We seek comment on whether there are any other entities that would be impacted by elimination of the exclusivity rules. If so, what are the benefits and costs of eliminating the rules for those entities? In particular, we seek comment on the potential impact on consumers of elimination of the exclusivity rules. We request that commenters quantify any benefits and costs to the extent possible and submit supporting data.

33. Under the Satellite Home Viewer Extension and Reauthorization Act of 2004, Congress authorized satellite carriers to carry out-of-market significantly viewed stations and applied the exclusivity rules insofar as local stations could challenge the significantly viewed status of the out-of-market station and thus prevent its carriage, just as in the cable context. We seek comment on whether new rules would be needed to permit local stations to challenge the significantly viewed status of an out-of-market station if the exclusivity rules are eliminated or modified. We also seek

comment on whether we should make any modifications to the process for obtaining or challenging significantly viewed status if we retain the exclusivity rules.

34. Finally, we request comment on whether, as an alternative to elimination of the exclusivity rules, we should make modifications to these rules. ACA and BCI suggest that if we do not eliminate the exclusivity rules, we should harmonize these rules by applying the Grade B or noise limited service contour exception for syndicated exclusivity to the network non-duplication rules. Under the Grade B service contour exception, a station may not obtain syndicated exclusivity protection against another station if such station places a Grade B signal over the cable community. According to ACA, ''[b]roadcast stations should have no reasonable expectation of exclusivity against adjacent-market stations receivable in the community over-the-air, as the Commission intended the exclusivity rules to prevent importing duplicative distant signals that are not available over-the-air in the community.'' We seek comment on this proposal. We also seek comment on whether we should modify the network non-duplication and syndicated exclusivity rules to apply only where the local station has granted retransmission consent to, and is carried by, the MVPD. Under this approach, a television station would only be permitted to assert network non-duplication or syndicated exclusivity protection if it is actually carried on the cable system. What effect would this approach have in situations where a cable system and broadcast station reach an impasse in retransmission consent negotiations? We observe that retransmission by an MVPD of the signal of certain superstations is not subject to retransmission consent requirements. Does the fact that the statute exempts this class of stations from retransmission consent requirements militate in favor of or against eliminating the network non-duplication and syndicated exclusivity rules? Should the Commission modify its exclusivity rules in light of the Middle Class Tax Relief and Job Creation Act of 2012, which provides full power and Class A television stations an opportunity to relinquish their existing channels by auction in order to channel share with another television licensee? Commenters that support these or any other such modifications should quantify the benefits and costs of the proposed modifications and provide supporting data. Are there any other modifications that we should consider if we decide to retain the exclusivity rules?

IV. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in this *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 provided on the first page of the *FNPRM*. 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**.

Need for, and Objectives of, the Proposed Rules

36. The *FNPRM* seeks comment on whether the Commission should eliminate or modify the network non-duplication and syndicated exclusivity rules for cable systems, satellite carriers, and open video systems. The network non-duplication rules permit a station with exclusive rights to network programming to assert those contractual rights, using notification procedures set forth in the Commission's rules, to prohibit an MVPD from carrying within a specified geographic zone the same network programming as broadcast by any other station. Similarly, under the syndicated exclusivity rules, a station may assert its contractual rights to exclusivity within a specified geographic zone to prevent an MVPD from carrying the same syndicated programming aired by another station.

37. Petitions for rulemaking filed in 2005 and in 2010 raised questions about the continued need for the exclusivity rules. The *NPRM* in this proceeding sought comment on the potential benefits and harms of eliminating the exclusivity rules. While the Commission received numerous comments on this issue, the record in this proceeding to date does not provide a sufficient basis on which to make a determination as to whether the exclusivity rules are still needed today and to assess the potential impact on affected parties of eliminating these rules. Accordingly, we have concluded that is necessary and appropriate to issue a *FNPRM* to undertake a more comprehensive review of the exclusivity rules and to compile a more complete record.

38. The *FNPRM* requests comment on whether the exclusivity rules are still needed to protect broadcasters' ability to compete in the video marketplace. In particular, the *FNPRM* seeks comment on the extent to which local broadcast stations' audiences would likely be diverted to distant stations carried on MVPDs if the exclusivity rules were eliminated; the argument that MVPDs are unlikely to seek to import a distant station's signal today unless they are faced with the blackout of a local station as a result of a retransmission dispute and that any such importation would likely be limited in duration; the likely impact that any diversion of a local station's audience to a distant station would have on the local station's advertising revenues and the extent to which changes in the sources of local station revenues may impact the need for retaining the exclusivity rules; and concerns that an MVPD's duplication of local programming via the signals of distant stations was not a fair method of competition with broadcasters are still valid today, given that MVPDs now do compete with broadcasters for access to programming. The *FNPRM* also invites comment on the extent to which the exclusivity rules are still needed to provide incentives for program suppliers to produce syndicated and network programming and promote program diversity.

39. The *FNPRM* seeks comment on the impact of eliminating the exclusivity rules on all interested parties, including broadcasters, MVPDs, program suppliers, and consumers. The *FNPRM* seeks comment on the impact of eliminating the exclusivity rules on retransmission consent negotiations. Additionally, the *FNPRM* invites comment on how elimination of the exclusivity rules would affect existing exclusivity contracts and broadcasters' ability to enforce those contracts. Upon elimination of the exclusivity rules, broadcasters and networks or syndicated program suppliers would continue to determine the exclusivity terms of affiliation and syndicated programming agreements through free market negotiations, but without a Commission enforcement mechanism. Instead, parties seeking to enforce contractual exclusivity provisions would need to seek recourse from the courts. The *FNPRM* seeks comment on the costs and difficulty of pursuing judicial enforcement of exclusive arrangements. Further, the *FNPRM* asks whether, if we eliminate the exclusivity rules, it would be necessary or

appropriate to grandfather existing exclusivity contracts to ensure that such contracts are enforceable by the Commission for a period of time sufficient to allow existing contracts to be reformed, if the parties wish to retain the exclusivity provisions. To the extent that we grandfather existing exclusivity contracts, the *FNPRM* invites comment on what would be a reasonable period of time to accord such contracts grandfathered status and whether we should allow a period of time for renegotiation of contracts before repeal of the rules takes effect.

40. The *FNPRM* seeks comment on whether and how the Commission's analysis of the impact of eliminating the exclusivity rules should differ for any subset of the affected parties, such as small market stations. The *FNPRM* asks whether, if the Commission decides to eliminate the exclusivity rules, these rules be retained, either permanently or for some period of time, for a class of smaller market stations. If so, the *FNPRM* seeks comment on how we should define that class and for what period of time we should retain the rules. The *FNPRM* also asks whether the existing exemptions from of certain small MVPDs from the exclusivity rules should be retained if we decide to retain the exclusivity rules. In addition, the *FNPRM* requests comment on the impact of eliminating the exclusivity rules on localism.

41. Finally, the *FNPRM* seeks comment on whether, as an alternative to elimination of the exclusivity rules, the Commission should make modifications to the rules. Specifically, the *FNPRM* invites comment on whether the Commission should (1) extend the Grade B service or noise limited service contour exception for syndicated exclusivity to the network non-duplication rules; (2) modify the network non-duplication and syndicated exclusivity rules to apply only where the local station has granted retransmission consent to, and is carried by, the MVPD; or (3) modify the exclusivity rules in light of the Middle Class Tax Relief and Job Creation Act of 2012, which provides full power and Class A television stations an opportunity to relinquish their existing channels by auction in order to channel share with another television licensee.

Legal Basis

42. The proposed action is authorized pursuant to Sections 4(i), 4(j), 301, 303(r), 307, 339, 340, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(r), 307, 339, 340, and 573.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

44. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.'' The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of such businesses can be considered small entities.

45. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data shows that there were 1,100 cable companies at the end of December 2012. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

46. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 56.4 million incumbent cable video subscribers in the United States today. Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

47. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created the following small business size standard for such businesses: those having $35.5 million or less in annual receipts. The 2007 U.S.

Census indicates that 2,076 television stations operated in that year. Of that number, 1,515 had annual receipts of $10,000,000 dollars or less, and 561 had annual receipts of more than $10,000,000. Since the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded $35.5 million in that year, the Commission concludes that the majority of television stations were small under the applicable SBA size standard.

48. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,388. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

49. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

50. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

51. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled ''Cable and Other Program Distribution.'' The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

52. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 show that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities.

53. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 show that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities.

54. *Open Video Systems.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. 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 businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of these businesses can be considered small entities. 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 other 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.

55. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments

primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. . . . These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for this category, which is: All such businesses having $35.5 million dollars or less in annual revenues. Census data for 2007 show that there were 659 establishments that operated that year. Of that number, 462 operated with annual revenues of $9,999,999 dollars or less. One hundred ninety-seven (197) operated with annual revenues of between $10 million and $100 million or more. Thus, under this size standard, the majority of such businesses can be considered small entities.

56. *Motion Picture and Video Production.* These entities may be indirectly affected by our action. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' We note that establishments in this category may be engaged in various industries, including cable programming. The SBA has developed a small business size standard for this category, which is: All such businesses having $30 million dollars or less in annual revenues. Census data for 2007 show that there were 9,478 establishments that operated that year. Of that number, 9,128 had annual receipts of $24,999,999 or less, and 350 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this size standard, the majority of such businesses can be considered small entities.

57. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' We note that establishments in this category may be engaged in various industries, including cable programming. The SBA has developed a small business size standard for this category, which is: All such businesses having $29.5 million dollars or less in annual revenues. Census data for 2007 show that there were 477 establishments that operated that year. Of that number, 448 had annual receipts of $24,999,999 or less, and 29 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this size standard, the majority of such businesses can be considered small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

58. The *FNPRM* does not propose any recordkeeping requirements. The *FNPRM* seeks comment on whether the Commission should eliminate the network non-duplication and syndicated exclusivity rules. If the Commission eliminates the exclusivity rules, broadcasters and networks or syndicated program suppliers would continue to determine the exclusivity terms of affiliation and syndicated programming agreements through free market negotiations, but there would be no Commission enforcement mechanism for such exclusivity provisions. Instead, parties seeking to enforce contractual exclusivity provisions would need to seek recourse from the courts.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

59. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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.

60. The *FNPRM* seeks comment on whether, if we eliminate the exclusivity rules, it would be necessary or appropriate to grandfather existing exclusivity contracts to ensure that such contracts are enforceable by the Commission for a period of time sufficient to allow existing contracts to be reformed, if the parties wish to retain the exclusivity provisions. To the extent that the Commission grandfathers existing exclusivity contracts, the *FNPRM* asks what would be a reasonable period of time to accord such contracts grandfathered status and whether the Commission should allow a period of time for renegotiation of contracts before repeal of the rule takes effect. Such grandfathering might reduce any adverse economic impact of eliminating the exclusivity rules on broadcast stations, including small broadcast stations.

61. The *FNPRM* also asks whether, if the Commission decides to eliminate the exclusivity rules, the rules should be retained, either permanently or for some period of time, for a class of smaller market broadcast stations. If so, the *FNPRM* seeks input on how we should define that class and for what period of time should we retain the exclusivity rules. Retaining the exclusivity rules permanently or for some period of time for small broadcast stations might reduce any adverse economic impact of eliminating the exclusivity rules on small broadcast stations.

62. Further, the *FNPRM* notes that the exclusivity rules currently exempt certain small MVPDs and asks whether those exemptions should be retained if the Commission decides to retain the exclusivity rules. Retaining the existing exemption for small MVPDs might be appropriate to avoid any adverse economic impact on small MVPDs if the exclusivity rules are retained.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

63. None.

C. Paperwork Reduction Act

64. This *FNPRM* proposes no new or modified information collection requirements. In addition, therefore, it does not propose any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002.

D. Ex Parte Rules

65. *Permit-But-Disclose.* The proceeding this *FNPRM* initiates 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 rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

E. Filing Requirements

66. 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).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.
- 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.

67. 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).

68. For additional information on this proceeding, contact Kathy Berthot, *Kathy.Berthot@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

69. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), 301, 303(r), 307, 339(b), 340, and 653(b) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303(r), 307, 339(b), and 573(b) this *Further Notice of Proposed Rulemaking is adopted*.

70. *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* in MB Docket No. 10–71, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–08114 Filed 4–9–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0104; 4500030113]

RIN 1018–AY53

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Western Distinct Population Segment of the Yellow-Billed Cuckoo (Coccyzus americanus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On October 3, 2013, we, the U.S. Fish and Wildlife Service (Service), announced a proposal to list the yellow-billed cuckoo in the western portion of the United States, Canada, and Mexico (western yellow-billed cuckoo) as a threatened distinct population segment (DPS) under the Endangered Species Act of 1973, as amended (Act). On December 26, 2013, we reopened the comment period for an additional 60 days to ensure the public had sufficient time to comment on the proposal for this species. We now announce another reopening of the comment period for our October 3, 2013, proposed rule to allow for us to accept and consider additional public comments on the proposed rule.

DATES: We request that comments on this proposal be submitted by the close of business on April 25, 2014.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0104, or contact the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment Submission: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R8–ES–2013–0104, 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, click on the Proposed Rule link to locate the 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–R8–ES–2013–0104; 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: For information about the proposed listing, contact Jennifer Norris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; by telephone 916–414–6600; or by facsimile 916–414–6712. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2013, we published in the **Federal Register** a proposed rule to list the western yellow-billed cuckoo as a threatened species under the Act (78 FR 61621). During the public comment period, we received numerous requests from Federal and State agencies and the public to extend or reopen the public comment period on the proposed rule beyond the December 2, 2013, due date. On December 26, 2013, we reopened the comment period for an additional 60 days (78 FR 78321). In order to ensure that the public has ample opportunity to review and comment on our proposed rule, we are reopening the comment period for an additional 15 days.

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 other concerned Federal and State agencies, the scientific community, or any other interested party concerning the proposed listing rule. Please see the Information Requested section of the October 3, 2013, proposed listing for a list of the comments that we particularly seek (78 FR 61621).

For more background on our proposed listing, see the October 3, 2013, **Federal Register** (78 FR 61621). The proposed rule is available at the Federal eRulemaking Portal at *http://www.regulations.gov* (see **ADDRESSES** section above).

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in our final rulemaking. Our final determination concerning this proposed rulemaking will take into consideration all written comments and any additional information we receive.

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 an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. 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 the proposed listing, 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, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0104, or contact the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 31, 2014.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–07986 Filed 4–9–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140331031–4031–01]

RIN 0648–BC77

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes regulations to implement measures in Amendment 3 to the Spiny Dogfish Fishery Management Plan, which was developed by the Mid-Atlantic and New England Fishery Management Councils. The proposed management measures include implementing a research set-aside program, updating essential fish habitat definitions, allowing rollover of specifications, and eliminating the seasonal allocation of the commercial quota. These administrative measures are intended to improve the implementation of the Spiny Dogfish Fishery Management Plan and provide benefits to the spiny dogfish fishery.

DATES: Comments must be received on or before May 12, 2014.

ADDRESSES: Copies of the amendment, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The amendment is also accessible via the Internet at: *http://www.nero.noaa.gov*.

You may submit comments, identified by NOAA–NMFS–2014–0036, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0036,* click the ''Comment Now!'' icon,

complete the required fields, and enter or attach your comments.

• *Mail:* NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Spiny Dogfish Amendment 3.''

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils). The Atlantic States Marine Fisheries Commission (Commission) also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan (FMP). The Federal Spiny Dogfish FMP was implemented in 2000, when spiny dogfish were determined to be overfished. The spiny dogfish stock was declared to be successfully rebuilt in 2010, and it continues to be above its target biomass. Currently, the stock is not overfished or experiencing overfishing.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the management procedures and measures for the spiny dogfish fishery. The Councils have developed and submitted Amendment 3, which is intended to update the FMP and improve management of the spiny dogfish fishery. Specifically, the Councils have recommended: (1) Adding an option for allocation of a small percentage (up to 3 percent) of the commercial quota for use in the Research Set-Aside (RSA) Program; (2) updating the definitions of essential fish habitat (EFH) for all life stages of spiny dogfish; (3) maintaining existing annual management measures until replaced via rulemaking (i.e., specifications rollover); and (4) eliminating the seasonal allocation of the commercial quota in order to minimize conflicts with spiny dogfish fishing operations that occur in both state and Federal waters. These proposed management measures are described in more detail below.

Research Set-Aside (RSA)

A number of FMPs include an RSA program, in which a percentage of the quota is set aside to fund research. In Amendment 3, the Councils are proposing to allow up to 3 percent of the spiny dogfish commercial quota to be set aside as RSA quota. The revenues generated by those landings would be used for scientific research aimed at improving our understanding of the spiny dogfish stock and its related fisheries, consistent with the Councils' research priorities. For example, the spiny dogfish commercial quota for fishing year 2014 is currently specified at 41.784 million lb (18,953 mt). Based upon the funds requested through the RSA Federal Funding Opportunity announcement (refer to: *http://www.nero.noaa.gov/mediacenter/2013/03/ma13rsaawards.html*), up to 1.254 million lb (569 mt) of spiny dogfish could be used for RSA (i.e., 3 percent of the 2014 commercial quota).

Essential Fish Habitat (EFH)

The Magnuson-Stevens Act requires that EFH be defined for all managed stocks, and that it should be periodically reviewed and updated. EFH designations are used by NMFS when consulting with other agencies on Federal activities, and up-to-date designations lead to more effective consultation and protection of EFH. Spiny dogfish EFH was most recently updated in 2007 (*http://www.nefsc.noaa.gov/nefsc/publications/tm/tm150/*). Amendment 3 includes updated text and maps, using the most recent fishery-independent data, to describe EFH for the following spiny dogfish size and sex categories: Recruits (juvenile males and females <36 cm); sub-adult females (36–79 cm); sub-adult males (36–59 cm); adult females (>79 cm); and adult males (>59 cm). Detailed EFH maps and text descriptions are provided in the supporting documents (see **ADDRESSES**).

Rollover of Specifications

This measure would allow the specifications (annual catch limit, commercial quota, etc.) of the current fishing year to carry forward to the subsequent fishing year, in the event that rulemaking and implementation of revised specifications are delayed. If the implementation of new final specifications is delayed beyond the start of the new fishing year (May 1), the previous year's specifications would apply to the new fishing year until replaced by the final rule. The Councils are recommending this measure to maintain consistency across FMPs.

Commercial Quota Allocation

The current regulations implementing the Spiny Dogfish FMP (§ 648.232) require that the commercial quota be allocated between two seasons: Season 1 (May through October) receives 57.9 percent of the quota; and Season 2 (November through April) receives 42.1 percent of the quota. These seasons were designed to match the regional distribution of the spiny dogfish population as it migrates up and down the Atlantic coast, and to ensure that each state's fisheries would be able to land spiny dogfish during the year.

In contrast to the Federal regulations, the Commission allocates the commercial quota to individual states/regions, rather than by season. These different management approaches have occasionally resulted in misaligned in-season fishery closures between Federal and state waters, and confusion within the industry regarding where they can fish. This rule proposes to remove the Federal FMP's seasonal quota allocation, and replace it with a single, annual coastwide commercial quota. The Federal spiny dogfish fishery would only be closed when 100 percent of the coastwide commercial quota is projected to be landed. The states, through the Commission's FMP, would be responsible for controlling their spiny dogfish allocations to ensure the participation of all states. This measure is expected to help alleviate potential misalignment issues with the Commission, while still constraining total spiny dogfish catch to the specified Federal limits.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This proposed rule has been determined to be not significant for the purpose of E.O. 12866.

The Councils prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Councils (see **ADDRESSES**).

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This rule will impact fishing vessels, including commercial fishing entities. In 2012, 2,666 vessels held spiny dogfish permits. However, not all of those vessels are active participants in the fishery; only 489 vessels landed spiny dogfish in 2012. If two or more vessels have identical owners, these vessels should be considered to be part of the same firm, because they may have the same owners. When permit ownership data is considered, in 2012, 1,976 fishing firms held at least one spiny dogfish permit. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity which they derive the most revenue. Using the $5M cutoff for shellfish firms (NAICS 114112) and the $19M cutoff for finfish firms (NAICS 114111), there are 1,953 directly regulated small entities and 23 directly regulated large entities. There are 488 active fishing firms, of which 482 are small entities and 6 are large entities. On average, for small entities, spiny dogfish is responsible for a small fraction of landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery. While all 1,953 directly regulated small entities will be affected by the Amendment 3, many of these small entities do not currently participate in this fishery and would be likely to experience only negligible economic impacts, if any.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

According to the Council's analysis in the EA (see **ADDRESSES**), Amendment 3 is not expected to result in any direct negative or positive economic impacts. The management measures and alternatives included in this action are administrative in nature, and have no inherent direct economic costs or benefits. Possible indirect, minor positive economic impacts are anticipated from the RSA and EFH alternatives. Under the RSA alternatives, the preferred alternative (Alternative 1b) of allowing an RSA quota of up to 3 percent of the commercial quota, and Alternative 1c, which would allow up to 5 percent of the commercial quota for RSA, are expected to result in minor positive economic impacts relative to no action (i.e., no RSA; Alternative 1a). This conclusion was based on cases where research funded by RSA would result in improved management of the spiny dogfish fishery. Both the no action (i.e., no update to EFH; Alternative 2a) and preferred (i.e., updated EFH; Alternative 2b) EFH alternatives may result in indirect, minor positive economic impacts, as the designation of EFH can inform Federal activities and help minimize potentially negative habitat impacts. Under the commercial quota allocation alternatives, the no action alternative (i.e., maintain current seasonal allocation of the quota; Alternative 4a) was expected to result in minor, indirect negative economic impacts in situations where misalignment in Federal (Council) vs. state (Commission) fishery closures could result in lost revenues. The preferred alternative (i.e., remove allocation of the quota; Alternative 4b) is anticipated to alleviate the potential negative economic impacts associated with the current management misalignment. Both the no action alternative (i.e., no rollover of specifications; Alternative 3a) and the preferred alternative (i.e., allow rollover of specifications; Alternative 3b) associated with the rollover of specifications from one year to the next in the event of delayed implementation of specifications are expected to have no economic impact (positive or negative).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 4, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.232, revise paragraphs (a), (b), and (e); and add paragraphs (c)(3) and (f) to read as follows:

§ 648.232 Spiny dogfish specifications.

(a) *Commercial quota and other specification measures.* The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a TAL (i.e., annual coastwide commercial quota) and any other measures, including those in paragraphs (a)(1) through (8) of this section, that are necessary to ensure that the commercial ACL will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. If research quota is specified as described in paragraph (f) of this section, the effective commercial quota will be those commercial landings available after the deduction for the research quota. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;
(2) Seasons;
(3) Mesh size restrictions;
(4) Trip limits;
(5) Research quota set from a range of 0 to 3 percent of the commercial quota;
(6) [Reserved]
(7) Other gear restrictions; and
(8) Changes to AMs and ACT control rules.

(b) *Joint Spiny Dogfish Committee recommendation.* The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations, requests for research quota, and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a TAL, and possibly other measures, including those specified in paragraphs (a)(1) through (8) of this section, necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years.

(c) * * *

* * * * *

(3) If the annual specifications are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications will remain in effect. The previous year's specifications will be replaced by the current year's specifications as of the effective date of the final rule implementing the current year's specifications.

* * * * *

(e) *Landings applied against the commercial quota.* All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the annual coastwide commercial quota, regardless of where the spiny dogfish were harvested.

(f) *Research quota.* See § 648.22(g).

■ 3. In § 648.233, revise paragraph (a) to read as follows:

§ 648.233 Spiny dogfish accountability measures (AMs).

(a) *Commercial EEZ closure.* The Regional Administrator shall determine the date by which the annual coastwide quota described in § 648.232 will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of the fishing year by publishing notification in the **Federal Register**. Upon the closure date, and for the remainder of the fishing year, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

* * * * *

■ 4. In § 648.235, revise paragraph (a) introductory text and paragraph (b), and remove paragraph (c).

The revisions read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) *Possession limit.* Vessels issued a valid Federal spiny dogfish permit under § 648.4(a)(11) may:

* * * * *

(b) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter.

[FR Doc. 2014–07976 Filed 4–9–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 69

Thursday, April 10, 2014

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

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Appointment of members.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces the appointments made by the Secretary of Agriculture to the 8 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Appointments by the Secretary of Agriculture are for a 3-year term, effective October 1, 2013 until September 30, 2015.

ADDRESSES: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, Room 3901, South Building, United States Department of Agriculture, STOP 0321, 1400 Independence Avenue SW., Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: Michele Esch, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3870 South Building, U.S. Department of Agriculture, STOP: 0321, 1400 Independence Avenue SW., Washington, DC 20250–0321. Telephone: 202–720–3684. Fax: 202–720–6199, or email: *Michele.esch@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 25 members, each representing a specific category related to agriculture. The Board was first appointed in September 1996 and at the time one-third of the original members were appointed for one, two, and three-year terms, respectively. Due to the staggered appointments, the terms for 8 of the 25 members expired September 30, 2013. Each member is appointed by the Secretary of Agriculture to a specific category on the Board, including farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. Appointees by vacancy category of the 3 new members and 5 re-appointments are as follows: Category F. ''National Food Animal Science Society,'' Govind Kannan, Dean & Director, College of Agriculture, Family Sciences and Technology, Fort Valley State University, Fort Valley, GA; Category G. ''National Crop, Soil, Agronomy, Horticulture, or Weed Science Society,'' Robert Taylor, Dean and Director of Land Grant Programs, College of Agriculture and Food Science, Florida A&M University, Tallahassee, FL; Category L. ''1890 Land-Grant Colleges and Universities,'' Chandra Reddy, Dean and Director/Administrator of Extension, College of Agriculture, Human and Natural Sciences, Tennessee State University, Nashville, TN; Category P. ''American Colleges of Veterinary Medicine,'' Neil Olson, Dean, College of Veterinary Medicine, University of Missouri, Columbia, MO; Category T. ''Rural Economic Development,'' Twila L'Ecuyer, Owner, CURE Group and Owner/Farmer, L'Ecuyer Farms and L'Ecuyer Gardens, Morrowville, KS; Category U. ''National Consumer Interest Group,'' Rita Green, Family Resources Management Extension Agent, Mississippi State University, Grenada, MS; Category V. ''National Forestry Group,'' Steven Daley-Laursen, Senior Executive, Office of the Vice President for Research and Economic Development and Professor, College of Natural Resources, University of Idaho, Moscow, ID; Category W. ''National Conservation or Natural Resource Groups,'' Carrie Castille, Associate Commissioner, Louisiana Department of Agriculture & Forestry, Baton Rouge, LA.

Done at Washington, DC, this 2nd day of April 2014.

Ann Bartuska,

Deputy Secretary, Research, Education, and Economics.

[FR Doc. 2014–08026 Filed 4–9–14; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Yakutat Resource Advisory Committee (RAC) will meet in Yakutat, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meetings are open to the public. The purpose of the meetings is to review project proposals and make project recommendations for Title II funds.

DATES: The meetings will be held from 6 p.m. to 8 p.m. on the following dates:

- May 16, 2014
- May 23, 2014
- August 15, 2014
- September 19, 2014

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Kwaan Plaza Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. A toll free number is available for the meeting, please contact the Desginated Federal Officer to receive this number.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including

names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Yakutat Ranger Distirct. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lee A. Benson, District Ranger and Designated Federal Officer, by phone at 907–784–3359 or via email at *labenson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/FB43877F55F5ED7988256CCC00690DA6?OpenDocument.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by April 1, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lee A. Benson, District Ranger, Yakutat Ranger District, 712 Ocean Cape Road, Yakutat, AK 99689; or by email to *labenson@fs.fed.us,* or via facsimile to 907–784–3457.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: April 2, 2014.

Lee A. Benson,

District Ranger.

[FR Doc. 2014–08059 Filed 4–9–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Solicitation of Nominees.

SUMMARY: In accordance with the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and the Federal Advisory Committee Act (FACA) (5 U.S.C., App. 2), the Coconino County Resource Advisory Committee (RAC) announces the solicitation of nominees to fill vacancies. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The RAC covers Coconino County and the National Forests of Coconino, Kaibab, Prescott, and Apache-Sitgreaves.

DATES: Nominations must be received on or before April 18, 2014.

ADDRESSES: Heather Noel, RAC Coordinator, Coconino National Forest Superivsor's Office, 1824 South Thompson Street, Flagstaff, Arizona 86001.

FOR FURTHER INFORMATION CONTACT: Heather Noel, RAC Coordinator, by phone at 928–527–3490 or via email at *hmnoel@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2013, the Helium Stewardship Act of 2013 (Pub. L. 113–40) reauthorized the Act. The purpose of the RAC is to improve collaborative relationships among the people that use and care for the National Forests and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The duties of the RAC include monitoring projects, advising the Secretary on the progress and results of the monitoring efforts, and making recommendations to the Forest Service for any appropriate changes or adjustments to the projects being monitored by the RACs.

RAC Membership

The RAC will be comprised of 15 members approved by the Secretary of Agriculture. RAC membership will be fairly balanced in terms of the points of view represented and functions to be performed. The RAC members will serve 4-year terms. The RAC shall include representation from the following interest areas:

(1) Five persons who represent:
- (a) Organized Labor or Non-Timber Forest Product Harvester Groups
- (b) Developed Outdoor Recreation, Off-Highway Vehicle Users, or Commercial Recreation Activities
- (c) Energy and Mineral Development, or Commercial or Recreational Fishing Groups
- (d) Commercial Timber Industry
- (e) Federal Grazing Permit or Other Land Use Permit Holders, or Representative of Non-Industrial Private Forest Land Owners, within the area for which the committee is organized

(2) Five persons who represent:
- (a) Nationally or Regionally Recognized Environmental Organizations
- (b) Regionally or Locally Recognized Environmental Organizations
- (c) Dispersed Recreational Activities
- (d) Archaeology and History
- (e) Nationally or Regionally Recognized Wild Horse and Burro Interest, Wildlife Hunting Organizations, or Watershed Associations

(3) Five persons who represent:
- (a) Hold State-Elected Office
- (b) Hold County or Local-Elected Office
- (c) American Indian Tribes within or adjacent to the area for which the committee is organized
- (d) Area School Officials or Teachers
- (e) Affected Public at Large.

In the event that a vacancy arises, the DFO may fill the vacancy with a replacement member appointed by the Secretary, if an appropriate replacement member is available.

Nominations and Applications Information

The appointment of members to the RAC will be made by the Secretary of Agriculture. Any individual or organization may nominate one or more qualified persons to represent the interest areas listed above. To be considered for membership, nominees must:

1. Be a resident of Arizona;
2. Identify what interest group they would represent and how they are

qualified to represent that interest group;

3. State why they want to serve on the RAC and what they can contribute;

4. Show their past experience in working successfully as part of a working group on forest management activities; and

5. Complete Form AD–755, Advisory Committee or Research and Promotion Background Information.

You may contact the person listed above or retrieve the Form AD–755 from the following Web site: *http://tinyurl.com/ly726kj.* All nominations will be vetted by the Department.

Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the RACs. To ensure that the recommendations of the RACs have taken into account the needs of the diverse groups served by the Department, membeship should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: April 2, 2014.

Gregory Parham,

Assistant Secretary of Administration, U.S. Department of Agriculture.

[FR Doc. 2014–07989 Filed 4–9–14; 8:45 am]

BILLING CODE 3411–15–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Friday, April 11, 2014, 8:30 a.m.–12:30 p.m. EDT.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

SUBJECT: Notice of meeting change of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (Board) previously announced that it will be meeting at the time and location listed above. The subject matter of the meeting has been changed to add the discussion and consideration of two resolutions concerning U.S. international media strategy for Iran.

The prompt and orderly conduct of business required this change and no earlier announcement was possible.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the agency's public Web site at *www.bbg.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public Web site.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Member of the public seeking to attend the meeting in person must register at *https://bbgboardmeetingapril2014.eventbrite.com* by 12:00 p.m. (EDT) on April 10. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at *pubaff@bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,

Director of Board Operations.

[FR Doc. 2014–08172 Filed 4–8–14; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–920]

Lightweight Thermal Paper From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is rescinding the administrative review of the antidumping duty order on lightweight thermal paper from the People's Republic of China (''PRC'') for the period November 1, 2012, through October 31, 2013.

DATES: Effective: April 10, 2014.

FOR FURTHER INFORMATION CONTACT: Demitrios Kalogeropoulos or Brendan Quinn, AD/CVD Operations, Office III, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2623 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2013, based on a timely request for review by Appvion, Inc. (formerly known as Appleton Papers Inc.) (''Petitioner''), the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on lightweight thermal paper from the PRC covering the period November 1, 2012, through October 31, 2013.[1] The review covers 19 companies: Anne (Hong Kong) Co., Ltd.; Gold Hua Sheng Paper (Suzhou Industrial Park) Co., Ltd.; Guangdong Guanhao High-Tech Co., Ltd.; Henan Jianghe Paper Co., Ltd.; Henan Province Jianghe Paper Co., Ltd.; JHT Paper; Jianghe Paper Co., Ltd.; Jinan Fuzhi Paper Co.; MDCN Technology Co., Ltd.; New Pride Co., Ltd.; Sailing International; Shanghai Hanhong Paper Co., Ltd. and Hanhong International Limited; Shenzhen Likexin Industrial Co., Ltd.; Shenzhen Taizhou Industrial Development Co., Ltd.; Shenzhen Yuanming Industrial Development Co., Ltd.; Suzhou Cannwell Thermal Paper Ltd.; Suzhou Guanhua Paper Factory; Suzhou Xiandai Paper Production Co.; and Xiamen Anne Paper Co., Ltd. On March 27, 2014, Petitioner withdrew its request for an administrative review of the 19 companies listed above.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. Petitioner withdrew its request within the 90-day deadline. No other parties requested an administrative review of the antidumping duty order. As a result, we are rescinding the administrative review of lightweight thermal paper from the PRC for the period November 1, 2012, through October 31, 2013.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties 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 to CBP 15 days after the publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 79392, 79397 (December 30, 2013).

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 the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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 sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 3, 2014.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–08112 Filed 4–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–869]

Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 19, 2013, the Department of Commerce (the Department) published its preliminary determination of sales at less than fair value (LTFV) in the antidumping duty investigation of diffusion-annealed, nickel-plated flat-rolled steel products (certain nickel-plated, flat-rolled steel) from Japan.[1] The Department invited interested parties to comment on the *Preliminary Determination.* Based on the Department's analysis of the comments received, the Department made changes to the *Preliminary Determination.* The Department determines that certain nickel-plated, flat-rolled steel from Japan is being, or is likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins are listed in the ''Final Determination'' section below.

DATE: *Effective:* April 10, 2014.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or David Cordell, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION

Background

On November 19, 2013, the Department published the *Preliminary Determination* in the **Federal Register**.[2] In the *Preliminary Determination,* we stated that we were postponing the final determination until no later than 135 days after the publication of the *Preliminary Determination* in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii).

Based on the Department's findings at verification, as well as the minor corrections presented by Toyo Kohan at the start of verification, on January 23, 2014, the Department requested that Toyo Kohan submit revised sales and cost databases.[3] On January 27, 2014, Toyo Kohan timely submitted its revised sales and cost databases.[4]

On January 30, 2014, Toyo Kohan and Nippon Steel & Sumitomo Metal Corporation (NSSMC) timely submitted their case briefs. On February 6, 2014, Thomas Steel Strip Corporation (Petitioner) timely submitted a rebuttal brief.

No hearing was held because Toyo Kohan, pursuant to 19 CFR 351.310(c), withdrew its request for one.[5]

Period of Investigation

The period of investigation is January 1, 2012, to December 31, 2012.

Verification

As provided in section 782(i) of the Act, the Department verified the information submitted by Toyo Kohan for the final determination. The Department used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by Toyo Kohan.

Scope of the Investigation

The diffusion-annealed, nickel-plated flat-rolled steel products included in this investigation are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.,* ''diffusion-annealed''); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this investigation, ''nickel-based alloys'' include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this investigation are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. The foregoing HTSUS subheadings are provided only for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memo, which is dated concurrently with and hereby adopted by this notice.[6] A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memo is a public document and is on file electronically via Enforcement and

[1] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 78 FR 69371 (November 19, 2013) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See Preliminary Determination.*

[3] *See* Letter from Angelica L. Mendoza, Program Manager, Office VI, to Toyo Kohan Co., Ltd., dated January 23, 2014.

[4] *See* Toyo Kohan Co. Ltd.'s Letter with Attachments to the Secretary of Commerce, dated January 27, 2014.

[5] *See* Letter to the Secretary of Commerce from Toyo Kohan Co., Ltd., dated February 11, 2014.

[6] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance entitled ''Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less-Than-Fair-Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan,'' dated concurrently with this notice (Issues and Decision Memo).

Compliance'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 (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memo can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memo and the electronic versions of the Issues and Decision Memo are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verifications, we have made certain changes to the margin calculation for Toyo Kohan.[7]

Final Determination

The Department determines that the following dumping margins exist for the period January 1, 2012, to December 31, 2012:

Manufacturer/Exporter	Weighted-Average margin (percent)
Toyo Kohan Co., Ltd.	45.42
Nippon Steel & Sumitomo Metal Corporation	77.70
All Others	45.42

Disclosure

We intend to disclose to parties in this proceeding the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain nickel-plated, flat-rolled steel from Japan which were entered, or withdrawn from warehouse, for consumption on or after November 19, 2013, the date of publication of the *Preliminary Determination.* We will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) The rates for Toyo Kohan and NSSMC will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 45.42 percent, as discussed in the ''All Others Rate'' section, below. These suspension of liquidation instructions will remain in effect until further notice.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. Toyo Kohan is the only respondent in this investigation for which we calculated a company-specific rate that is not zero, *de minimis,* or determined entirely under section 776 of the Act. Therefore, for purposes of determining the ''all others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the dumping margin calculated for Toyo Kohan, 45.42 percent, for the ''all others'' rate, as referenced above.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (ITC) of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act the ITC will determine within 45 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice also serves as a final 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 the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(l) of the Act.

Dated: April 3, 2014.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

Appendix I

Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Discussion of Issues
Issue 1: Whether Toyo Kohan's Overrun Sales Were Made Outside the Ordinary Course of Trade
Issue 2: Whether the Scope of the Investigation is Ambiguous
Issue 3: Whether the Final Determination Reflects the Department's Conclusions from Its Cost Verification
A. Scrap Revenue
B. Financial Expense Ratio
C. Alternative Cost Database

[FR Doc. 2014–08106 Filed 4–9–14; 8:45 am]

BILLING CODE 3510–DS–P

[7] For a discussion of these changes, *see* Memorandum to the file, through Angelica Mendoza, Program Manager, Office VI, from Dena Crossland, International Trade Compliance Analyst, Office VI, entitled ''Analysis of Data Submitted by Toyo Kohan Co., Ltd. in the Final Affirmative Determination of the Antidumping Duty Investigation of Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan'' dated April 3, 2014; *see also* Memorandum to Neal M. Halper, Director, Office of Accounting, through Michael P. Martin, Lead Accountant, from Gary Urso, Senior Accountant, entitled, ''Cost of Production Calculation Adjustments for the Final Determination—Toyo Kohan Co., Ltd.,'' dated April 3, 2014.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD226

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Capacity Limits in Purse Seine Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for information.

SUMMARY: NMFS is requesting information about any individual's or company's plan or intent to seek authorization for a U.S. purse seine vessel to participate in the western and central Pacific Ocean (WCPO) purse seine fishery, as managed under the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), the South Pacific Tuna Act of 1988 (SPTA) and other law, if it is not currently authorized to do so. The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission) recently agreed to new restrictions on the replacement of purse seine vessels in Commission members' fleets. NMFS intends to use information submitted in response to this notice to identify any purse seine vessels, whether existing, under construction, or yet to be constructed, that might replace one or more currently licensed vessels. This information will be used to help satisfy the obligations of the United States as a party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) and as a member of the Commission.

DATES: Information must be submitted in writing by May 12, 2014 to be considered.

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

- *Electronic Mail:* Submit written information via email to: *0648-XD226@noaa.gov.*
- *Mail:* Submit written information by mail to: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Information sent by any other method, to any other address or individual, or received after May 12, 2014, might not be considered by NMFS. Attachments to electronic mail will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808–725–5032.

SUPPLEMENTARY INFORMATION:

Background

Several authorizations are necessary for a U.S. purse seine vessel to participate in the WCPO purse seine fishery. The U.S. WCPO purse seine fishery is regulated in part under the authority of the SPTA (16 U.S.C. 973–973r) through implementing regulations at 50 CFR Part 300, subpart D. The SPTA and its implementing regulations implement the terms of a treaty between the United States and 16 Members of the Pacific Islands Forum Fisheries Agency (Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America and its annexes, schedules, and implementing agreements, as amended; hereafter called ''the Treaty''). The Treaty generally governs the conduct of U.S. fishing vessel operations in the Treaty Area, which comprises much of the WCPO. The Treaty provides access by U.S. purse seine vessels to a large portion of the WCPO by authorizing, and regulating through a licensing system, U.S. purse seine vessel operations within all or portions of the exclusive economic zones of the 16 Pacific Island Parties to the Treaty (PIPs). License applications are first submitted to NMFS, which are approved or disapproved according to procedures established at 50 CFR 300.32. NMFS forwards approved applications to the Pacific Islands Forum Fisheries Agency (FFA, located in Solomon Islands), which acts as the Treaty administrator on behalf of the PIPs, and which issues the licenses.

In addition to being governed by the Treaty and the SPTA, the U.S. WCPO purse seine fishery is subject to the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce to implement the provisions of the Convention and the decisions of the Commission as they apply to the United States. The area of competence of the Commission, or the Convention Area, includes the majority of the Treaty Area. As a Party to the Convention and a Member of the Commission, the United States is obligated to implement the decisions of the Commission. The decisions of the Commission can be found on its Web site (*http://www.wcpfc.int/*). Pursuant to the Convention and the decisions of the Commission, a U.S. fishing vessel must have a high seas fishing permit (see below) with a valid WCPFC Area Endorsement, issued by NMFS under 50 CFR 300.212, in order to be used for commercial fishing for highly migratory species on the high seas in the Convention Area.

The WCPO purse seine fishery is also subject to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), particularly with respect to the operation of the fishery within the U.S. exclusive economic zone. The fishery is also subject to the authority of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*), which governs the conduct of U.S. fishing vessels on the high seas, and under which a high seas fishing permit is required for a U.S. fishing vessel to be used for commercial fishing anywhere on the high seas.

Recent Decision of the Commission on the Numbers and Capacities of Vessels in Purse Seine Fleets

In December 2013, the Commission adopted a conservation and management measure for bigeye tuna, yellowfin tuna, and skipjack tuna (CMM 2013–01). Most of the CMM's provisions are in effect from February 4, 2014, until December 31, 2017. Among other provisions, the CMM obligates certain flag States, including the United States, to limit the number of their purse seine vessels more than 24 meters in length with freezing capacity that operate between the latitudes of 20° North and 20° South to the current level (paragraph 49 of CMM 2013–01). CMM 2013–01 also obligates certain flag States, including the United States, to ensure that purse seine vessels in their fleets are not replaced with vessels with greater carrying capacity or well volume, or that the catch or fishing effort of such vessels is not greater than that of the replaced vessels (paragraph 50 of CMM 2013–01). Notwithstanding this latter obligation, CMM 2013–01 provides for flag States to allow the replacement of purse seine vessels in their fleets with vessels for which building approval has been granted and the Commission has been notified of such approval before March 1, 2014 (paragraph 50 of CMM 2013–01; this allowance is hereafter referred to as ''the paragraph 50 allowance'').

Solicitation of Information About Prospective Vessels Entering the WCPO Purse Seine Fishery

The paragraph 50 allowance enables purse seine vessels to be replaced with vessels having greater carrying capacity and well volume and for the replacement vessels to make greater catches and exert greater fishing effort than the replaced vessels provided certain criteria are met. In order for the United States to comply with the paragraph 50 allowance, NMFS must be informed of any plan or intent to bring U.S. vessels into the WCPO purse seine fishery. CMM 2013–01 requires that ''building approval'' for the replacement vessel must have been granted before March 1, 2014, and the Commission must have been notified of such approval before March 1, 2014, for such replacement. Although this date has passed, we have notified the Commission that the agency is required to follow administrative rulemaking requirements, and it was not possible for us to solicit and evaluate information from the public within the extremely short deadlines under CMM 2013–01. Accordingly, NMFS will seek public input on the paragraph 50 allowance notwithstanding the passage of the Commission's deadline.

NMFS invites any individual or company that plans or intends to seek authorization for a purse seine vessel more than 24 meters in length with freezing capacity to participate in the WCPO purse seine fishery (and that is not currently authorized to participate in the fishery) to notify NMFS of such plan or intent by providing the information listed below. ''To participate in the WCPO purse seine fishery'' means to use a U.S.-flagged purse seine vessel to fish in the Convention Area, regardless of the vessel's carrying capacity, well volume, or other characteristics. Specifically, NMFS requests that the following information be submitted to the NMFS Pacific Islands Regional Administrator (see **ADDRESSES**): (1) Whether the vessel is already built, under construction, or not yet under construction; (2) if not yet under construction, whether an agreement has been reached with a builder concerning its construction, and if so, the date of the agreement; (3) the name of the vessel, if known; (4) the U.S. Coast Guard Certificate of Documentation number of the vessel, if assigned; (5) the international radio call sign of the vessel, if assigned; (6) the vessel's length, if known; (7) the approximate date of fishing authorization that will be sought, if known; (8) the name and contact information of the individual or company most likely to seek authorization for the vessel to participate in the WCPO purse seine fishery; and (9) the name(s) of the currently authorized purse seine vessel(s) that that person or company intends to remove from the WCPO purse seine fishery coincident with the entry of the subject vessel, if any.

NMFS intends to use the information collected to identify prospective WCPO purse seine fishing vessels, and to determine whether any such vessel would replace one or more vessels currently authorized to participate in the WCPO purse seine fishery. Information provided in response to this request will be used only for making determinations related to the paragraph 50 allowance.

Failure to respond to this notice of solicitation of information could affect future eligibility of replacement vessels to compete for licenses and other authorizations to participate in the WCPO purse seine fishery. Responses for a plan or intent for a prospective purse seine vessel must be submitted in writing by May 12, 2014. Information submitted in response to this notice will, as appropriate, be subject to the confidentiality provisions of the WCPFC Implementation Act, section 506(d), and implementing regulations.

This request for information is subject to the Paperwork Reduction Act. It is part of a collection-of-information that has been approved by the Office of Management and Budget (OMB) under control number 0648–0218, ''South Pacific Tuna Act.'' A change to that collection-of-information to accommodate this request for information has been approved by the OMB.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: April 7, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–08063 Filed 4–9–14; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled National Service Trust Enrollment Form and National Service Trust Exit Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Amy Borgstrom, at (202) 606–6930 or email to *aborgstrom@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on December 12, 2013. This comment period ended February 9, 2014. Four public comments were received from this Notice. One commenter stated that the forms may be difficult to interpret by individuals with cognitive disabilities. All members

completing the forms may do so with assistance of the programs with which they are serving, therefore we have not made changes. Multiple commenters stated that the disability information may be too detailed or intrusive. We have included language that speaks to the protections of the data, and feel that this type of information will allow us to ensure that we are serving all Americans equally. Other commenters provided a number of requests for clarification of the meaning of certain questions. We have clarified many of these questions on the forms. Multiple commenters requested that the forms state that they may be filled out on paper or electronically, and we have added a clarifying statement saying this.

Description: CNCS is seeking approval of the National Service Trust Enrollment Form and the National Service Trust Exit Form, which is used by AmeriCorps members and program staff to enroll in the National Service Trust and to document the completion of a member's term of service, a requirement to receiving a Segal Education Award, and to meet other legal and program requirements.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Enrollment Form and National Service Trust Exit Form.

OMB Number: 3045–0006.

Agency Number: None.

Affected Public: AmeriCorps members, grantee and other program staff.

Total Respondents: 160,000.

Frequency: One per form.

Average Time per Response: Averages 10 minutes per form.

Estimated Total Burden Hours: 266,667.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: April 4, 2014.

Erin Dahlin,

Deputy Director of Program Coordination.

[FR Doc. 2014–08016 Filed 4–9–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board (DPB); Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Policy), DoD.

ACTION: Federal Advisory Committee meeting notice.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce the following Federal advisory committee meeting of the Defense Policy Board (DPB). This meeting will be closed to the public.

DATES: *Quarterly Meeting:* Monday, April 28, 2014, from 8:00 a.m. to 6:00 p.m. and Tuesday, April 29, 2014, from 7:00 a.m. to 9:30 a.m.

ADDRESSES: The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 2000 Defense Pentagon, Washington, DC 20301–2000. Phone: (703) 571–9232.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and the Federal Advisory Committee Management Act; Final Rule 41 CFR Parts 101–6 and 102–3.

Purpose of Meeting: To obtain, review and evaluate classified information related to the DPB's mission to advise on: (a) Issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary or the Under Secretary of Defense for Policy.

Meeting Agenda: Beginning at 8:00 a.m. on April 28 through the end of the meeting on April 29, the DPB will have secret through top secret (SCI) level discussions on national security issues regarding Russia.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that this meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the Department of Defense FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Title 5, United States Code, Section § 552b(c)(1) and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing secret or classified material.

Committee's Designated Federal Officer or Point of Contact: Ann Hansen, *osd.pentagon.ousd-policy.mbx.defense-board@mail.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written statements to the membership of the DPB at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's Designated Federal Officer; the Designated Federal Officer's contact information is listed in this notice or it can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: April 7, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–08025 Filed 4–9–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0051]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DHRA 12 DoD, entitled ''Defense Injury and Unemployment Compensation System'', in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will process FECA claims seeking monetary, medical, and similar benefits for injuries or deaths sustained while performing assigned duties. Data is collected for incident notification to safety personnel responsible for OSHA recording. Safety claim records are used to support DoD management responsibilities under the applicable regulations and to obtain appropriate injury compensation benefits for qualifying employees or their dependents.

DATES: Comments will be accepted on or before May 12, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.*

The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 12, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 7, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPR 35

SYSTEM NAME:

Defense Injury and Unemployment Compensation System (April 18, 2011, 76 FR 21708).

CHANGES:

System identifier: Delete entry and replace with ''DHRA 12 DoD.''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Civilian Personnel Advisory Service, 4800 Mark Center Drive, Alexandria, VA 22350–1100.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), claim number, date of birth, gender, home phone number, home address, component, occupation, assignment and duty location information, wages, benefits, entitlement data necessary to injury and unemployment claim management, Department of Labor/Office of Workers Compensation Programs (DOL/OWCP) claim status, authorization for medical care, related DoD personnel records such as, timekeeping and payroll data, reports descriptive of the incident and extent of injury for use in DOL/OWCP adjudication of the claim, initial notification to agency safety personnel for Occupational Safety and Health Act (OSHA) reporting purposes, reports related to payment of benefits through SESA offices, State where the claim for unemployment compensation was filed and approximate date filed with the SESA.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with; ''5 U.S.C. Chapter 81, Compensation for Work Injuries; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Instruction (DoDI) 1400.25–V810, DoD Civilian Personnel Management System: Injury Compensation; DoDI 1400.25–V850, DoD Civilian Personnel Management System: Unemployment Compensation; and E.O. 9397 (SSN), as amended.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Office of Personnel Management and Social Security Administration for the purpose of ensuring appropriate payment of benefits.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system of records.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks and is accessible only to authorized personnel. Access is limited to individuals who have been given an account. Users go through a vetting process to determine need-to-know to perform duties. Individuals are only given access to data that is needed to perform their duties. Users can only gain access once an account is created for them and they register their Common Access Card (CAC) with a valid Public Key Infrastructure (PKI) certificate. Once the account is created and the CAC registered, system access is granted through their CAC.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are destroyed 10 years after the case is closed by the Department of Labor.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''DUICS Program Manager, Defense Civilian Personnel Advisory Service, Enterprise Human Resources Information Systems Directorate, Benefits and Work Life Programs Division, Injury and Unemployment Compensation Branch, 4800 Mark Center Drive, Alexandria, VA 22350–1100.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Injury Compensation Program Administrator (ICPA) designated by their servicing Human Resources office, or contact the Defense Civilian Personnel Advisory Service, Enterprise Human Resources Information Systems Directorate, 4800 Mark Center Drive, Alexandria, VA 22350–1100.

Individuals seeking to determine whether information about themselves relating to SESA is contained in this system should contact the Defense Civilian Personnel Advisory Service, Enterprise Human Resources Information Systems Directorate, 4800 Mark Center Drive, Alexandria, VA 22350–1100.

Signed, written requests regarding SESA should include the individual's full name, SSN, address, state where the claim for unemployment compensation was filed, and approximate date filed with the SESA.

Signed, written requests regarding Unemployment Compensation should include the individual's full name, SSN, address, state where the claim for unemployment compensation was filed, and approximate date filed with the SESA.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the OSD/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, D.C. 20301–1155.

Signed, written requests should include the individual's full name, SSN, address, and the name and number of this system of records notice. If the request involves unemployment compensation, it should include the State where the claim for unemployment compensation was filed and approximate date filed with the SESA.''

* * * * *

[FR Doc. 2014–08015 Filed 4–9–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Education Research and Special Education Research Grant Programs

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

Overview Information

Education Research and Special Education Research Grant Programs

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.305A, 84.305B, 84.305C, 84.305D, 84.305H, 84.324A, and 84.324B.

DATES: *Applications Available:* June 5, 2014.

Deadline for Notice of Intent to Apply: June 5, 2014.

Deadline for Transmittal of Applications: August 7, 2014.

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces the Institute's FY 2015 competitions for grants to support education research and special education research. The Director takes this action under the Education Sciences Reform Act of 2002. The Institute's purpose in awarding these grants is to provide national leadership in expanding fundamental knowledge and understanding (1) of developmental and school readiness outcomes for infants and toddlers with or at risk for disability, and (2) of education outcomes for all students from early childhood education through postsecondary and adult education.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The central purpose of the Institute's research grant programs is to provide interested individuals and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all students. These interested individuals include parents, educators, students, researchers, and policymakers. In carrying out its grant programs, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in This Notice: The Institute will conduct seven research competitions in FY 2015 through two of its National Education Centers:

The Institute's National Center for Education Research (NCER) will hold five competitions: One competition for education research, one competition for education research training, one competition for education research and development centers, one competition for statistical and research methodology in education, and one competition for partnerships and collaborations focused on problems of practice or policy.

The Institute's National Center for Special Education Research (NCSER) will hold two competitions: one competition for special education research and one competition for special education research training.

NCER Competitions

The Education Research Competition. Under this competition NCER will consider only applications that address one of the following ten education research topics:

- Cognition and Student Learning.
- Early Learning Programs and Policies.
- Education Technology.
- Effective Teachers and Effective Teaching.
- English Learners.
- Improving Education Systems: Policies, Organization, Management, and Leadership.
- Mathematics and Science Education.
- Postsecondary and Adult Education.
- Reading and Writing.
- Social and Behavioral Context for Academic Learning.

The Education Research Training Competition. Under this competition NCER will consider only applications that address one of the following three topics:

- Predoctoral Research Training.
- Postdoctoral Research Training.
- Methods Training for Education Researchers.

The Education Research and Development Centers Competition. Under this competition NCER will consider only applications that address one of the following three topics:

- Knowledge Utilization.
- Standards in Schools.
- Virtual Learning.

The Statistical and Research Methodology in Education Competition. Under this competition NCER will consider only applications that address one of the following two topics:

- Statistical and Research Methodology Grants.
- Early Career Statistical and Research Methodology Grants.

Partnerships and Collaborations Focused on Problems of Practice or Policy Competition. Under this competition NCER will consider only applications that address one of the following three topics:

- Researcher-Practitioner Partnerships in Education Research.
- Continuous Improvement in Education Research.
- Evaluation of State and Local Education Programs and Policies.

NCSER Competitions

The Special Education Research Competition. Under this competition NCSER will consider only applications that address one of the following eleven topics:

- Autism Spectrum Disorders.
- Cognition and Student Learning in Special Education.
- Early Intervention and Early Learning in Special Education.

- Families of Children with Disabilities.
- Mathematics and Science Education.
- Professional Development for Teachers and Related Services Providers.
- Reading, Writing, and Language Development.
- Social and Behavioral Outcomes to Support Learning.
- Special Education Policy, Finance, and Systems.
- Technology for Special Education.
- Transition Outcomes for Secondary Students with Disabilities.

The Special Education Research Training Competition. Under this competition NCSER will consider only applications that address the following topic:

- Early Career Development and Mentoring in Special Education Research.

Program Authority: 20 U.S.C. 9501 *et seq.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The EDGAR regulations in 34 CFR part 75, except for 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, and 75.230.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Types of Awards: Discretionary grants and cooperative agreements.

Fiscal Information: Although Congress has not yet enacted an appropriation for fiscal year 2015, the Institute is inviting applications for these competitions now so that it may give applicants adequate time to prepare their applications before the competitions take place. The Department may announce additional topics later in 2014. The actual award of grants will depend on the availability of funds. The size of the awards will depend on the scope of the projects proposed. The number of awards made under each competition will depend on the quality of the applications received for that competition, the availability of funds, and the following limits on awards for specific competitions and topics set by the Institute.

The Institute may waive any of the following limits on awards for a specific competition or topic in the special case that the peer review process results in a tie between two or more grant applications, making it impossible to adhere to the limits without funding only some of the equally ranked applications. In that case, the Institute may make a larger number of awards to include all applications of the same rank.

For the NCER's Education Research Training competition, we will award no more than five grants under the Predoctoral Research Training topic and no more than five grants under the Postdoctoral Research Training topic.

For the NCER's Education Research and Development Center competition, we will award no more than one grant under the Knowledge Utilization topic, no more than one grant under the Standards in Schools topic, and no more than one grant under the Virtual Learning topic.

For the NCER's Partnerships and Collaborations Focused on Problems of Practice or Policy competition, we will award no more than five grants under the Continuous Improvement in Education Research topic.

For the NCSER's Special Education Research Training Competition, we will award no more than five grants under the Early Career Development and Mentoring in Special Education Research topic.

Depending on the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applications from the FY 2015 competitions.

III. Eligibility Information

1. *Eligible Applicants:* Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, nonprofit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

IV. Application and Submission Information

1. *Request for Applications and Other Information:* Information regarding program and application requirements for the competitions will be contained in the NCER and NCSER Requests for Applications (RFAs), which will be available at the following Web site: *http://ies.ed.gov/funding/.*

RFAs Available: The RFAs for all seven competitions announced in this notice will be available at the Web site listed above on or before April 30, 2014. The dates on which the application packages for these competitions will be available are indicated in the chart at the end of this notice.

The selection criteria, requirements concerning the content of an application, and review procedures for the competitions are contained in the RFAs. The RFAs also include information on the maximum award available under each grant competition. Applications that include proposed budgets higher than the relevant maximum award will not be considered for an award. The Director of the Institute may change the maximum amount through a notice in the **Federal Register**.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application are contained in the RFA for the specific competition. The forms that must be submitted are in the application package for the specific competition.

3. *Submission Dates and Times Requirements:* Each competition will have its own application package. The deadline date for transmittal of applications invited under this notice is indicated in the chart at the end of this notice and in the RFAs for the competitions.

Application packages for grants under these competitions must be obtained from and submitted electronically using the Grants.gov Apply site (*www.Grants.gov*). For information (including dates and times) about how to submit your application package electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section V. 1. *Electronic Submission of Applications* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VIII of this notice and the chart at the end of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM)—the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also, note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at SAM.gov. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

V. Other Submission of Applications

Applications for grants under these competitions must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

1. Electronic Submission of Applications

Applications for grants under the Education Research, Education Research Training, Education Research and Development Centers, Statistical and Research Methodology in Education, the Partnerships and Collaborations Focused on Problems of Practice or Policy competitions, Special Education Research, and Special Education Research Training, CFDA Numbers 84.305A, 84.305B, 84.305C, 84.305D, 84.305H, 84.324A, and 84.324B, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant applications for the Education Research, Special Education Research, Education Research Training, Special Education Research Training, Education Research and Development Centers, Statistical and Research Methodology in Education, and the Partnerships and Collaborations Focused on Problems of Practice or Policy competitions at www.Grants.gov. You must search for the downloadable application package for each competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.305, not 84.305A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424 Research & Related (R&R)) and the other R&R forms including, Project Performance Site Locations, Other Project Information, Senior/Key Person Profile (Expanded), Research and Related Budget (Total Federal and Non-Federal), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF

(Portable Document) read-only, non-modifiable format. Do not attempt to attach and upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, your application will be rejected with errors by Grants.gov and we will not review it.

• Your electronic application must comply with any page-limit requirements described in the relevant RFA for your application.

• After you electronically submit your application, you will receive from Grants.gov three emails that constitute automatic notification of receipt. These emails will contain a Grants.gov tracking number that you can use to track your application on the Grants.gov Web site. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Contact Center at *support@grants.gov, http://www.grants.gov/web/grants/about/contact-us.html,* or toll-free at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VIII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Ellie Pelaez, U.S. Department of Education, 555 New Jersey Avenue NW., Room 602e, Washington, DC 20208. FAX: (202) 219–1466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

2. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number: *[Identify the CFDA number, including suffix letter, if any, for the competition under which you are applying.]*), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

3. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number: *[Identify the CFDA number, including suffix letter, if any, for the competition under which you are applying.]*), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 10 of the SF 424 (R&R) the CFDA number, including suffix letter, if any, of the

competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

VI. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are provided in the RFAs.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VII. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for an annual three-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under one of the competitions announced in this notice, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* To evaluate the overall success of its education research grant program, the Institute annually assesses the number of IES-supported interventions with evidence of efficacy in improving student outcomes including school readiness, academic outcomes (reading, writing, mathematics, and science), high school graduation and dropout, postsecondary enrollment and completion, and in enhancing teacher characteristics that have been shown to have a positive effect on student outcomes.

For the special education research grant program, the Institute annually assesses the number of Institute-supported interventions with evidence of efficacy in improving student outcomes in school readiness, academics, and behavior.

The data for these annual measures are based on What Works Clearinghouse (WWC) reviews of initial findings on interventions from Institute research grants, such as findings that will have been presented as papers at a convention or working papers provided to the Institute by its grantees. The WWC reviews these reports and rates them using the WWC published standards to determine whether the evidence from these research grants meets evidence standards of the WWC and demonstrates a statistically significant positive effect in improving the relevant outcome.

The Institute also annually assesses the performance of its research training and special education research training programs by measuring the number of individuals who have been or are being trained in IES-funded research training programs and the number of fellows working in the field of education after they have completed the training program.

6. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VIII. Agency Contact

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular research competition is listed in the chart at the end of this notice, in the relevant RFA, and in the relevant application package. The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period ranges are also listed in the chart and in the RFAs that are posted at the following Web sites: *http://ies.ed.gov/funding/* and *www.ed.gov/about/offices/list/ies/programs.html.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

IX. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the RFA in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the appropriate program contact

person listed in the chart at the end of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 7, 2014.

John Q. Easton,

Director, Institute of Education Sciences.

INSTITUTE OF EDUCATION SCIENCES

CFDA No. and name	Application package available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
National Center for Education Research (NCER)					
84.305A Education Research					
▪ Cognition and Student Learning.	June 5, 2014	August 7, 2014	$100,000 to $1,000,000 ...	Up to 5 years	Erin Higgins, *Erin.Higgins@ed.gov.*
▪ Early Learning Programs and Policies					
▪ Education Technology					
▪ Effective Teachers and Effective Teaching					
▪ English Learners					
▪ Improving Education Systems: Policies, Organization, Management, and Leadership					
▪ Mathematics and Science Education					
▪ Postsecondary and Adult Education					
▪ Reading and Writing					
▪ Social and Behavioral Context for Academic Learning					
84.305B Research Training Programs in the Education Sciences					
▪ Predoctoral Research Training Program.	June 5, 2014	August 7, 2014	$50,000 to $1,000,000	Up to 5 years	Meredith Larson, *Meredith.Larson@ed.gov.*
▪ Postdoctoral Research Training Program					
▪ Methods Training for Education Researchers					
84.305C Education Research and Development Center Program					
▪ Knowledge Utilization	June 5, 2014	August 7, 2014	$1,000,000 to $2,000,000	Up to 5 years	Rebecca McGill-Wilkinson, *Rebecca.McGill@ed.gov.*
▪ Standards in Schools					
▪ Virtual Learning.					
84.305D Statistical and Research Methodology in Education					
▪ Early Career	June 5, 2014	August 7, 2014	$40,000 to $300,000	Up to 3 years	Phill Gagne, *Phill.Gagne@ed.gov.*
▪ Regular Grant					
84.305H Partnerships and Collaborations Focused on Problems of Practice or Policy					

INSTITUTE OF EDUCATION SCIENCES—Continued

CFDA No. and name	Application package available	Deadline for transmittal of applications	Estimated range of awards*	Project period	For further information contact
▪ Researcher-Practitioner Partnerships in Education Research. ▪ Continuous Improvement Research in Education ▪ Evaluation of State and Local Education Programs and Policies	June 5, 2014	August 7, 2014	$50,000 to $1,000,000	Up to 5 years	Allen Ruby, *Allen.Ruby@ed.gov*.
National Center for Special Education Research (NCSER)					
84.324A Special Education Research ▪ Autism Spectrum Disorders. ▪ Cognition and Student Learning in Special Education ▪ Early Intervention and Early Learning in Special Education ▪ Families of Children with Disabilities ▪ Mathematics and Science Education ▪ Professional Development for Teachers and Related Services Providers ▪ Reading, Writing, and Language Development ▪ Social and Behavioral Outcomes to Support Learning ▪ Special Education Policy, Finance, and Systems ▪ Technology for Special Education ▪ Transition Outcomes for Secondary Students with Disabilities	June 5, 2014	August 7, 2014	$100,000 to $1,000,000 ...	Up to 5 years	Jacquelyn Buckley, *Jacquelyn.Buckley@ed.gov*.
84.324B Special Education Research Training ▪ Early Career Development and Mentoring Program in Special Education Research.	June 5, 2014	August 7, 2014	$50,000 to $100,000	Up to 4 years	Kristen Rhoads, *Kristen.Rhoads@ed.gov*.

* These estimates are annual amounts.

Note: The Department is not bound by any estimates in this notice.

Note: If you use a telecommunications devices for the deaf (TTD) or a test telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

[FR Doc. 2014–08107 Filed 4–9–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 24, 2014; 9:00 a.m.–5:00 p.m.; Friday, April 25, 2014; 9:00 a.m.–5:00 p.m.

ADDRESSES: DoubleTree Bethesda—Washington DC, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, 301–652–2000.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building,

1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: 301–903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, April 24, 2014

- Perspectives from Department of Energy and National Science Foundation
- Update from the Department of Energy and National Science Foundation's Nuclear Physics Office's
- Presentation of the Charge on Neutrino-less Double Beta
- Presentation of the Charge on NNSA Development of Mo-99 Domestic Supply

Friday, April 25, 2014

- Continued Discussion of Subcommittee Report and Letter Transmittal
- Public Comment (10-minute rule)
- Presentation of the NSAC Subcommittee Report on the Molybdenum-99 Program
- Presentation of the NSAC Subcommittee Report on Neutrino-less Double Beta Decay

Note: The NSAC Meeting will be broadcast live on the Internet. You may find out how to access this broadcast by going to the following site prior to the start of the meeting. A video record of the meeting including the presentations that are made will be archived at this site after the meeting ends: *www.tvworldwide.com/events/doe/131007*.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's *Office of Nuclear Physics* Web site for viewing.

Issued in Washington, DC, on April 4, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–08029 Filed 4–9–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Quadrennial Energy Review: Notice of Public Meeting

AGENCY: Office of Energy Policy and Systems Analysis, Secretariat, Quadrennial Energy Review Task Force, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: At the direction of the President, the U.S. Department of Energy (DOE or Department), as the Secretariat for the Quadrennial Energy Review Task Force (QER Task Force), will convene a two part public meeting to discuss and receive comments on issues related to the Quadrennial Energy Review. The purpose of the meeting is to examine energy infrastructure constraints in New England and regional approaches to addressing them.

DATES: The Department, as the Secretariat for the QER Task Force, will convene a two part meeting relating to the Quadrennial Energy Review. Part 1 of the meeting will be held in Providence, Rhode Island and Part 2 will be held in Hartford, Connecticut. Both parts of the meeting will occur on Monday, April 21, 2014. Part 1, in Providence, Rhode Island will begin at 9 a.m. and end by 1 p.m. on Monday, April 21, 2014. Part 2, in Hartford, Connecticut will begin at 1 p.m. and run until 5 p.m., on Monday, April 21. Written comments are welcome, especially following the public meetings, and should be submitted within 60 days of the meetings.

ADDRESSES: Part 1, in Providence, Rhode Island, will be held at the Rhode Island Convention Center, 1 Sabin St., Ballroom B, Providence, RI 02903.

The Hartford meeting will be held at the Phoenix Auditorium, Connecticut Department of Energy and Environmental Protection, 79 Elm St., Hartford, CT 06106.

You may submit written comments, to: *QERComments@hq.doe.gov* or by U.S. mail to the Office of Energy Policy and Systems Analysis, EPSA–60, QER Meeting Comments, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121.

For the April 21, 2014, Public Meeting, please title your comment ''Quadrennial Energy Review: Comment on the New England Regional Infrastructure Constraints Public Meeting'' held April 21, 2014. Please also indicate whether your comment relates to Part 1 (Providence) or Part 2 (Hartford) of the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Adonica Renee Pickett, EPSA–90, U.S. Department of Energy, Office of Energy Policy and Systems Analysis, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9168 *Email:Adonica.Pickett@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On January 9, 2014, President Obama issued a *Presidential Memorandum—Establishing a Quadrennial Energy Review*. To accomplish this review, the Presidential Memorandum establishes a Quadrennial Energy Review Task Force to be co-chaired by the Director of the Office of Science and Technology Policy, and the Director of the Domestic Policy Council. Under the Presidential Memorandum, the Secretary of Energy shall provide support to the Task Force, including support for coordination activities related to the preparation of the Quadrennial Energy Review Report, policy analysis and modeling, and stakeholder engagement.

The initial focus for the Quadrennial Energy Review will be our Nation's infrastructure for transporting, transmitting, storing and delivering energy. Our current infrastructure is increasingly challenged by transformations in energy supply, markets, and patterns of end use; issues of aging and capacity; impacts of climate change; and cyber and physical threats. Any vulnerability in this infrastructure may be exacerbated by the increasing interdependencies of energy systems with water, telecommunications, transportation, and emergency response systems. The first Quadrennial Energy Review Report will serve as a roadmap to help address these challenges.

The Department of Energy has a broad role in energy policy development and the largest role in implementing the Federal Government's energy research and development portfolio. Many other executive departments and agencies also play key roles in developing and implementing policies governing energy resources and consumption, as well as associated environmental impacts. In addition, non-Federal actors are crucial contributors to energy policies. Because most energy and related infrastructure is owned by private entities, investment by and engagement of the private sector is necessary to develop and implement effective policies. State and local policies; the views of nongovernmental,

environmental, faith-based, labor, and other social organizations; and contributions from the academic and non-profit sectors are also critical to the development and implementation of effective energy policies.

An interagency Quadrennial Energy Review Task Force, which includes members from all relevant executive departments and agencies (agencies), will develop an integrated review of energy policy that integrates all of these perspectives. It will build on the foundation provided in the Administration's *Blueprint for a Secure Energy Future* of March 30, 2011, and *Climate Action Plan* released on June 25, 2013. The Task Force will offer recommendations on what additional actions it believes would be appropriate. These may include recommendations on additional executive or legislative actions to address the energy challenges and opportunities facing the Nation.

April 21, 2014 Public Meeting: New England Regional Energy Infrastructure Constraints, Parts 1 and 2

On April 21, 2014, the DOE will hold a two part public meeting in Providence, Rhode Island and Hartford, Connecticut. Each part of the April 21, 2014 public meeting will feature a facilitated panel discussion, followed by an open microphone session. Persons desiring to speak at the open microphone sessions should come prepared to speak for no more than 3 minutes and will be accommodated on a first- come, first- serve basis, according to the order in which they register to speak on a sign-in sheet available at the meeting location, immediately prior to the meeting.

In advance of the meeting, DOE anticipates making publicly available a briefing memorandum providing useful background information regarding the topics under discussion at the meeting. DOE will post this memorandum on its Web site: *http://energy.gov*.

Submitting comments via email. Submitting comments by email to the QER email address will require you to provide your name and contact information in the transmittal email. Your contact information will be viewable to DOE staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). Your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to the QER email address (*QERcomments@hq.doe.gov*) information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted to the QER email address cannot be claimed as CBI. Comments received through the email address will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section, below.

If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Confidential Business Information. Pursuant to *10 CFR 1004.11,* any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Confidential information should be submitted to the Confidential QER email address: *QERConfidential@hq.doe.gov*.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest. It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on April 5, 2014.

Carl Pechman,

QER Secretariat, QER Interagency Task Force, U.S. Department of Energy.

[FR Doc. 2014–08030 Filed 4–9–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–036]

Decision and Order Granting a Waiver to Samsung From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of its decision and order in Case No. RF–036 grants Samsung Electronics America, Inc. (Samsung) with a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for specific basic models set forth in its petition for waiver. In its petition, Samsung provides an alternate test procedure that is identical to the test procedure DOE published in a final rule dated January

25, 2012 (77 FR 3559) that manufacturers will be required to use starting in 2014. Under today's decision and order, Samsung shall be required to test and rate these refrigerator-freezers using an alternate test procedure as adopted in that January 2012 final rule, which accounts for multiple defrost cycles when measuring energy consumption.

DATES: This Decision and Order is effective April 10, 2014.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371, Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Samsung with a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with multiple defrost cycles, provided that Samsung tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Samsung from making representations concerning the energy efficiency of these products unless the product has been tested in a manner consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan,

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

Decision and Order

In the Matter of: Samsung Electronics America, Inc. (Case No. RF–036)

I. *Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver from the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. *Samsung's Petition for Waiver: Assertions and Determinations*

On November 26, 2013, Samsung submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that is the same as the one that manufacturers will be required to use in 2014 for products with long-time or variable defrost. See 77 FR 3559 (Jan. 25, 2012) (final rule). Samsung has submitted similar petitions for waiver and requests for interim waiver for other basic models of refrigerator-freezers that incorporate multiple defrost cycles. DOE subsequently granted a waiver for the products specified in these petitions. See 77 FR 1474 (Jan. 10, 2012), 77 FR 75428 (Dec. 20, 2012), 78 FR 35901 (June 14, 2013), 78 FR 35898 (June 14, 2013), and 78 FR 65623 (Nov. 1, 2013).

Samsung's petition included an alternate test procedure to account for the energy consumption of its refrigerator-freezer models with multiple defrost cycles. The alternate test procedure specified by Samsung is the same as the test procedure that DOE finalized in January 2012. See 77 FR 3359. Among other things, the notice to that final rule addressed comments responding to the earlier Samsung petitions that were the subject of the previous waiver, as well as the interim final rule that had previously been issued. See 75 FR 78809 (Dec. 16, 2010). The alternate test procedure that

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

Samsung has requested permission to use as part of its waiver petition is, as with its prior waiver petitions noted above, identical to the test procedure provisions for products with long-time or variable defrost DOE adopted in the final test procedure rule that manufacturers will be required to use starting in 2014.

Because the currently applicable test procedure found in 10 CFR Part 430, subpart B, appendix A1 cannot be used to test the basic models at issue or would otherwise lead to materially inaccurate results, DOE previously granted a waiver to Samsung for other basic models incorporating multiple defrost technology. See 77 FR 1474, 77 FR 75428, 78 FR 35901, 78 FR 35898, and 78 FR 65623. DOE has determined that it is desirable to have similar basic models, such as those addressed by the Samsung petition addressed in this notice, tested in a consistent manner and is adopting the same approach laid out in its prior decision by permitting Samsung to use the alternate test procedure specified in this Decision and Order.

III. *Consultations with Other Agencies*

DOE consulted with the appropriate staff at the Federal Trade Commission (FTC) staff concerning the Samsung petition for waiver. The FTC staff did not have any objections to granting a waiver to Samsung.

IV. *Conclusion*

After careful consideration of all the material submitted by Samsung and consultation with the FTC staff, it is ordered that:

(1) The petitions for waiver submitted by Samsung Electronics America, Inc. (Case No. RF–036) are hereby granted as set forth in the paragraphs below.

(2) Samsung shall be required to test and rate the following Samsung models according to the alternate test procedure set forth in paragraph (3) of this section.

RS25H5121**
RS25H5111**

(3) Samsung shall be required to test the products listed in paragraph (2) of this section according to appendix A1 to subpart B of 10 CFR part 430 except that the test cycle shall be identical to the test procedure provisions for products with long-time or variable defrost located in section 4.2.1 of appendix A to subpart B of 10 CFR part 430, as adopted in DOE's final rule dated January 25, 2012 (77 FR 3559).

(4) Representations. Samsung may make representations about the energy use of its refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid and accurate. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Samsung's November 26, 2013 petition for waiver. The granting of this waiver does not release the petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–08073 Filed 4–9–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–037]

Decision and Order Granting a Waiver to Samsung From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–037) that grants Samsung Electronics America, Inc. (Samsung) with a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for the basic models set forth in its petition for waiver. In its petition, Samsung provides an alternate test procedure to address the difficulties in testing dual compressor systems using the currently applicable DOE test procedure. Under today's decision and order, Samsung shall be required to test and rate these refrigerator-freezers using an alternate test procedure that takes dual compressors into account when measuring energy consumption.

DATES: This Decision and Order is effective April 10, 2014.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371, Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Samsung with a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A for certain basic models of refrigerator-freezers with dual compressors, provided that Samsung tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Samsung from making representations concerning the energy efficiency of these products unless the product has been tested in a manner consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Samsung Electronics America, Inc. (Case No. RF–037)

I. *Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which

includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, it authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. *Samsung's Petition for Waiver: Assertions and Determinations*

On December 13 and 26, 2013, Samsung submitted petitions for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A because it was designing new refrigerator-freezers that incorporate a dual compressor design. Samsung sought a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for the company's dual compressor products. In its petition, Samsung set forth an alternate test procedure and noted in support for the petition already granted to Sub-Zero involving a similar waiver pertaining to the use of dual compressor-equipped refrigerators. See 76 FR 71335 (November 17, 2011) (interim waiver) and 77 FR 5784 (February 6, 2012) (Decision and Order). DOE has also granted a similar waiver to LG. See 77 FR 44603 (July 30, 2012) (interim waiver) and 78 FR 18327 (March 26, 2013) (Decision and Order). While Samsung has acknowledged that its products are different from the ones addressed by the Sub-Zero waiver in that they feature a different number of evaporators and defrost heaters, Samsung asserts that the procedure outlined in the Sub-Zero waiver will provide a representative measurement of the energy use of its products. In addition, Samsung requests that it be permitted to use the alternate test procedure that DOE has already permitted Sub-Zero and LG to use in response to similar waiver requests pertaining to the testing of refrigerator-freezers that use shared dual compressors, with minor modification suggested below:

Before: 5.2.1.4 Dual Compressor Systems with dual Automatic Defrost

With Minor Change: 5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual).

DOE has determined that it is desirable to have similar basic models, such as those addressed by this most recent Samsung petition, tested in a consistent manner and is adopting the same approach laid out in its prior decision by permitting Samsung to use the alternate test procedure specified in this Decision and Order.

III. *Consultations with Other Agencies*

DOE consulted with the appropriate staff at the Federal Trade Commission (FTC) concerning the Samsung petition for waiver. The FTC staff did not have any objections to granting a waiver to Samsung.

IV. *Conclusion*

After careful consideration of all the material that was submitted by Samsung and DOE's consultation with the FTC staff, it is ordered that:

(1) The petitions for waiver submitted by Samsung Electronics America, Inc. (Case No. RF–037) are hereby granted as set forth in the paragraphs below.

(2) Samsung shall be required to test and rate the following Samsung models according to the alternate test procedure set forth in paragraph (3) of this section.

RF34H99****

RF33H99****

(3) Samsung shall be required to test the product listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A, except that, for the Samsung products listed in paragraph (2) only, replace section 5.2.1.4 of appendix A, with the following:

5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual). The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

1440 = number of minutes in a day

ET is the test cycle energy (kWh/day);

i is a variable that can equal to 1, 2 or more that identifies the distinct defrost cycle types applicable for the refrigerator or

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

refrigerator-freezer;
D is the total number of distinct defrost cycle types;
EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
T1 is the length of time for EP1 (minutes);
EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);
T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.
CTi is the freezer compressor run time between instances of defrost cycle type i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR part 430, subpart B, appendix A clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0°F (0.6°C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0°F (0.6°C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor on-cycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency

Measurements shall be taken at regular interval not exceeding 1 minute.

[End of 5.2.1.4]

(4) Representations. Samsung may make representations about the energy use of its refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid and accurate. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Samsung's December 13 and 26, 2013 petitions for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–08077 Filed 4–9–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–035]

Decision and Order Granting a Waiver to Liebherr Canada Ltd. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of its decision and order (Case No. RF–035) granting Liebherr Canada Ltd. (Liebherr) with a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for the basic models set forth in its petition for waiver. In its petition, Liebherr sought to use an alternate test procedure that would permit the testing of its all-refrigerator model while physically connected to Liebherr's companion upright freezer model, which is necessary for the refrigerator to function properly. Under today's decision and order, Liebherr shall be required to test and rate these refrigerator-freezers, subject to use of the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective April 10, 2014.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371, Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Liebherr a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A for certain basic models of refrigerator which shares a control panel with an accompanying freezer, provided that Liebherr tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Liebherr from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan,

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

Decision and Order

In the Matter of: Liebherr Canada Ltd. (Case No. RF–035)

I. *Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, it authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver from the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. *Liebherr's Petition for Waiver: Assertions and Determinations*

On September 27, 2013, Liebherr filed a petition for waiver and an application for interim waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A. The subject of the waiver petition is Liebherr 's all-refrigerator model, which shares a control panel with an accompanying freezer. Testing to the procedures in Title 10 of the Code of Federal Regulations (10 CFR), part 430, subpart B, appendix A, section 3 Test Control Settings requires that refrigerators with a user operable temperature control be tested with the control set in a prescribed manner according TABLE 1—TEMPERATURE SETTINGS FOR ALL-REFRIGERATORS. According to Liebherr, following this requirement is not possible for the models at issue unless the refrigerator is connected to the accompanying freezer, which houses the control panel for both appliances. Liebherr's petition seeks permission to allow a freezer, with the appropriate connection and control panel, to be connected to the refrigerator for the sole purpose of changing the control settings in the refrigerator under test.

In its petition, Liebherr asks to use an alternate test procedure to test these products. Specifically Liebherr proposes to place the refrigerator in a position for testing that would enable the freezer to be located close enough to attach the low voltage connection (approximately 18'') between the two components without interfering with the ambient air flow or other testing conditions. As part of this modification, the refrigerator's low voltage cable would be connected to the freezer, at which point, the freezer would be plugged in and switched off and the refrigerator portion of the control panel would be set to the appropriate temperatures for the refrigerator test.

DOE has determined that it is desirable to have similar basic models, such as those addressed by this most recent Liebherr petition, tested in a consistent manner and is adopting the same approach laid out in its prior decision by permitting Liebherr to use the alternate test procedure specified in this Decision and Order.

III. *Consultations with Other Agencies*

DOE consulted with the appropriate staff at the Federal Trade Commission (FTC) concerning the Liebherr petition for waiver. The FTC staff did not have any objections to granting a waiver to Liebherr.

IV. *Conclusion*

After careful consideration of all the material that was submitted by Liebherr and DOE's consultation with the FTC staff, it is ordered that:

(1) The petitions for waiver submitted by Liebherr Canada Ltd. (Case No. RF–035) are hereby granted as set forth in the paragraphs below.

(2) Liebherr shall be required to test and rate the following Liebherr models according to the alternate test procedure set forth in paragraph (3) of this section:

RB 1420; and

R 1420.

(3) Liebherr shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A, except that for the Liebherr products listed in paragraph (2) only, test its refrigerator models, with a modification to address the connection of the refrigerator to the freezer. For the purposes of granting the Decision and Order, DOE has modified slightly the language of Liebherr's suggested alternative test procedure to be more consistent with the language of the DOE test procedure. For the purposes of testing, the models addressed in this notice, the following shall be treated as an additional requirement in Section 2 of Appendix A addressing test condition:

2.11 Connection of refrigerator cabinet to separate freezer cabinet: The refrigerator shall be positioned for testing in accordance with this section, with the freezer positioned close enough to the refrigerator to allow attachment of the low voltage connection (approximately 18''), but not in a location in which the freezer interferes with the ambient air flow or other testing conditions specified in this section. The refrigerator's low voltage

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

cable shall be connected to the freezer prior to testing. The freezer must be plugged in in during testing, but shall be placed in the ''off'' position on the control panel. The refrigerator portion of the control panel shall then be used to set the appropriate temperatures for the refrigerator test as required by Section 3. Test Control Settings and perform the remainder of the test as prescribed by this Appendix.

(4) Representations. Liebherr may make representations about the energy use of its refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

DOE notes that Liebherr has not petitioned for a test procedure waiver nor requested an interim waiver for its accompanying freezer models. Thus, the freezer models shall be tested according to the applicable test procedure in appendix B to subpart B of 10 CFR part 430 without modification.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid and accurate. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Liebherr's September 27, 2013, petition for waiver. The granting of this waiver does not release the petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan

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

[FR Doc. 2014–08076 Filed 4–9–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC14–10–000]

Commission Information Collection Activities, (FERC–725E, FERC–583, FERC–512, and FERC–588); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 USC 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden [1] of the information collections described below. *Please note* that this is the first time FERC has issued a consolidated notice involving otherwise unrelated information collections.

DATES: Comments on the collections of information are due June 9, 2014.

ADDRESSES: You may submit comments (identified by Docket No. IC14–10–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. *Please note* that each collection is distinct from the others contained within this notice.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC–725E, Mandatory Reliability Standards for the Western Electric Coordinating Council

OMB Control No.: 1902–0246.

Abstract: The information collected by the FERC–725E (OMB Control No. 1902–0246) is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). Section 215 of the FPA buttresses the Commission's efforts to strengthen the reliability of the interstate grid through the grant of new authority by providing for a system of mandatory Reliability Standards developed by the Electric Reliability Organization. Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity.[2] A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO.[3] On June 8, 2008 in an adjudicatory order, the Commission approved eight regional Reliability Standards submitted by the ERO that were proposed by the Western Electricity Coordinating Council (WECC).[4]

WECC is responsible for coordinating and promoting electric system reliability. In addition to promoting a reliable electric power system in the Western Interconnection, WECC

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] 16 U.S.C. 824o(e)(4).

[3] 16 U.S.C. 824o(a)(7) and (e)(4).

[4] 72FR33462, June 18, 2007.

supports efficient competitive power markets, ensures open and non-discriminatory transmission access among members, and provides a forum for resolving transmission access disputes plus the coordination of operating and planning activities of its members.

There are eight Reliability Standards currently applicable in the WECC region. These standards generally require entities to document compliance with substantive requirements, retain documentation, and submit reports to WECC.

- BAL–002–WECC–2 requires balancing authorities and reserve sharing groups to document compliance with the contingency reserve requirements described in the standard.
- BAL–004–WECC–02 requires balancing authorities to document that time error corrections and primary inadvertent interchange payback were conducted according the requirements in the standard.
- FAC–501–WECC–1 requires transmission owners with certain transmission paths to have a transmission maintenance and inspection plan and to document maintenance and inspection activities according to the plan.
- IRO–006–WECC–1 requires balancing authorities and reliability coordinators document actions taken to mitigate unscheduled flow.
- PRC–004–WECC–1 requires transmission owners, generator owners and transmission operators to document their analysis and/or mitigation due to certain misoperations on major transfer paths. This standard requires that documentation be kept for six years.
- TOP–007–WECC–1 requires transmission operators to document that when actual flows on major transfer paths exceed system operating limits their schedules and actual flows are not exceeded for longer than a specified time.
- VAR–002–WECC–1 requires generator operators and transmission operators to provide quarterly reports to the compliance monitor and have evidence related to their synchronous generators, synchronous condensers, and automatic voltage regulators.
- VAR–501–WECC–1 requires generator operators to provide quarterly reports to the compliance monitor and have evidence regarding operation of their power system stabilizers.

The information generated by these standards generally serves to ensure entities are complying with applicable Reliability Standards.

Type of Respondents: Balancing authorities, reserve sharing groups, transmission owners, reliability coordinators, transmission operators, generator operators.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–725E, MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL

FERC data collection	Number of respondents [5] (1)	Annual number of responses per respondent (2)	Average burden/cost per response (4)	Total annual burden hours (Total annual cost) (1)*(2)*(3)
FERC–725E				
Reporting:				
Balancing Authorities	34	1	21	714
Generator Operators	228	1	10	2,280
Transmission Operators applicable to standard VAR–002 [6]	86	4	10	3,440
Transmission Operators that operate qualified transfer paths [7]	9	3	40	1,080
Transmission Owners that operate qualified transfer paths [8]	5	3	40	600
Reliability Coordinators	1	1	1	1
Reserve Sharing Group	3	1	1	3
Total				8,118
Record-keeping: [9]				
Balancing Authorities				71
Balancing Authorities (IRO–006) [10]				34
Generator Operators				228
Transmission Operator (VAR–002)				344
Transmission Operator				108
Transmission Owner				60
Reliability Coordinator [11]				34
Total				879

[5] Number of respondents derived from the NERC Compliance Registry as of February 25, 2014.

[6] Based on estimates in Order 751, Docket No. RM09–9–000

[7] Based on burden estimates taken from the Order in Docket No. RR07–11–000 P. 130.

[8] *Id.*

[9] Based on 10% total annual burden hours per response.

[10] Based on record keeping hours for Balancing Authorities in Order 746 in Docket No. RM09–19–000 implementing IRO–006–WECC–1.

FERC–583, Annual Kilowatt Generating Report (Annual Charges)

OMB Control No.: 1902–0136.

Abstract: The FERC–583 is used by the Commission to implement the statutory provisions of section 10(e) of the Federal Power Act (FPA) (16 U.S.C. 803(e)), which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering Part I of the FPA and for the use of United States dams. In addition, section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to ''assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.'' The information is collected annually and used to determine the amounts of the annual charges to be assessed licensees for

[11] Based on record keeping hours in Order 746 in Docket No. RM09–19–000.

reimbursable government administrative costs and for the use of government dams. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 11.

Type of Respondent: FERC-regulated private and public hydropower licensees.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–583, ANNUAL KILOWATT GENERATING REPORT (ANNUAL CHARGES)

Number of respondents [12]	Annual number of responses per respondent	Total number of responses	Average burden and cost per response [13]	Total annual burden hours and total annual cost	Cost per respondent ($)
(1)	(2)	(1)*(2)=(3)	(4)	(3)*(4)=(5)	(5)÷(1)
517	1	517	2 $141	1,034 $72,897	$141

FERC–512, Application for Preliminary Permit

OMB Control No.: 1902–0073.

Abstract: The Commission uses the information collected under the requirements of FERC–512 to implement the statutory provisions of sections 4(f), 5 and 7 of the Federal Power Act (FPA).[14] The purpose of obtaining a preliminary permit is to maintain priority of the application for a license for a hydropower facility while the applicant conducts surveys to prepare maps, plans, specifications and estimates; conducts engineering, economic and environmental feasibility studies; and making financial arrangements. The conditions under which the priority will be maintained are set forth in each permit. During the term of the permit, no other application for a preliminary permit or application for a license submitted by another party can be accepted. The term of the permit is three years. The information collected under the designation FERC–512 is in the form of a written application for a preliminary permit which is used by Commission staff to determine an applicant's qualifications to hold a preliminary permit, review the proposed hydro development for feasibility and to issue a notice of the application in order to solicit public and agency comments. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.31–.33, 4.81–.83.

Type of Respondents: Hydropower facilities.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collectionas:

FERC–512—APPLICATION FOR PRELIMINARY PERMIT

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden/$ per response [15]	Total annual burden hours (total annual cost)	Cost per respondent ($)
(1)	(2)	(1)*(2)=(3)	(4)	(3)*(4)=(5)	(5)÷(1)
125	1	125	37 $2,608.50	4,625 $326,062.50	$2,608.50

FERC–588, Emergency Natural Gas Transportation, Sale, and Exchange Transportation

OMB Control No.: 1902–0144.

Abstract: The Commission uses the information collected under the requirements of FERC–588 to implement the statutory provisions of sections 7(c) of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) and provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, section 7(c) exempts from certificate requirements ''temporary acts or operations for which the issuance of a certificate will not be required in the public interest.'' The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to the customer. The natural gas companies which provide the temporary assistance to the companies which are having the ''emergency'' must file the necessary information described in Part 284, Subpart I of the Commission's Regulations with the Commission so that it may determine if their assisting transaction/operation qualifies for exemption. The assisting company may or may not be under the Commission's jurisdiction and if their assisting actions qualify for the exemption, they will not become subject to the Commission's jurisdiction for such actions.

A report within forty-eight hours of the commencement of the transportation, sale or exchange, a request to extend the sixty-day term of

[12] Based on data from Fiscal Year 2013, there were 517 projects, owned by 241 FERC-regulated private and public licensees. Many of the licensees owned multiple projects.

[13] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $70.50 per hour.

[14] 16 U.S.C. 797, 798, & 800.

[15] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $70.50 per hour.

the emergency transportation, if needed, and a termination report are required. The data required to be filed for the forty-eight hour report is specified by 18 CFR 284.270.

Type of Respondents: Natural Gas Pipelines.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–588—EMERGENCY NATURAL GAS TRANSPORTATION, SALE, AND EXCHANGE TRANSPORTATION

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden/$ per response [16] (4)	Total annual burden hours (total annual cost) (3)*(4)=(5)	Cost per respondent ($) (5)÷(1)
8	1	8	10 $705	80 $5,640	$705

Dated: April 2, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08038 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC14–4–000]

Commission Information Collection Activities (FERC–73); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information FERC–73, Oil Pipeline Service Life Data, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. In response to the notice issued in the **Federal Register** (79 FR 3362, January 21, 2014) FERC received one comment. FERC responds to the comment below as well as in its submittal to OMB.

DATES: Comments on the collection of information are due by May 12, 2014.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0019, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov*. Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC14–4–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–73, Oil Pipeline Service Life Data

OMB Control No.: 1902–0019

Type of Request: Three-year extension of the FERC–73 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission has authority over interstate oil pipelines as stated in the Interstate Commerce Act, 49 U.S.C. 6501, *et. al.* As part of the information necessary for the subsequent investigation and review of an oil pipeline company's proposed depreciation rates, the pipeline companies are required to provide service life data as part of their data submissions if the proposed depreciation rates are based on the remaining physical life calculations. This service life data is submitted on FERC Form No. 73, ''Oil Pipeline Service Life Data.'' The information collected under the requirements of FERC Form No. 73 is used by the Commission to implement the statutory provisions of Sections 306 and 402 of the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46277 (September 13, 1977).[1]

The submitted data are used by the Commission to assist in the selection of appropriate service lives and book depreciation rates. Book depreciation rates are used by oil pipeline companies to compute the depreciation portion of their operating expense which is a component of their cost of service which in turn is used to determine the transportation rate to assess customers. FERC staff's recommended book depreciation rates become legally binding when issued by Commission order. These rates remain in effect until a subsequent review is requested and the outcome indicates that a modification is justified. The Commission implements these filings in 18 CFR parts 347 and 357.

Type of Respondents: Oil pipeline companies.

Estimate of Annual Burden:[2] The Commission estimates the total Public Reporting Burden for this information collection as:

[16] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $70.50 per hour.

[1] For FERC Form No. 73 filing instructions and materials, please see *http://www.ferc.gov/docs-filing/forms.asp#form73.*

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC FORM NO. 73, OIL PIPELINE SERVICE LIFE DATA

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Oil Pipelines Undergoing Investigation or Review	3	1	3	40	120

The total estimated annual cost burden to respondents is $8,400 [120 hours * $70/hour = $8,400].[3]

Comment received in response to initial notice: The Commission received one comment from the Bureau of Economic Analysis (BEA). In that comment, BEA strongly supported the continued collection of data through the FERC Form No. 73. Their support stems from reliance on this data collection for key components of their economic statistics. Specifically, BEA uses the information on the service lives for petroleum pipeline companies to validate the lives in BEA's depreciation rates for petroleum pipelines. Moreover, these rates help BEA derive economic depreciation or consumption of fixed capital as part of the National Income and Product Accounts work BEA does. In response, the FERC intends to work with BEA should there be a need to make any changes to this data collection.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08055 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

[3] $70/hour is the average FERC employee salary plus benefits. We assume that respondents to this collection are similarly situated in terms of salary and benefits.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–116–000]

Notice of Application for Certificate of Public Convenience and Necessity Great Lakes Gas Transmission Limited Partnership

Take notice that on March 21, 2014 Great Lakes Gas Transmission Limited Partnership (Great Lakes), 717 Texas Street, Suite 2400, Houston, Texas 7700–2761, filed in the above referenced docket an abbreviated application pursuant to section 7(b) of the Natural Gas Act (NGA) and Sections 157.7 and 157.18 of the Commission's regulations requesting authorization for a temporary act or operation to temporarily deactivate the certified capacity associated with a temporary, phased reduction in the maximum operating pressure (MOP) from 974 psig to 897 psig of a portion of its natural gas pipeline system from the Canadian/United States border at Emerson to Great Lakes' Cloquet Compressor Station 5 in Minnesota. Great Lakes proposes this temporary action for a period of up to 36 month, 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Richard Parke, Manager, Certificates, at (832) 320–5516, Great Lakes Gas Transmission Limited Partnership, 717 Texas Street, Suite 2400, Houston, Texas, or by email *richard_parke@transcanada.com.*

Specifically, beginning April 1, 2013 the MOP of the subject section of pipeline was temporarily reduced by five percent from 974 psig to 925 psig to ensure system integrity and safety. Great Lakes proposes the second phase of temporary five percent MOP reduction from 925 psig to 879 psig for April 1, 2015 until April 1, 2017. These proposed operational changes would result in an overall reduction in available capacity of approximately 226,000 dekatherms per day of firm winter and 191,000 dekatherms per day firm summer capacity for west to east flow. Great Lakes states that, during the 36-month period, it will determine if market conditions support the continued operation at certified levels of all lines and segments of its system from Canadian/United States border to Great Lakes' Compressor Station 5, or whether it will instead seek authorization for permanent abandonment of a portion of the capacity and line segment(s) associated with this temporary action. Great Lakes states that the MOP reduction does not impact capacity on the east to west flow or Great Lakes' ability to meet any of its existing firm contractual commitments. Great Lakes states no construction or ground disturbance has or will occur for these modifications and therefore there is no associated cost.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. 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 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 25, 2014.

Dated: April 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08053 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–112–000]

Notice of Application: Empire Pipeline, Inc. and National Fuel Gas Supply Corporation

Take notice that on March 18, 2014, Empire Pipeline, Inc. (Empire) and National Fuel Gas Supply Corporation (NFG) filed a joint application with the Federal Energy Regulatory Commission pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting authority to construct and operate the Tuscarora Lateral Project in Steuben County, New York and Tioga County, Pennsylvania. Specifically, Empire requests authorization to: (i) Lease storage and transportation capacity from National Fuel; (ii) construct approximately 17 miles of 12 and 16-inch diameter pipeline; (iii) construct an interconnection and related facilities to connect Empire's system to National Fuel's; (iv) if required, perform rewheeling of compressor units at the existing Oakfield Compressor Station; (v) provide new firm and interruptible storage and transportation services; and (vi) lease capacity from National Fuel. National Fuel seeks authorization to (i) lease storage and transportation capacity to Empire; (ii) construct and operate additional facilities at its Tuscarora Compressor Station; and (iii) make tariff revisions that recognize leased capacity. The total cost of the project would be approximately $43.7 million, and is more fully explained in the application which is on file with the Commission and open to public inspection.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed David W. Reitz, Deputy General Counsel National Fuel Gas Supply Corporation and Attorney for Empire Pipeline, Inc., 6363 Main Street, Williamsville, New York 14221, by phone at (716) 857–7949, by fax at (716) 857–7206 or by email at *reitzd@natfuel.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 seven 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 seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: April 23, 2014.

Dated: April 2, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08032 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2725–071]

Oglethorpe Power Corporation, Georgia Power Company, Rocky Mountain Leasing Corporation, Fleet National Bank, SunTrust Bank, Atlanta, U.S. Bank National Association; Notice of Application for Partial Transfer of License and Soliciting Comments and Motions To Intervene

On March 10, 2014, Oglethorpe Power Corporation (OPC), Georgia Power Company (GPC), Rocky Mountain Leasing Corporation (RMLC), Fleet National Bank (not in its individual capacity but solely as the original Owner Trustee) (FNB), SunTrust Bank, Atlanta (not in its individual capacity but solely as the original Co-Owner Trustee) (SunTrust) (transferors and co-licensees), and U.S. Bank National Association (not in its individual capacity but solely as the successor Owner Trustee) (USBNA) (transferee) filed an application for a partial transfer of license of the Rocky Mountain Project located on Heath Creek in Floyd County, Georgia.

The transferors and transferee seek Commission approval to a partial transfer of the license for the Rocky Mountain Project from OPC, GPC, RMLC, FNB, and SunTrust transferors, as co-licensees to OPC, GPC, RMLC, and USBNA transferee, as co-licensees.

Applicant Contacts: For Transferors (Oglethorpe Power Corporation and Rocky Mountain Leasing Corporation): Mr. John H. Clements, Van Ness Feldman, P.C., 1050 Thomas Jefferson Street NW., Washington, DC 20007, Phone (202) 298–1933. For Transferor (Georgia Power Company): Mr. David M. Moore, Balch & Bingham, LLP, 30 Ivan Allen Jr., Blvd., Suite 700, Phone (404) 962–3530. For Transferee (U.S. Bank National Association): Mr. William G. Rock, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103, Phone (860) 251–5121.

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice, by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2725–071.

Dated: April 2, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08040 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP14–119–000; CP14–120–000; CP14–122–000; PF12–8–000]

Notice of Applications: Trunkline Gas Company, LLC; Trunkline LNG Export, LLC; Trunkline LNG Company, LLC; Trunkline LNG Company, LLC

Take notice that on March 25, 2014, Trunkline Gas Company, LLC (Trunkline Gas), 1300 Main Street, Houston, Texas 77002, filed in Docket No. CP14–119–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for authorization to: (i) Construct, install, and operate approximately 17.89 miles of pipeline; 119,075 horsepower (HP) of compression; various new meter stations; and appurtenances; (ii) remediate certain existing pipeline; (iii) modify station piping at four compressor stations and modify various meter stations; and (iv) abandon one 3,000 HP compressor unit, all within the States of Arkansas, Mississippi, and Louisiana (Pipeline Modification Project). Trunkline Gas states that the Pipeline Modification Project will provide for 3,100,000 dekatherms per day of firm transportation service. Trunkline Gas requests a pre-determination of rolled-in rate treatment for the estimated $579.2 million cost of the Pipeline Modification Project.

Additionally, Trunkline LNG Export, LLC (Trunkline Export) and Trunkline LNG Company, LLC (Trunkline LNG) (collectively, the Applicants), 1300 Main Street, Houston, Texas 77002, jointly filed in Docket No. CP14–120–000 an application under section 3 of the NGA for authorization to: (i) Site, construct, and operate new liquefaction

facilities adjacent to Trunkline LNG's existing liquefied natural gas (LNG) terminal located in Calcasieu Parish, Louisiana (Terminal); and (ii) construct and operate certain facility modifications at the Terminal (Liquefaction Project). The Applicants state that the Liquefaction Project includes three liquefaction trains with a design production capacity of 16.45 million metric tons of LNG per annum.

Finally, Trunkline LNG filed an application in Docket No. CP14–122–000 pursuant to sections 3 and 7(b) of the NGA for authorization to: (i) Abandon certain Terminal facilities previously certificated under NGA section 7; (ii) abandon services provided under Trunkline LNG's FERC Gas Tariff and its certificates of public convenience and necessity; (iii) cancel Trunkline LNG's FERC Gas Tariff, including all rate schedules therein; and (iv) convert such certificated facilities and operation under NGA section 3, so that the entirety of Trunkline LNG's facilities and operations are authorized solely under NGA section 3.

All of the applications are 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 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, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning these applications may be directed to Stephen Veatch, Senior Director of Certificates, Trunkline Gas Company, LLC; Trunkline LNG Export, LLC; Trunkline LNG Company, LLC, 1300 Main Street, Houston, Texas 77002, by telephone at (713) 989–2024, by facsimile at (713) 989–1205, or by email at *stephen.veatch@energytransfer.com*.

On April 6, 2012, the Commission staff granted Trunkline Gas, Trunkline Export, and Trunkline LNG's request to utilize the Pre-Filing Process and assigned Docket No. PF12–8–000 to staff activities involved in the above referenced projects. Now, as of the filing of the March 25, 2014 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket Nos. CP14–119–000, CP14–120–000, and CP14–122–000, as noted in the caption of this Notice.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR § 157.9, within 90 days of this Notice, the Commission staff will issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) for this proposal. The issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS.

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 seven 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.

Comment Date: 5:00 p.m. Eastern Time on April 24, 2014.

Dated: April 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08036 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–103–000; PF13–3–000]

Notice of Application: Elba Liquefaction Company, L.L.C.; Southern LNG Company, L.L.C.

Take notice that on March 10, 2014, Elba Liquefaction Company, L.L.C. (ELC) and Southern LNG Company, L.L.C. (SLNG), 569 Brookwood Village, Suite 749, Birmingham, AL 35209, filed an application under section 3(a) of the Natural Gas Act requesting authorization to construct and operate its Elba Liquefaction Project,[1] a new natural gas liquefaction and export facility at SLNG's existing liquefied natural gas terminal located on Elba Island, Chatham County, Georgia. 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. There is

[1] Elba Express Company, L.L.C. (EEC) filed a companion, Docket No. CP14–115–000, on March 21, 2014 for its EEC Modification Project.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the proposed project should be directed to Glenn A. Sheffield, Director—Rates & Regulatory, Elba Express Company, L.L.C., 569 Brookwood Village, Suite 749, Birmingham, AL 35209 or at (205) 325–3813 (phone), or (205) 327–2253 (fax), or *glenn_sheffield@kindermorgan.com* or Patricia F. Francis, Assistant General Counsel, Elba Express Company, L.L.C., 569 Brookwood Village, Suite 749, Birmingham, AL 35209 or at (205) 325–7696 (phone), or (205) 327–2253 (fax), or *patricia_francis@kindermorgan.com.*

On March 1, 2013, the Commission staff granted ELC and SLNG's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF13–3–000 to staff activities involving the project. Now, as of the filing of this application on March 10, 2014 (CP14–103–000), the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP14–103–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. 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.

Comment Date: April 24, 2014.

Dated: April 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08031 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. HB28–14–1–000]

Notice of Application for Approval of Headwater Benefits Agreement, and Soliciting Comments, Motions To Intervene, and Protests: El Dorado Irrigation District and Sacramento Municipal Utility District

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Headwater Benefits Agreement.

b. *Docket No.:* HB28–14–1–000.

c. *Date Filed:* December 30, 2013.

d. *Applicants:* El Dorado Irrigation District and Sacramento Municipal Utility District.

e. *Name of Projects:* El Dorado Project No. 184 and Upper American River Project No. 2101 in the American River Basin.

f. *Location:* The El Dorado Project is located on the South Fork of the American River and its tributaries in El Dorado, Alpine, and Amador counties, California. The Upper American River Project is located on Rubicon River and tributaries, Silver Creek and tributaries, and South Fork of the American River, in El Dorado County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a, *et seq.* (2012); 18 CFR 11.14(a)(1) (2013); and 18 CFR 385.602 (2013).

h. *Applicants' Contacts:* Mr. Jacob Eymann, Senior Civil Engineer, El Dorado Irrigation District, 2890 Mosquito Road, Placerville, California 95667, (530) 642–4068, and Mr. David Hansen, Project Manager, Sacramento Municipal Utility District, 6201 S St., Sacramento, CA 95817, (916) 732–6703.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters

without prior registration using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number HB28–14–1–000.

k. *Description of Request:* The applicants filed the agreement pursuant to 18 CFR 11.14(a) (2013), which provides that owners of downstream and headwater projects may negotiate a settlement for headwater benefits charges, and that such settlements must be filed with the Commission for its approval, according to the provisions of 18 CFR 385.602 (2013), which governs submission of settlement offers. The agreement provides for: (i) An annual payment of $30,000 (baselined for 2013 with payments subject to escalation in future years), and (ii) a one-time payment of $360,000 to compensate El Dorado Irrigation District for headwater benefits provided in years 2001 through 2012.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of 18 CFR 385.210, 385.211, and 385.214 (2013). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE, or ''PROTEST'', as applicable; (2) set forth in the heading the name of the applicant and the docket number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001–385.2005 (2013). All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b) (2013). All comments, motions to intervene, or protests should relate to project works which are the subject of the agreement. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicants specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010 (2013).

Dated: April 2, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08037 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 659–028]

Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests: Crisp County Power Commission

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-capacity License Amendment.

b. *Project No.:* 659–028.

c. *Date Filed:* March 5, 2014.

d. *Applicant:* Crisp County Power Commission.

e. *Name of Project:* Lake Blackshear Hydroelectric Project.

f. *Location:* On the Flint River, in Worth, Lee, Sumter, Dooly, and Crisp counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contacts:* Mr. Steve Rentfrow, General Manager, Crisp County Power Commission, 202 South 7th Street, P.O. Box 1218, Cordele, GA 31010, (229) 273–3811, and Mr. David Montgomery Moore, Balch & Bingham LLP, 30 Ivan Allen Jr. Blvd. NW., Suite 700, Atlanta, GA 30308, (404) 962–3530.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters without prior registration using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–659–028.

k. *Description of Request:* The applicant proposes to amend Article 403 of its existing license to revise the reservoir drawdown period for consistency with historically low flows in the Flint River. Article 403 requires the applicant to conduct a biennial lake drawdown from November 1 to December 15. The applicant is proposing fixed dates for the new biennial draw down period to allow sufficient time to conduct the necessary activities of the aquatic plant control program, dock repair, and shoreline maintenance. The applicant is proposing to commence drawdown on November 1 and begin refill on

December 15. No other characteristics of the drawdown would change.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, and Protests:* Anyone may submit comments, a motion to intervene, or protests in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08039 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–115–000; PF13–3–000]

Notice of Application: Elba Express Company, L.L.C.

Take notice that on March 21, 2014, Elba Express Company, L.L.C. (EEC), 569 Brookwood Village, Suite 749, Birmingham, AL 35209, filed an application under section 7(c) of the Natural Gas Act to add north-to-south transportation capacity to the existing EEC pipeline system by constructing and operating additional compression at EEC's existing Hartwell Compressor Station in Hart County, Georgia, and constructing and operating two new compressor stations in Jefferson and Effingham Counties, Georgia (EEC Modification Project). EEC is proposing the EEC Modification Project, in part to enable EEC to transport domestically-produced natural gas on a firm basis to Elba Liquefaction Company, L.L.C. (ELC) and Southern LNG Company, L.L.C. (SLNG)'s proposed Elba Liquefaction Project.[1] 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. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the EEC Modification Project should be directed to Glenn A. Sheffield, Director—Rates & Regulatory, Elba Express Company, L.L.C., 569 Brookwood Village, Suite 749, Birmingham, AL 35209 or at (205) 325–3813 (phone), or (205) 327–2253(fax), or *glenn_sheffield@kindermogan.com* or Patricia F. Francis, Assistant General Counsel, Elba Express Company, L.L.C., 569 Brookwood Village, Suite 749, Birmingham, AL 35209 or at (205) 325–7696 (phone), or (205) 327–2253(fax), or *patricia_francis@kindermorgan.com.*

On March 1, 2013, the Commission staff granted EEC's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF13–3–000 to staff activities involving the project. Now, as of the filing of this application on March 21, 2014 (CP14–115–000), the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP14–115–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

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

[1] ELC and SLNG filed a companion, Docket No. CP14–103–000, on March 10, 2014 for the Elba Liquefaction Project.

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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. 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.

Comment Date: April 24, 2014.

Dated: April 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08033 Filed 4–9–14; 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: RP14–262–000.
Applicants: Dominion Transmission, Inc.
Description: DTI–RP14–262 Refund Report.
Filed Date: 4/1/14.
Accession Number: 20140401–5213.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–707–000.
Applicants: Hardy Storage Company, LLC.
Description: RAM 2014 to be effective 5/1/2014.
Filed Date: 4/1/14.
Accession Number: 20140401–5147.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–708–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Amendment to Neg Rate Agmt (Entergy New Orleans 35223–1) to be effective 4/1/2014.
Filed Date: 4/1/14.
Accession Number: 20140401–5149.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–709–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Amendment to Neg Rate Agmt (BP 37–15) to be effective 4/5/2014.
Filed Date: 4/1/14.
Accession Number: 20140401–5150.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–710–000.
Applicants: Northern Natural Gas Company.
Description: 20140401 Combine Market Based Rate Agreements to be effective 6/1/2014.
Filed Date: 4/1/14.
Accession Number: 20140401–5300.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–711–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 04/01/14 Negotiated Rates—ConEdison Energy Inc. (HUB) 2275–89 to be effective 3/31/2014.
Filed Date: 4/1/14.
Accession Number: 20140401–5309.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–712–000.
Applicants: Columbia Gas Transmission, LLC.
Description: OTRA—Summer 2014 to be effective 5/1/2014.
Filed Date: 4/1/14.
Accession Number: 20140401–5321.
Comments Due: 5 p.m. ET 4/14/14.

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: April 2, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–08028 Filed 4–9–14; 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: ER10–2531–004.
Applicants: Cedar Creek Wind Energy, LLC.
Description: Amendment to December 17, 2013 Updated Market Power Analysis in the Northwest region of Cedar Creek Wind Energy, LLC.
Filed Date: 4/2/14.
Accession Number: 20140402–5091.
Comments Due: 5 p.m. ET 4/23/14.

Docket Numbers: ER14–591–003.
Applicants: Southwest Power Pool, Inc.
Description: 2635 LES GIA—Second Amended Compliance Filing to be effective 11/26/2013.
Filed Date: 4/2/14.
Accession Number: 20140402–5067.

Comments Due: 5 p.m. ET 4/23/14.

Docket Numbers: ER14–1639–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Demand Curve Changes to be effective 6/1/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5290.

Comments Due: 5 p.m. ET 4/22/14.

Docket Numbers: ER14–1640–000.

Applicants: Entergy Gulf States Louisiana, L.L.C.

Description: EGSL MSS–3 Amendment 4–1–2014 to be effective 5/31/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5293.

Comments Due: 5 p.m. ET 4/22/14.

Docket Numbers: ER14–1641–000.

Applicants: Entergy Louisiana, LLC.

Description: ELL MSS–3 Amendment 4–1–2014 to be effective 5/31/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5294.

Comments Due: 5 p.m. ET 4/22/14.

Docket Numbers: ER14–1642–000.

Applicants: Entergy Mississippi, Inc.

Description: EMI MSS–3 Amendment 4–1–2014 to be effective 5/31/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5295.

Comments Due: 5 p.m. ET 4/22/14.

Docket Numbers: ER14–1643–000.

Applicants: Entergy New Orleans, Inc.

Description: ENOI MSS–3 Amendment 4–1–2014 to be effective 5/31/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5297.

Comments Due: 5 p.m. ET 4/22/14.

Docket Numbers: ER14–1644–000.

Applicants: Entergy Texas, Inc.

Description: ETI MSS–3 Amendment 4–1–2014 to be effective 5/31/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5298.

Comments Due: 5 p.m. ET 4/22/14.

Docket Numbers: ER14–1645–000.

Applicants: Midcontinent Independent System Operator, Inc. Entergy Services, Inc.

Description: 2014–04–01—Schedule 47—Entergy Transition Cost Recovery Filing to be effective 6/1/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5317.

Comments Due: 5 p.m. ET 4/22/14.

Docket Numbers: ER14–1646–000.

Applicants: Oklahoma Gas and Electric Company.

Description: Notice of Termination to be effective 5/31/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5381.

Comments Due: 5 p.m. ET 4/22/14.

Docket Numbers: ER14–1647–000.

Applicants: California Independent System Operator Corporation.

Description: 2014–04–01 NSPGA with Elk Hills to be effective 6/1/2014.

Filed Date: 4/1/14.

Accession Number: 20140401–5390.

Comments Due: 5 p.m. ET 4/22/14.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR14–2–000.

Applicants: North American Electric Reliability Corporation.

Description: Updating revised definition of Bulk Electric System Definition Phase 2 in the NERC Rules of Procedure of North American Electric Reliability Corporation.

Filed Date: 4/1/14.

Accession Number: 20140401–5353.

Comments Due: 5 p.m. ET 5/1/14.

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: April 2, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07964 Filed 4–9–14; 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: RP14–667–000.

Applicants: Texas Eastern Transmission, LP.

Description: BP Energy 911147 05–01–2014 Negotiated Rate to be effective 5/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5092.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–668–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Flow Through of Cash Out Revenues filed on 3–31–14.

Filed Date: 3/31/14.

Accession Number: 20140331–5094.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–669–000.

Applicants: Texas Eastern Transmission, LP.

Description: NJRES 8932289 4–1–2014 Negotiated Rate to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5095.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–670–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Cap Rel Neg Rate Agmt (QEP 37657 to BP 42137) to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5123.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–671–000.

Applicants: ANR Pipeline Company.

Description: Wisconsin Gas LLC FSS Agmt to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5124.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–672–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Cap Rel Neg Rate Agmt (EOG 34687 to Tenaska 41553) to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5125.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–673–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Negotiated Rates—WSS–OA—WGL to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5126.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–674–000.

Applicants: Portland Natural Gas Transmission System.

Description: Cargill Neg Rate Agmts to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5127.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–675–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Amendment to Neg Rate Agmts (QEP 37657–64 and 36601–21) to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5131.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–676–000.
Applicants: Gulf South Pipeline Company, LP.
Description: CapRelNegRateAgmts (PHK 41455,41448 to Texla 42198,42228,42229 & Sequent 42227) to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5132.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–677–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (JW Operating 34690 to QWest 42236) to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5133.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–678–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (QEP 36601 to BP 42237) to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5136.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–679–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (Pivotal 34691 to Sequent 42239) to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5137.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–680–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (EOG 34687 to Trans LA 42242) to be effective 3/31/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5138.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–681–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Non-Conforming Agreement_NESL_Hess to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5166.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–682–000.
Applicants: Alliance Pipeline L.P.
Description: Devon to CNRL to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5199.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–683–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Negotiated Rates—ESS—Hess Energy Marketing, LLC to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5217.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–684–000.
Applicants: Kern River Gas Transmission Company.
Description: Gas compressor fuel factors and lost and unaccounted-for gas factors for calendar year 2013 of Kern River Gas Transmission Company.
Filed Date: 3/31/14.
Accession Number: 20140331–5225.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–685–000.
Applicants: Equitrans, L.P.
Description: Interruptible Wheeling Service to be effective 4/30/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5224.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–686–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC. submits is cashout report for the period November 2012 through October 2013.
Filed Date: 3/31/14.
Accession Number: 20140331–5231.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–687–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Neg Rate 2014–03–31 Mieco to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5253.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–688–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Update List of Non-Conforming Service Agreements (Hess, VPEM) to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5255.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–689–000.
Applicants: American Midstream (Midla), LLC.
Description: Midla Non-Conforming Agreements to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5260.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–690–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (Centerpoint 35483,35484, 35485 to BP 42245,42246,42248) to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5261.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–691–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Amendment to Neg Rate Agmt (FPL 40097–5) to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5262.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–692–000.
Applicants: Texas Eastern Transmission, LP.
Description: EQT 04–01–2014 Releases to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5269
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–693–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Negotiated Rate Filing—EOG Resources to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5272.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–694–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: ConEd Ramapo April 2014 Release to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5273.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–695–000.
Applicants: Northern Natural Gas Company.
Description: 20140331 Negotiated Rate to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5275.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–696–000.
Applicants: TC Offshore LLC.
Description: ConocoPhillips Neg Rate to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5305.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–697–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Negotiated Rates—Staten Island Heater Facility Surcharge to be effective 4/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5324.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–698–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Negotiated Rate Service Agmts—NationalGrid, TCO, CentralHudson, ConEd, Keyspan to be effective 5/1/2014.
Filed Date: 3/31/14.
Accession Number: 20140331–5351.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–699–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 03/31/14. Negotiated Rates—Cargill Incorporated (RTS) 3085–17 & 18 to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5382

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–700–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 03/31/14. Negotiated Rates—United Energy Trading, LLC. (RTS) 5095–20 & 22 to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5390.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–701–000.

Applicants: Transcontinental Gas Pipe Line Company,

Description: Cancellation of Negotiated Rate Amendments—Staten Isl. Heater Facility Surchg to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5447.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–702–000.

Applicants: Natural Gas Pipeline Company of America

Description: Penalty Revenue Crediting Report of Natural Gas Pipeline Company of America LLC.

Filed Date: 3/31/14.

Accession Number: 20140331–5488.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–703–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Request for Limited Waiver of Wyoming Interstate Company, L.L.C.

Filed Date: 3/31/14.

Accession Number: 20140331–5490.

Comments Due: 5 p.m. ET 4/7/14.

Docket Numbers: RP14–704–000.

Applicants: Rockies Express Pipeline LLC.

Description: Accounting Filing or Request of Rockies Express Pipeline LLC.

Filed Date: 3/31/14.

Accession Number: 20140331–5491.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–705–000.

Applicants: Chandeleur Pipe Line, LLC.

Description: Annual Operational Transaction(s) Report for Chandeleur Pipe Line, LLC.

Filed Date: 3/31/14.

Accession Number: 20140331–5495.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: RP14–706–000.

Applicants: Sabine Pipe Line LLC.

Description: Annual Operational Transaction(s) Report for Sabine Pipe Line LLC.

Filed Date: 3/31/14.

Accession Number: 20140331–5496.

Comments Due: 5 p.m. ET 4/14/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP14–567–001.

Applicants: Columbia Gas Transmission, LLC.

Description: OTRA Tariff Modifications Compliance Filing to be effective 4/1/2014.

Filed Date: 3/31/14.

Accession Number: 20140331–5134.

Comments Due: 5 p.m. ET 4/14/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–08027 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG14–23–000; EG14–24–000]

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status: Maine GenLead, LLC; Evergreen Wind Power II, LLC

Take notice that during the month of March 2014, the status of the above-captioned entities as Exempt Wholesale Generators Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: April 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08054 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–12–010]

Notice Of Filing; Electricity Market Transparency Provisions of Section 220 of the Federal Power Act

Take notice that on April 2, 2014, the California Department of Water Resources, CERS Division filed a request for waiver of Order No. 768 Reporting Requirements.[1]

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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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

[1] *Electricity Mkt. Transparency Provisions of Section 220 of the Fed. Power Act,* Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g,* Order No. 768–A, 143 FERC ¶ 61,054 (2013).

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 23, 2014.

Dated: April 3, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07966 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13570–002]

Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments: Warmsprings Irrigation District

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 13570–002.

c. *Date filed:* April 15, 2013.

d. *Applicant:* Warmsprings Irrigation District (WSID).

e. *Name of Project:* Warm Springs Dam Hydroelectric Project.

f. *Location:* The Warm Springs Dam Hydroelectric Project would be located on the Malheur River in Malheur County, Oregon, near the Town of Juntura. It would occupy 13.5 acres of federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Randy Kinney, Warmsprings Irrigation District, 334 Main Street North, Vale, OR 97918; (541) 473–3951.

i. *FERC Contact:* Ken Wilcox, *ken.wilcox@ferc.gov,* (202) 502–6835.

j. *Deadline for filing scoping comments:* May 31, 2014.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13570–002.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The Warm Springs Dam Hydroelectric Project would utilize the existing Warm Springs Dam and reservoir and would consist of the following new facilities: (1) A steel liner fitted into one of two existing outlets in the right abutment of the dam; (2) a 150-foot-long, 8-foot-diameter steel penstock and increaser section conveying water from the outlet works to a powerhouse located at the stilling basin immediately downstream of the dam; (3) a 34-foot-wide by 36-foot-long powerhouse containing one 2.7-megawatt (MW) Francis or Kaplan turbine; (4) 2.2-mile-long, 25-kilovolt (kV) transmission line; and (5) appurtenant facilities. The project would occupy 13.5 acres of federal land.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA.

The times and locations of these meetings are as follows:

Public Scoping Meeting

DATE: Wednesday, April 30, 2014
TIME: 7:00 p.m. (MDT)
PLACE: Juntura Elementary School
ADDRESS: 5855 6th Street, Juntura, Oregon

Agency Scoping Meeting

DATE: Thursday, May 1, 2014
TIME: 9:00 a.m. (PDT)
PLACE: Harney County Community Center
ADDRESS: 484 N. Broadway, Burns, Oregon

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Environmental Site Review

The Applicant and FERC staff will conduct a project Environmental Site Review beginning at 2:00 p.m. (MDT) on Wednesday, April 30, 2014. All interested individuals, organizations, and agencies are invited to attend. All participants should meet near the bridge on Warm Springs Road one-half mile south of Warm Springs Dam. Alternatively, attendees may meet at the Oasis Cafe in Juntura (5838 Highway 20) at 1:15 p.m. to follow staff to the site near the bridge. All participants are responsible for their own transportation to the site. Anyone with questions about the Environmental Site Review should contact Mr. Randy Kinney of Warmsprings Irrigation District at (541) 473–3951. *PLEASE NOTE: Juntura and Warm Springs Dam are located within the Mountain Time Zone; Burns is in the Pacific Time Zone.*

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage

statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Dated: April 2, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08041 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–25–000]

Tallgrass Pony Express Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on March 31, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2014), Tallgrass Pony Express Pipeline LLC (''TPEP'') filed a petition for a Declaratory Order approving the specified rate structures, rate authorizations, and terms and conditions of service, for an expansion of TPEP's pipeline system into oil producing areas of northeast Colorado. The Petition further seeks approval of rate recovery in TPEP's tariff of an acquisition premium for certain acquired assets, as more fully explained in the Petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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 April 30, 2014

Dated: April 3, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07965 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14603–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications: Alaska Power Company

On March 18, 2014, Alaska Power Company filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the West Creek Water Power Project (West Creek Project or project) to be located on West Creek and the West Branch Taiya River, near Skagway, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) A 1,500-foot-long, 175-foot-high concrete gravity dam creating a 895-acre reservoir having a total storage capacity of 86,000 acre-feet at a normal maximum operating elevation of 780 feet mean sea level; (2) a water intake structure on the dam leading to a 15,900-foot-long, 10-foot-diameter, unlined tunnel; (3) a 60-foot by 150-foot powerhouse containing two turbine/generation units rated for a total of 25 megawatts; (4) a 100-foot-long by 80-foot-wide open channel tailrace returning water to the West Branch Taiya River; (5) a submarine 3.9-mile-long, 34.5-kilovolt transmission line extending from the powerhouse to a landing for a substation on Nahku Bay connected to an existing transmission line owned by the applicant (the point of interconnection); and (6) appurtenant facilities. The estimated annual generation of the West Creek Project would be 110 gigawatt-hours.

Applicant Contact: Glen D. Martin, Alaska Power Company, 193 Otto St., P.O. Box 3222, Port Townsend, WA 98368, (360) 385–1733 ext. 122.

FERC Contact: Ryan Hansen, phone: (202) 502–8074, or email *ryan.hansen@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14603–000.

More information about this project, including a copy of the application, can

be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14603) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08056 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–117–000]

Notice of Request Under Blanket Authorization: Sea Robin Pipeline Company, LLC

Take notice that on March 24, 2014, Sea Robin Pipeline Company, LLC (Sea Robin), 1300 Main Street, Houston, Texas 77002, filed a prior notice application pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Sea Robin's blanket certificate issued in Docket No. CP82–429–000, for authorization to abandon certain pipeline facilities located in Vermilion Parish, Louisiana and extending into federal and state waters offshore Louisiana. Specifically, Sea Robin seeks authority to abandon in place Line No. 210B–100 16-inch diameter pipe (5.4 miles) and Line 210A–1800 14-inch diameter pipe (0.29 miles), and abandon by removal its T–2 Platform, all as more fully set forth in the application, which is open to the public for 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 this application should be directed to Stephen T. Veatch, Senior Director of Certificates, Sea Robin Pipeline Company, LLC, 1300 Main Street, Houston, TX, 77002, or (713) 989–2024 or (713) 989–1205 or by email *stephen.veatch@energytransfer.com.*

Any person or the Commission's staff may, within 60 days after 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 and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), 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 filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 commenter's 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 commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, 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 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: April 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–08034 Filed 4–9–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2012–0426; FRL–9909–36–OSWER]

RIN 2050–AG72

Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on Practices To Enhance Effectiveness to the RCRA Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is extending the deadline for submitting written comments on the Notice of Data Availability (NODA) published on February 14, 2014. In response to stakeholder requests, EPA is extending the comment period to May 30, 2014.

DATES: Comments on the issued NODA must be received on or before May 30, 2014.

ADDRESSES: Submit your comments on the NODA, identified by Docket ID No. EPA–HQ–RCRA–2012–0426, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: rcra-docket@epa.gov.* Attention Docket ID No. EPA–HQ–RCRA–2012–0426.
- *Mail:* RCRA Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2012–0426. Please include a total of 2 copies.
- *Hand Delivery:* Deliver two copies of your comments to EPA Docket Center, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. 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–RCRA–2012–0426. EPA's policy is that all comments

received will be included in the public docket without change and may be made available on-line at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

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 RCRA Docket, 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 RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this notice, contact Jim O'Leary, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, (5304P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone (703) 308–8827; fax number: 703–308–0514; email address *oleary.jim@epa.gov.*

For more information on this action, please visit: *http://www.epa.gov/waste/hazard/generation/retail.htm.*

SUPPLEMENTARY INFORMATION:

General Information

On February 14, 2014, EPA published in the **Federal Register** a NODA inviting comment on information assembled by EPA, as well as soliciting additional information regarding the hazardous waste management practices of establishments in the retail sector (e.g., stores). This NODA also invited comment on specific issues and suggested questions that the retail industry had raised about challenges they face in complying with the Resource Conservation and Recovery Act (RCRA) hazardous waste policies, guidances and regulations.

Today's action extends the deadline for submitting written comments on the NODA to May 30, 2014. This extension provides an additional 45 days for the public to provide written comments. EPA received several requests for an extension of the comment period and this notice is the Agency's response to those persons who requested an extension of the comment period.

Dated: April 3, 2014.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2014–08043 Filed 4–9–14; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2014–0022]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP088735XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this transaction. Comments received will be made available to the public.

DATES: Comments must be received on or before May 5, 2014 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2014–0022 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2014–0022 on any attached document.

SUPPLEMENTARY INFORMATION: *Reference:* AP088735XX

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured commercial aircraft to Luxembourg.

Brief non-proprietary description of the anticipated use of the items being exported:

To provide air cargo services globally.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company

Obligor: Cargolux Airlines International S.A.

Guarantor(s): None

Description of Items Being Exported

Boeing 747 aircraft

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that

competitors could use to compete with companies in the United States.

Cristopolis A. Dieguez,

Management and Program Analyst, Office of the Chief Financial Officer.

[FR Doc. 2014–08024 Filed 4–9–14; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 9, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0004.

Title: Sections 1.1307 and 1.1311, Guidelines for Evaluating the Environmental Effects of Radiofrequency Exposure.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 305,612 Respondents; 305,612 Responses.

Estimated Time per Response: 0.31 hours (average).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 302, 303 and 307.

Total Annual Burden: 50,065 hours.

Total Annual Cost: $1,396,150.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is a minimal exemption from the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4) and 47 CFR 0.459 of the Commission's rules, that is granted for trade secrets, which may be submitted to the Commission as part of the documentation of test results. The exemption is normally granted for a short time (weeks to months) for requests relating to routine authorizations and for a longer time for requests relating to experimental authorizations. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them. The Commission is requesting OMB approval for an extension. The Commission has adjusted the total number of respondents/responses, the total annual hourly burden, and the total annual cost to respondents from the previous estimates, based on a division of reporting between licensing and equipment authorization functions. Licenses are typically issued to entities (including individuals) to operate specific facilities at specific locations; an example would be a FM broadcast license, which authorizes operation of an FM broadcast transmitter at a specific location that cannot be changed without FCC permission. Equipment authorizations are typically issued to entities to market equipment to the public; an example would be a cellular telephone, which can be purchased by any individual and operated at-will without a specific license. Additionally, the portion of the information collection relating to equipment authorization is now being captured and reported in OMB 3060–0057.

This information collection is a result of responsibility placed on the FCC by the National Environmental Policy Act (NEPA) of 1969. NEPA requires that each federal agency evaluate the impact of ''major actions significantly affecting the quality of the human environment.'' It is the FCC's opinion that this is the most efficient and reasonable method of complying with NEPA with regard to the environmental issue of radiofrequency radiation from FCC-regulated transmitters.

The Commission requires applicants to submit limited information during the licensing and authorization process. In many services, the Commission simply requires licensees to provide reliable service to specific geographic areas, but does not require licensees to file site-specific information. It does not appear that the FCC's present licensing methods can provide public notification of site-specific information without imposing new and significant additional burden to the Commission's applicants. However, we note that applicants with the greatest potential to exceed the Commission's exposure limits are required to perform an environmental evaluation as part of the licensing and authorization process.

The Commission advises concerned members of the public, seeking site-specific information, to contact the FCC for the name and telephone number of the service providers in the concerned party's area. The Commission encourages all service providers to provide site-specific, technical information and environmental evaluation documentation upon public request. In addition, we note alternative sources of information may be state and local governments, which may collect some site-specific information as part of the zoning process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–08046 Filed 4–9–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 9, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–1113.

Title: Commercial Mobile Alert System (CMAS).

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,253 respondents; 3,759 responses.

Estimated Time per Response: 30 minutes (.5 hour).

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained 47 U.S.C. sections 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 302(a), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d).

Total Annual Burden: 28,193 hours.

*Total Annual Co*sts: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) during the comment period to the Office of Management and Budget (OMB) in order to obtain OMB approval for an extension because on August 7, 2008, the FCC released a *Third Report and Order* in PS Docket No. 07–287, FCC 08–184 *(CMAS Third R&O).*

The *CMAS Third R&O* implements provisions of the Warning, Alert and Response Network (''WARN'') Act, including inter alia, a requirement that within 30 days of release of the *CMAS Third R&O,* each Commercial Mobile Service (CMS) provider must file an election with the Commission indicating whether or not it intends to transmit emergency alerts as part of the Commercial Mobile Alert System (CMAS). The *CMAS Third R&O* noted that this filing requirement was subject to OMB review and approval. The Commission received ''pre-approval'' from the OMB on February 4, 2008. The Commission began accepting CMAS election filings on or before September 8, 2008.

All CMS providers are required to submit a CMAS election, including those that were not licensed at the time of the initial filing deadline with the FCC. In addition, any CMS provider choosing to withdraw its election must notify the Commission at least sixty (60) days prior to the withdrawal of its election. The information collected will be the CMS provider's contact information and its election, i.e., a ''yes'' or ''no'', on whether it intends to provide commercial mobile service alerts.

The Commission will use the information collected to meet its statutory requirement under the WARN Act to accept licensees' election filings and to establish an effective CMAS that will provide the public with effective mobile alerts in a manner that imposes minimal regulatory burdens on affected entities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–08045 Filed 4–9–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 9, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1046.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Order on Reconsideration, FCC 04–251.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 469 respondents; 3,801 responses.

Estimated Time per Response: 0.50 hours-200 hours.

Frequency of Response: On occasion, annual and quarterly reporting requirements, third party disclosure requirements, and recordkeeping requirement.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154 and 276.

Total Annual Burden: 73,494 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information. Respondents may request confidential treatment of their information that they believe to be confidential pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period. The Commission is seeking OMB approval for an extension of this information collection. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. The Commission is reducing its previous burden estimates by 86,690 hours. In the Order on Reconsideration (FCC 04–251), the Commission considered four petitions for reconsideration of our Report and Order. The Report and Order (FCC 03–235) established detailed rules (Payphone Compensation Rules) ensuring that payphone service providers or PSPs are ''fairly compensated'' for each and every completed payphone-originated call pursuant to section 276 of the Communications Act, as amended (the Act). The Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. The Payphone Compensation Rules: (1) Place liability to compensate PSPs for payphone-originated calls on the facilities-based long distance carriers or switch-based resellers (SBRs) from whose switches such calls are completed; (2) define these responsible carriers as ''Completing Carriers'' and require them to develop their own system of tracking calls to completion, the accuracy of which must be confirmed and attested to by a third-party auditor; (3) require Completing Carriers to file with PSPs a quarterly report and also submit an attestation by the chief financial officer (CFO) that the payment amount for that quarter is accurate and is based on 100% of all completed calls; (4) require quarterly reporting obligations for other facilities-based long distance carriers in the call path, if any, and define these carriers as ''Intermediate Carriers;'' (5) give parties flexibility to agree to alternative compensation arrangements (ACA) so that small Completing Carriers may avoid the expense of instituting a tracking system and undergoing an audit. The Order on Reconsideration did not change this compensation framework, but rather refined and built upon its approach. While the Commission increased the time carriers must retain certain data and added burden in that regard, the Commission also removed potentially burdensome paperwork requirements by encouraging carriers to comply with the reporting requirements through electronic means. We believe that the clarifications adopted in the Order on Reconsideration significantly decrease the paperwork burden on carriers. Specifically, the Commission did the following: (1) Clarified alternative arrangements for small businesses requiring a Completing Carrier to give the PSP adequate notice of an ACA prior to its effective date with sufficient time for the PSP to object to an ACA, and also prior to the termination of an ACA; (2) clarified any paperwork burdens imposed on carriers allowing Completing Carriers the ability to give PSPs adequate notice of payphone compensation requirements by placing notice on a clearinghouse Web site or through electronic methods; (3) required Completing Carriers and Intermediate Carriers to report only completed calls in their quarterly reports; and (4) extended the time period from 18 to 27 months for Completing Carriers and Intermediate Carriers to retain certain payphone records.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–08047 Filed 4–9–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:54 p.m. on Tuesday, April 8, 2014, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: April 8, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–08249 Filed 4–8–14; 4:15 pm]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10449, Glasgow Savings Bank Glasgow, Mo

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Glasgow Savings Bank, Glasgow, MO (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Glasgow Savings Bank on July 13, 2012. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: April 4, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–07996 Filed 4–9–14; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Data Supporting Decisions Challenge''

Authority: 15 U.S.C. 3719.

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

DATES: *Award Approving Official:* Karen DeSalvo, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: CMS data made publicly available for the first time in recent months has great potential to further the nation's understanding of health care spending and physician practice patterns. Because this data exists in raw forms that require interpretation and context, to make an impact on the average consumer it must be presented in ways that they can understand. Only then can consumers use the data to help make health choices that are the most appropriate for their specific, individual needs. This challenge seeks the creation of interactive data visualization tools that communicate complex data from multiple sources in ways that support consumer decision making for value based health care.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

- Phase I submission period: April 14–April 24, 2014
- Phase I finalist announcement: May 1, 2014
- Phase II development period: May 1–June 2, 2014
- Phase II live demo at Datapalooza: June 2, 2014
- Winners announced at Datapalooza: June 3, 2014

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: These visualization tools should be created to be used by consumers, for the purpose of assisting in active decision-making processes, especially involving potentially expensive decisions such as referrals or whether to move forward with an intervention or procedure. The visualizations should be customizable by the user; for example, patients should be able to enter their own health and/or claims information, such as demographic features or clinical attributes, to support their decision-making.

We are most interested in visualizations that use data about medical services and procedures physicians and other healthcare professionals provide in office and in facility settings, and payments and charges for these services, as they relate to helping consumer decision-making. Visualizations can help illuminate not just the most common medical procedures, but also the thousands of procedures and services that occur less frequently yet put together make up a significant percentage of total procedures performed. Detailed geographic information system (GIS) data can enhance analysis of physician payment and disbursement data from the national down to the hyper-local level. The combination of data from multiple sources, and quality measure data in particular, can be used to create tools providing deep insight into geographic variations in procedure costs, regional specializations in procedures, and many other uses yet to be uncovered.

Value based healthcare means both the cost and quality of services, so participants are encouraged to explore a variety of data sets; *http://data.cms.gov* and *http://healthdata.gov* are just two of many. Participants may also use externally-developed technical tools such as the Bloom API, which updates weekly with CMS data.

The challenge is broken into two phases:

—In Phase I, participants will submit a proposal of no more than 750 words describing the use case for their visualization(s), how their approach will address the use case, and the data sources they intend to use. Participants are allowed to use privately-held data exclusive to their own organizations. Proposals may include wireframes, sketches, or other low fidelity designs to support the visualization proposal. Participants must also indicate whether or not they expect to be able to attend Datapalooza. A review panel will select up to ten finalists, which will advance to Phase II.

When developing the use case, participants should consider what type of patient would be most affected by decisions based on value, and for what specific type of decision. For example, are they in an ACO or other capitated system? Does the patient have a healthcare savings account or high deductible plan? Is the patient undergoing a specific type of intervention, such as a total knee replacement?

—In Phase II, the finalists will build out their visualization tools to the most complete extent possible. If finalists choose to create live or static visualizations embeddable for use on the web, mobile, or print, they should be sure to include their name or organization and cite data sources used. Finalists are also free to publish an API for their visualization so that others can build on and extend the work. At Datapalooza, each finalist will demo live for the review panel, and the winner will be announced on

the main stage at the end of the conference.

Eligibility Rules for Participating in the Competition: To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Registration Process for Participants: To register for this Challenge, participants can access *http://www.challenge.gov* and search for ''Data Supporting Decisions Challenge.''

Prize:

- Total: $35,000 in prizes
- First Place: $20,000
- Second Place: $10,000
- Third Place: $5,000

Payment of the Prize: Prize will be paid by contractor.

Basis upon Which Winner Will Be Selected: The review panel will make selections based upon the following criteria:

Phase I (Proposal)

- Strength of use case for consumers
- How well solution will address use case
- Proposed use of data
- Quality of data sources

Phase II (Visualization Tools)

- Utility for consumers
- Interactivity and customization by user
- Use of data sources
- Visual appeal

In order for an entry to be eligible to win this Challenge, it must meet the following requirements:

1. Acceptable platforms—The tool must be designed for use with existing web, mobile web, electronic health record, or other platform.

2. Section 508 Compliance—Contestants must acknowledge that they understand that, as a pre-requisite to any subsequent acquisition by FAR contract or other method, they are required to make their proposed solution compliant with Section 508 accessibility and usability requirements at their own expense. Any electronic information technology that is ultimately obtained by HHS for its use, development, or maintenance must meet Section 508 accessibility and usability standards. Past experience has demonstrated that it can be costly for solution-providers to ''retrofit'' solutions if remediation is later needed. The HHS Section 508 Evaluation Product Assessment Template, available at *http://www.hhs.gov/od/vendors/index.html*, provides a useful roadmap for developers to review. It is a simple, web-based checklist utilized by HHS officials to allow vendors to document how their products do or do not meet the various Section 508 requirements.

3. No HHS or ONC logo—The app must not use HHS' or ONC's logos or official seals in the Submission, and must not claim endorsement.

4. Functionality/Accuracy—A Submission may be disqualified if it fails to function as expressed in the description provided by the user, or if it provides inaccurate or incomplete information.

5. Security—Submissions must be free of malware. Contestant agrees that ONC may conduct testing on the app to determine whether malware or other security threats may be present. ONC may disqualify the Submission if, in ONC's judgment, the app may damage government or others' equipment or operating environment.

Additional Information: General Conditions: ONC reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, for any reason, at ONC's sole discretion.

Intellectual Property:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.
- By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty-free, worldwide license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Dated: April 3, 2014.

Karen DeSalvo,

National Coordinator for Health Information Technology.

[FR Doc. 2014–07985 Filed 4–9–14; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–14–14SR]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to LeRoy Richardson, 1600

Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

''A Professional Development Needs Assessment to Improve Implementation of HIV/STD, Teen Pregnancy Prevention Services''—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2010, young people aged 13–24 accounted for 21% of all new HIV infections in the United States. Nearly half of the 19 million new sexually transmitted diseases (STD) reported each year are among young people aged 15–24. Young people who share certain demographic characteristics are disproportionately affected by HIV infection and other STD. Black and Latino young men who have sex with men (YMSM), homeless youth, and youth enrolled in alternative schools are particularly vulnerable.

The Nation's schools can play a critical role in addressing these epidemics. After the family, schools are one of the primary entities responsible for the development of young people.

To address these needs and disparities, the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Division of Adolescent and School Health (DASH) through FOA PS–13–1308 is funding 19 state education agencies (SEA) and 17 local education agencies (LEA) to do HIV/STD teen pregnancy prevention in the education setting. Under the same cooperative agreement six Non-Governmental organizations (NGOs) are being funded to provide professional development, training and technical assistance to these 36 agencies in the major approach areas of Exemplary Sexual Health Education, Sexual Health Services and Safe and Supportive Environments. In addition, a contractor is being funded to provide assistance with the development and offering of professional development training and technical assistance.

This information collection is sponsored by CDC as part of the capacity building for grantees funded under the cooperative agreement. CDC has provided guidance and facilitation in the development of the survey tool that the contractor will use. This ensures efficiency and effectiveness and will minimize the need for multiple data collection activities by CDC and ETR as the contractor.

SEA and LEA will be providing professional development training and technical assistance to school districts and schools. Time is very limited to access school personnel and it is critical that this training and technical assistance be provided in the most effective and efficient manner. To meet these needs, DASH has funded a contractor, ETR Associates, through contract # 200–2013–F–57593 to develop a training plan designed to raise the capacity of all funded agencies in the area of professional development. The contract requires a needs assessment to gauge the skill level and needs of the funded agencies.

The contractor, ETR, will conduct an organizational needs assessment so that a plan can be developed to allow the contractor to tailor their training and technical assistance activities to the specific needs of the service providers (SEA/LEA).

Findings from this assessment will be used by ETR, funded NGOs, and CDC–DASH to plan for and implement professional development training and provide technical assistance in the most effective and efficient manner based on need and current theory. The CDC will be able to refine its approach to conceptualizing and providing professional development training and technical assistance to all grantees in the most cost-effective manner possible.

This activity is being done to obtain the information needed to develop appropriate tools such as job aids, resources, and training to increase the effectiveness of local and state education agencies that will be providing professional development around HIV prevention in schools and school districts. These resources will contribute to efficient and effective HIV prevention throughout the four remaining years of the cooperative agreement.

This needs assessment is being administered on-line to 36 organizations (local and state education agencies [LEA/SEA])in order to craft plans for the training and technical assistance needed for them as well as for the priority schools and school districts they work with as part of cooperative agreement. It is voluntary and no personally identifiable information will be collected. The total estimated burden for one administration of this needs assessment is 36 hours (36 respondents × 1 hour/response). It is expected that this needs assessment would be administered three times in a five year period to address changing and emerging needs for training and technical assistance.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
LEA/SEA grantees	CDC DASH 1308 Training and Technical Assistance Needs Assessment.	36	1	1	36
Total					

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–08013 Filed 4–9–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–14–14OE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Monitoring and Reporting System for the Rape Prevention and Education Program Awardees—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Sexual violence is a major public health problem. According CDC's National Intimate Partner and Sexual Violence Survey (NISVS, OMB# 0920–0822), in the United States, nearly 1 in 5 women and 1 in 71 men have been raped in their lifetime, while 1 in 2 women and 1 in 5 men have experienced severe sexual violence victimization other than rape at some point in their lives, with the majority of victimization starting early in life. According to NISVS, approximately 80% of female victims experienced their first rape before the age of 25 and almost half experienced the first rape before age 18. Among male victims, 28% were first raped when they were 10 year old or younger. NISVS also found that early sexual victimization increases women's risk of adult victimization: Approximately 35% of women who were raped as minors were also raped as adults compared to 14% of women without an early rape history.

State health departments and the community-based organizations funded to implement sexual violence prevention strategies have variable, often low, levels of capacity and infrastructure to engage in program improvement and systematically collect data about sexual violence as well as the prevention strategies they are implementing. Historically, some health departments and funded community-based organizations have not had adequate resources to support a full-time staff person to deliver and implement prevention strategies. Additionally, while sexual violence prevention practitioners have undergone a sea change and expanded their focus from raising awareness of the problem to implementing primary prevention strategies, improved implementation based on best-available practices in prevention is still needed.

CDC, through the Rape Prevention and Education (RPE) Program, supports sexual violence prevention by implementing primary prevention strategies using a public health approach and effective prevention principles. The current cooperative agreement will advance this goal by supporting RPE funded organizations to implement sexual violence prevention strategies that adhere to general principles of effective prevention strategies. These principles include: Addressing modifiable risk and protective factors for perpetration and victimization, addressing multiple levels of the social ecology, emphasizing primary prevention, having sufficient dosage or intensity, being culturally relevant, being developed and implemented with stakeholders and based on best available evidence. Additionally, it aims to improve program evaluation infrastructure and capacity at the state level.

In order to accomplish these goals, the program strategy involves the focused implementation of three main components:

- Component 1—Implementation and program evaluation of sexual violence (SV) prevention strategies using a public health approach (this includes expectations that program evaluation activities are conducted at the state level.
- Component 2—Provision of Training and Technical Assistance to RPE funded organizations on the implementation of SV prevention strategies.
- Component 3—Participation in program support activities.

The primary outcome of interest is the improved ability of RPE funded organizations to use the public health approach and effective prevention principles to implement and evaluate sexual violence prevention strategies.

CDC seeks a 3-year Office of Management and Budget (OMB) approval to collect information electronically from awardees funded under the RPE cooperative agreement. Information will be collected from RPE awardees through an electronic data management information system; the Rape Prevention and Education Management Information System (RPE–MIS). The RPE–MIS will be used to collect information about the staffing resources dedicated by each awardee, as well as partnerships with external organizations. The RPE–MIS requires awardees to define their program objectives in action-oriented SMART (Specific, Measurable, Achievable, Relevant, and Time-Framed) format, identify their target population and associated strategies citing the best available evidence and data sources, establish the link between their objectives, chosen strategies and the target population, and provide quantifiable performance measures associated with the chosen strategies. Information collected through the RPE–MIS will be used to inform performance monitoring, and program evaluation.

Anticipated respondents are a maximum of 55 awardees for the RPE Program. All respondents will be state and territorial health departments or designated personnel from their partner sexual assault coalitions. The time commitments for data entry and training are greatest during the initial population of the RPE–MIS, typically in the first six months of implementation. Estimated burden for the first-time population of the RPE–MIS is fifteen hours. Annual Reporting is estimated at three hours per respondent.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TO RESPONDENTS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State and Territorial Health Departments or Sexual Assault Coalition Designee.	RPE–MIS: Initial population	55	1	15	825
	RPE–MIS: Annual reporting	55	1	3	165
Total					990

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–08012 Filed 4–9–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–14–0905]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Leroy Richardson 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

FoodNet Non-O157 Shiga Toxin-Producing *E. coli Study:* Assessment of Risk Factors for Laboratory-Confirmed Infections and Characterization of Illnesses by Microbiological Characteristics (0920–0905 expires 11/30/14)—Extension—National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year many Shiga toxin-producing *E. coli* (STEC) infections occur in the United States, ranging in severity from mild diarrhea, to hemorrhagic colitis and in some cases, life-threatening hemolytic uremic syndrome (HUS). HUS occurs most frequently following infection with serogroup O157; 6% of patients with this type of STEC infection develop HUS, with highest occurrence in children aged < 5 years. HUS has a fatality rate of approximately 5%; up to 25% of HUS survivors are left with chronic kidney damage. STEC are broadly categorized into two groups by their O antigens, STEC O157 and non-O157 STEC. The serogroup O157 is most frequently isolated and most strongly associated with HUS. Risk factors for STEC O157 infections in the United States and internationally have been intensely studied. Non-O157 STEC are a diverse group that includes all Shiga toxin-producing *E. coli* of serogroups other than O157. Over 50 STEC serogroups are known to have caused human illness. Numerous non-O157 outbreaks have been reported from throughout the world and clinical outcomes in some patients can be as severe as those seen with STEC O157 infections, however, little is known about the specific risk factors for infections due to non-O157 STEC serogroups. More comprehensive understanding of risk factors for sporadic non-O157 STEC infections is needed to inform prevention and control efforts.

The FoodNet case-control study is the first multistate investigation of non-outbreak-associated non-O157 STEC infections in the United States. It investigates risk factors for non-O157 STEC infections, both as a group and individually for the most common non-O157 STEC serogroups. In addition, the study characterizes the major known virulence factors of non-O157 STEC to assess how risk factors and clinical features vary by virulence factor profiles. As the largest, most comprehensive, and most powerful study of its kind, it is making an important contribution towards better understanding of non-O157 STEC infections and will provide science-based recommendations for interventions to prevent these infections. Study enrollment began between July and September 2012 (sites had staggered start dates) and is scheduled to run for 36 months. Since we have not yet enrolled enough cases to meet the study objectives, we are requesting an extension.

Persons with non-O157 STEC infections who are identified as part of routine public health surveillance and randomly selected healthy persons in the patients' communities (to serve as controls) are contacted and offered enrollment into this study. Participation is completely voluntary and there is no cost for enrollment. The total burden is 268 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total
Patients	Case questionnaire	161	1	25/60	67
Controls	Control questionnaire	483	1	25/60	201
					268

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–08014 Filed 4–9–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF Program Instruction: Children's Justice Act.

OMB No.: 0970–0425.

Description: The Program Instruction, prepared in response to the enactment of the Childrens Justice Act (CJA), Title II of Public Law 111–320, Child Abuse Prevention and Treatment Act Reauthorization of 2010, provides direction to the States and Territories to accomplish the purposes of assisting States in developing, establishing and operating programs designed to improve: (1) The assessment and investigation of suspected child abuse and neglect cases, including cases of suspected child sexual abuse and exploitation, in a manner that limits additional trauma to the child and the child's family; (2) the assessment and investigation of cases of suspected child abuse-related fatalities and suspected child neglect-related fatalities; (3) the investigation and prosecution of cases of child abuse and neglect, including child sexual abuse and exploitation; and (4) the assessment and investigation of cases involving children with disabilities or serious health-related problems who are suspected victims of child abuse or neglect. This Program Instruction contains information collection requirements that are found in Public Law 111–320 at Sections 107(b) and 107(d), and pursuant to receiving a grant award. The information being collected is required by statute to be submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute; to monitor, evaluate and measure grantee achievements in addressing the investigation and prosecution of child abuse and neglect; and to report to Congress.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application and Annual Report	52	1	60	3,120

Estimated Total Annual Burden Hours: 3,120.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–08065 Filed 4–9–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0062]

Agency Information Collection Activities; Proposed Collection; Comment Request; Exception From General Requirements for Informed Consent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information related to the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents without informed consent in certain circumstances.

DATES: Submit either electronic or written comments on the collection of information by June 9, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Exception From General Requirements for Informed Consent—21 CFR 50.23 (OMB Control Number 0910–0586)—Extension

In the **Federal Register** of June 7, 2006 (71 FR 32827), FDA issued an interim final rule to amend its regulations to establish a new exception from the general requirements for informed consent, to permit the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents without informed consent in certain circumstances. The Agency took this action because it was concerned that, during a potential terrorism event or other potential public health emergency, delaying the testing of specimens to obtain informed consent may threaten the life of the subject. In many instances, there may also be others who have been exposed to, or who may be at risk of exposure to, a dangerous chemical, biological, radiological, or nuclear agent, thus necessitating identification of the agent as soon as possible. FDA created this exception to help ensure that individuals who may have been exposed to a chemical, biological, radiological, or nuclear agent are able to benefit from the timely use of the most appropriate diagnostic devices, including those that are investigational.

Section 50.23(e)(1) (21 CFR 50.23(e)(1)) provides an exception to the general rule that informed consent is required for the use of an investigational in vitro diagnostic device. This exception applies to those situations in which the in vitro investigational diagnostic device is used to prepare for, and respond to, a chemical, biological, radiological, or nuclear terrorism event or other public health emergency, if the investigator and an independent licensed physician make the determination and later certify in writing that: (1) There is a life-threatening situation necessitating the use of the investigational device, (2) obtaining informed consent from the subject is not feasible because there was no way to predict the need to use the investigational device when the specimen was collected and there is not sufficient time to obtain consent from the subject or the subject's legally authorized representative, and (3) no satisfactory alternative device is available. Under the rule, these determinations are made before the device is used, and the written certifications are made within 5 working days after the use of the device. If use of the device is necessary to preserve the life of the subject and there is not sufficient time to obtain the determination of the independent licensed physician in advance of using the investigational device, § 50.23(e)(2) provides that the certifications must be made within 5 working days of use of the device. In either case, the certifications are submitted to the Institutional Review Board (IRB) and, under § 50.23(e)(3) (76 FR 36989, June 24, 2011), to FDA within 5 working days of the use of the device.

Section 50.23(e)(4) provides that an investigator must disclose the investigational status of the device and what is known about the performance characteristics of the device at the time test results are reported to the subject's health care provider and public health authorities, as applicable. Under § 50.23(e)(4), the investigator provides the IRB with the information required by § 50.25 (21 CFR 50.25) (except for the information described in § 50.25(a)(8)) and the procedures that will be used to provide this information to each subject or the subject's legally authorized representative.

From its knowledge of the industry, FDA estimates that there are approximately 150 laboratories that could perform testing that uses investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents. FDA estimates that in the United States each year there are approximately 450 naturally occurring cases of diseases or conditions that are identified in the Centers for Disease Control's list of category ''A'' biological threat agents. The number of cases that would result from a terrorist event or other public health emergency is uncertain. Based on its knowledge of similar types of submissions, FDA estimates that it will take about 2 hours to prepare each certification.

Based on its knowledge of similar types of submissions, FDA estimates that it will take about 1 hour to prepare a report disclosing the investigational status of the in vitro diagnostic device and what is known about the performance characteristics of the device and submit it to the health care provider and, where appropriate, to public health authorities.

The June 7, 2006, interim final rule refers to previously approved collections of information found in FDA regulations. These collections of

information are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 50.25 have been approved under 0910–0130.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Written certification (sent to FDA)—50.23(e)(3).	150	3	450	0.25 (15 minutes)	113	$100

[1] There are no capital costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours	Total operating and maintenance costs
Written certification (sent to IRB)—50.23(e)(1) and (e)(2)	150	3	450	2	900	$0
Informed consent information—50.23(e)(4)	150	3	450	1	450	100
Total					1,350	100

[1] There are no capital costs associated with this collection of information.

Dated: April 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–08006 Filed 4–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Announcement of Agency Decision: Density of the Primary Living Space of Captive Chimpanzees Owned or Supported by the National Institutes of Health (NIH) or Used in NIH-Supported Research

SUMMARY: This notice summarizes the agency's actions to obtain additional scientific input and announces the agency's decision with respect to the space density of the primary living space of captive research chimpanzees owned or supported by the National Institutes of Health (NIH) or used in NIH-supported research. The NIH has prepared procedural guidance and technical assistance for researchers, facility staff, and agency staff to ensure proper implementation of the agency's decisions. Investigators should follow guidance (see NOT–OD–14–024 at *http://www.grants.nih.gov/grants/guide/notice-files/NOT-OD-14-024.html*) regarding the submission of applications, proposals, or protocols for research involving chimpanzees.

FOR FURTHER INFORMATION CONTACT: The Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH at *dpcpsi@od.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background

In February 2012, the NIH charged a working group of the Council of Councils, a federal advisory committee, to provide advice on implementing recommendations made by the Institute of Medicine (IOM) Committee on the Use of Chimpanzees in Biomedical and Behavioral Research in its 2011 report, *Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity*. On January 22, 2013, the NIH Council of Councils (Council) accepted recommendations presented by the Working Group on the Use of Chimpanzees in NIH-Supported Research in its report (see *http://dpcpsi.nih.gov/sites/default/files/FNL_Report_WG_Chimpanzees_0.pdf*) and provided these recommendations to the NIH. The NIH subsequently issued a request for information, *http://www.gpo.gov/fdsys/pkg/FR-2013-02-05/html/2013-02507.htm,* to obtain broad public input on the 28 Council recommendations the NIH considered as it determined how to implement the IOM Committee's recommendations.

In June 2013, the NIH announced its decisions with respect to the Council of Councils' recommendations; see *http://dpcpsi.nih.gov/sites/default/files/NIH_response_to_Council_of_Councils_recommendations_62513.pdf*. The agency accepted 27 of the 28 Council recommendations. Included in these were 10 recommendations describing the characteristics of a captive environment that allow for and promote a full range of behaviors that are natural for chimpanzees—or ethologically appropriate environments (EAE). The NIH accepted 9 of the 10 Council's recommendations on EAE, including recommendations on enclosure height, foraging and diet, nesting materials, enrichment, a staff to chimpanzee ratio, staff training, and recordkeeping. The NIH did not accept Recommendation EA2—''The density of the primary living space of chimpanzees should be at least 1,000 ft^2 (93 m^2) per individual. Therefore, the minimum outdoor enclosure size for a group of 7 animals should be 7,000 ft^2 (651 m^2).''—based on comments received from the public. Because of concerns about the scientific basis for this recommendation and the expected costs of implementing it, the agency further reviewed the space density requirements with respect to the promotion of species-appropriate behavior.

While a large number of commenters who addressed Recommendation EA2 supported the recommendation, some commenters emphasized the amount of space recommended is the minimum needed and larger enclosures that more closely replicate the amount of space available to chimpanzees in the wild are

preferable. Other commenters encouraged the NIH to identify data in the scientific literature on the appropriate area for chimpanzee housing, while others argued that the recommended 1,000 ft² area is arbitrary and unnecessary, is not based on or is contrary to the published literature, and does not accurately reflect the opinions of some of the experts consulted by the Council Working Group. Several commenters noted that certain publications cited by the Council Working Group pertain to gorillas or to spaces smaller than 1,000 ft². In the absence of sufficient supporting scientific evidence, these commenters did not believe that larger housing environments would improve chimpanzee well-being. Others suggested that rather than establishing minimum space requirements, the NIH should consider the complexity and quality of the environment, including the opportunity for chimpanzees to take temporary refuge from other members of their group.

The agency was concerned about the lack of scientific consensus and especially whether the published literature supports the Council's recommendation of providing 1,000 ft² of living space per chimpanzee. Given that concern, the NIH sought additional input on an individual basis on the space density needs of captive research chimpanzees from experts with extensive experience in veterinary medicine, behavioral management of primates, renovation of chimpanzee housing and research facilities, primate facility management, and behavioral primatology (*https://dpcpsi.nih.gov/sites/default/files/Space-Density-EAE-List-of-Experts.pdf*).

Independent of seeking expert input, the NIH commissioned a literature review, *https://dpcpsi.nih.gov/sites/default/files/ElseLitReviewFinal-110713.pdf,* focused on the space density needed to support an ethologically appropriate physical and social environment for captive chimpanzees in a research environment. The literature review was prepared by a pre-eminent veterinary primatologist. That individual was also asked to identify, review, and summarize relevant parts of U.S. regulations and other requirements.

The relevant animal welfare/regulatory requirements and guidance pertaining to the space density needs of captive research chimpanzees are summarized in the literature review (pages 2–4). The Animal Welfare Act Regulations, *http://www.gpo.gov/fdsys/pkg/CFR-2013-title9-vol1/xml/CFR-2013-title9-vol1-chapI-subchapA.xml,* list the minimum space requirements for the nonhuman primate (NHP) weight category that includes chimpanzees as 25 ft² for floor area per animal, and 84 inches for enclosure height. 9 CFR part 3.80. The regulations note that many of the NHP requirements are generic and the conditions appropriate for one species do not necessarily apply to another. Per the regulations, the ''minimum specifications must be applied in accordance with the customary and generally accepted professional and husbandry practices considered appropriate for each species, and necessary to promote their psychological well-being.'' 9 CFR part 3, n. 2. The Chimpanzee Health Improvement, Maintenance, and Protection (CHIMP) Act (Pub. L. 106–551; *http://www.gpo.gov/fdsys/pkg/PLAW-106publ551/pdf/PLAW-106publ551.pdf*) directs the Secretary of Health and Human Services to develop by regulation standards for operating the federally supported sanctuary system to provide for the permanent retirement of chimpanzees that are no longer required for research. The regulations (42 CFR part 9) that implement the CHIMP Act do not specify enclosure size but stipulate that the size of the sanctuary facilities must be in accordance with the recommendations of *The Guide for the Care and Use of Laboratory Animals,* which align with the minimum space requirements of the *Animal Welfare Act Regulations*. The Association of Zoos and Aquariums and the Global Federation of Animal Sanctuaries recommend space densities that differ from each other and from the one in Recommendation EA2.

The remainder of this document summarizes the literature review and expert input.

Literature Review—Summary

The literature review revealed very limited empirical data is available on which to base a determination of the minimum space density necessary to provide an EAE for captive chimpanzees, and no quantitative data was found to support the figure of 1,000 ft²/individual chimpanzee. Relatively few investigators have reported data that measure chimpanzee well-being using space density as a variable, with Ross and his colleagues, who have been studying enclosure design in zoos for more than 10 years, being one of the notable exceptions. Ross *et al.* (2011a) postulated that once the ''minimal size threshold is crossed'' (as they speculated could possibly be the case with their Great Ape House facility—space density 12.2 m²/individual) they ''would then expect diminishing behavioral and welfare benefits with further increases.'' Wilson (1982) made a similar observation, noting that increasing space beyond that required may have little effect on activity.

The literature review noted there was general consensus among essentially all investigators as to the importance of vertical space, climbable space, three-dimensional space, gross usable space, and other similar enclosure parameters, and the necessity for significant environmental complexity within the enclosure. The general impression gained from the literature review is that these parameters share equal importance with space density when captive chimpanzee well-being is considered. The difficulty is the lack of a simple, replicable way to measure them.

There was also general consensus that chimpanzees neither like nor use open spaces and in most situations they use only a small proportion of their enclosure space. This is consistent with conclusions of many investigators that the overall quantity of cage space alone has limited value when designing an enclosure to maximize the well-being of primates because the usefulness of space depends upon its quality rather than quantity (Reinhardt *et al.,* 1996; Wilson, 1982; Stoinski *et al.,* 2001; Ross *et al.,* 2011a) and, having no stimulatory value, space alone does not enhance an animal's environment (Reinhardt *et al.,* 1996).

The literature review also questioned whether the full range of wild chimpanzee behavior, particularly some aspects of fission-fusion, are applicable to captive situations, and whether some behaviors, such as traveling long distances in search for food or patrolling the borders of their territories, may in fact not be necessary for captive group well-being, nor desirable for group stability.

Expert Views—Summary

Independent of the literature review, the NIH sought input from individuals with extensive expertise in veterinary medicine; behavioral management of primates; renovation of chimpanzee housing and research facilities; primate and chimpanzee facility management; and behavioral primatology. The NIH contacted each expert individually and sought input on the question of space density needs of captive research chimpanzees. The calls with the individual experts preceded the preparation of the literature review to ensure that one process did not influence the other.

The views of the experts were very similar to the literature review. Each of

the experts emphasized the critical importance of environmental complexity rather than focusing only on the square footage of living space per chimpanzee as a means of ensuring species-typical behavior. The experts also noted that different animals/groups within a colony would require different stimuli to exhibit species-typical behavior. The experts reiterated the difficulty in identifying square footage requirements, including lack of published literature in this area. Based on their experience in behavioral management of chimpanzees, as veterinarians and by directing and operating facilities for captive research chimpanzees, several of the experts recommended minimum space needed to promote species-typical behavior. The recommendations ranged from 150–500 ft^2 of living space per animal.

Conclusion

The literature review demonstrated there is little published literature containing quantitative scientific data that can be used to support a determination of the minimum space density (horizontal surface area per animal) needed to support an EAE for captive chimpanzees. Furthermore, other aspects of enclosure design, such as complexity and vertical height, are considered by many experts to be more important than space density with respect to chimpanzee well-being and the promotion of species-specific behavior.

Based on both the literature review and recommendations from individual experts, it is clear that published guidelines for minimum living space area for captive research chimpanzees are variable. Encouraging species-typical behavior among chimpanzees does not simply result from providing a minimum square footage of living space per animal. Rather, the characteristics (complexity) of the space as well as enrichment opportunities have a significant effect on promoting species-typical behavior. The environment should take into account the individual chimpanzees' and colony characteristics, including social, health, age, and biological factors.

Based on the recommendation from the Council of Councils, the information contained in the literature review, and additional input from scientific, veterinary, and facility experts, the NIH has decided that the density of the primary living space of chimpanzees should be at least 250 ft^2 per chimpanzee. This decision supplements the agency decisions on the nine EAE recommendations made by the Council of Councils (see EA1, EA3–10 at *http://dpcpsi.nih.gov/sites/default/files/NIH_response_to_Council_of_Councils_recommendations_62513.pdf*). The NIH expects the facilities it supports to monitor the chimpanzees for species-typical behavior.

The NIH has prepared procedural guidance and technical assistance for researchers, facility staff, and agency staff to ensure proper implementation of the agency's decisions. Investigators should follow guidance (see NOT–OD–14–024 at *http://www.grants.nih.gov/grants/guide/notice-files/NOT-OD-14-024.html*) regarding the submission of applications, proposals, or protocols for research involving chimpanzees.

Dated: February 25, 2014.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2014–08062 Filed 4–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: May 5–7, 2014.

Time: 6:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Robert S Balaban, Ph.D., Scientific Director, Division of Intramural Research, NHLBI, National Institutes of Health, Building 10, CRC, 4th Fl., Room 4–1581, 10 Center Drive, Bethesda, MD 20892, 301–496–2116.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: April 4, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–07971 Filed 4–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Complementary and Alternative Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine NCCAM Advisory Council Board.

Date: June 6, 2014.

Closed: 8:30 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Open: 10:15 a.m. to 4:00 p.m.

Agenda: A report from the Institute Director and other staff.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, Ph.D., Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–2014, *goldrosm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *nccam.nih.gov/about/naccam/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS).

Dated: April 4, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–07970 Filed 4–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2013–N265; BAC–4311–K9]

Monomoy National Wildlife Refuge, Chatham, MA; Draft Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental impact statement (EIS) for Monomoy National Wildlife Refuge (NWR, refuge) for public review and comment. In this draft CCP/EIS, we describe how we propose to manage the refuge for the next 15 years.

DATES: To ensure consideration, we must receive your written comments by June 9, 2014. We will hold public meetings during a 60-day public comment period. In addition, we will use special mailings, newspaper articles, internet postings, and other media announcements to inform people of opportunities for input, including details on when and where public meetings will occur.

ADDRESSES: Send your comments or requests for more information by any one of the following methods:

- *Email: northeastplanning@fws.gov.* Include ''Monomoy NWR Draft CCP/EIS'' in the subject line of the message.
- *Fax:* Attention: Libby Herland, Project Leader, 978–443–2898.
- *U.S. Mail:* Attention: Libby Herland, Project Leader, Eastern Massachusetts National Wildlife Refuge Complex, 73 Weir Hill Road, Sudbury, MA 01776.
- *In-Person Drop Off:* You may drop off comments during regular business hours at the above address.

You will find the draft CCP/EIS, as well as information about the planning process and a summary of the CCP, on the planning Web site: *http://www.fws.gov/refuge/monomoy/what_we_do/conservation.html.*

FOR FURTHER INFORMATION CONTACT: Libby Herland, 978–443–4661, x 11.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Monomoy NWR, which officially began on February 24, 1999, when we published a **Federal Register** notice (64 FR 9166) announcing our intent to prepare a CCP. The notice indicated that one draft CCP/EIS would be written for all eight refuges in the Eastern Massachusetts NWR Complex (refuge complex), of which Monomoy NWR is a part. As our work got under way to develop one CCP/EIS for eight refuges, we recognized that each had distinct issues and management concerns, and it became apparent that combining them all into one plan would prove too challenging. Thus, in two separate **Federal Register** notices—one published on February 15, 2001 (66 FR 10506), and a second one published on December 13, 2004 (69 FR 72210)—we explained our intent to reorganize our CCP planning effort for the eight refuges, including Monomoy NWR. For more information about the initial steps of the planning process and the history of this refuge, see the December 13, 2004, notice.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge consistent with the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreational opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

CCP Alternatives, Including Selected Alternative

The draft CCP/EIS, which includes detailed information about the planning process, refuge resources, management issues, and management alternatives considered and proposed, may be found on our Web site at *http://www.fws.gov/refuge/monomoy/what_we_do/conservation.html.* There are three refuge management alternatives considered in the draft CCP/EIS; the Service's preferred alternative is detailed in the draft plan as alternative B. The alternatives analyzed in detail include:

Alternative A: Current Management (No Action)

This alternative reflects current management, including activities previously undertaken, or already planned or approved, and is the baseline for comparing the other two alternatives. In addition to actions identified as common to all, under alternative A, there would be little or no change in our current refuge programs at Monomoy NWR. We would initiate few, if any, new wildlife population, habitat, or ecosystem management activities. No new public recreational opportunities would be undertaken, and there would be no enhancements to existing programs and opportunities. The Monomoy Wilderness would continue to be managed to protect wilderness character. The refuge would continue its current operations and maintenance activities within its current staffing and funding levels.

Alternative B: Enhanced Management of Habitat and Public Uses (Service-Preferred Alternative)

Alternative B, in comparison to alternative A, represents an extension and progression of all areas of refuge management. Under alternative B, new biological program activities would be initiated. Special emphasis would be placed on obtaining baseline data to increase our knowledge of wildlife populations and habitats in this dynamic coastal environment, enhance our ability to evaluate those resources in a regional context, and anticipate the effects of climate change. The new information would be used to develop the detailed step-down plans proposed under this alternative. Wildlife and habitat surveys and inventories would be prioritized to provide the data needed to evaluate the effectiveness of refuge management, and to adapt management as warranted, in order to achieve long-range refuge goals and objectives.

Under alternative B, new and existing compatible wildlife-dependent recreational opportunities would be provided consistent with refuge purposes for protecting migratory birds and wilderness character. Special emphasis would be placed on providing enhanced, sustainable, and compatible opportunities for all six priority wildlife-dependent recreational uses defined in the Administration Act. Staffing would be modestly increased to accommodate new programs and activities, and proposed new visitor contact facilities would provide better access to information and support quality educational and interpretive programs.

Alternative C: Natural Processes

Alternative C proposes less intensive management on all refuge lands. It would be guided by a philosophy of allowing natural processes and succession of habitats to progress, consistent with preserving wilderness character, and to the extent that it does not compromise refuge purposes and goals. Generally, wildlife and habitat management, and inventories and monitoring efforts, would be reduced from those planned under alternative A. We would manage the refuge visitor services program with an emphasis on providing wildlife-dependent recreation that uses hand tools and non-motorized equipment, protects naturalness, and provides solitude or primitive, unconfined recreation.

Under all alternatives, the boundary of the refuge would be modified to include an area on Nauset/South Beach, approximately 717 acres, that is within the Cape Cod National Seashore boundary, but which accreted and joined the refuge's South Monomoy Island. With this addition, the refuge comprises 8,321 acres. We would incorporate the Nauset/South Beach addition into, and manage it consistent with, the refuge's existing designated wilderness area.

Public Involvement

We will give the public an opportunity to provide input at public meetings. You can obtain the schedule from the address or Web site listed in this notice (see **ADDRESSES**). You may also submit comments anytime during the public comment period.

Public Availability of Comments

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.

Dated: March 5, 2014.

Deborah Rocque,

Acting Regional Director, Northeast Region.

[FR Doc. 2014–07531 Filed 4–9–14; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Second Review)]

Silicon Metal From Russia; Revised Schedule for the Subject Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: *Effective:* April 7, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Background.* On December 11, 2013, the Commission established a schedule for the conduct of this review (78 FR 76856, December 19, 2013). Subsequently, counsel for the domestic interested party filed a request to appear at the hearing or, in the alternative, for consideration of cancellation of the hearing. Counsel indicated a willingness to submit responses to any Commission questions in lieu of an actual hearing. No other party filed a timely request to appear at the hearing. Consequently, the public hearing in connection with the review, scheduled to begin at 9:30 a.m. on April 10, 2014, at the U.S. International Trade Commission Building, is cancelled. Parties to the investigation should respond to any written questions posed by the Commission in their post-hearing briefs, which are due to be filed on April 21, 2014.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR Part 201), and part 207, subparts A and C (19 CFR Part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 7, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–08066 Filed 4–9–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–501 (Remand Proceeding)]

Certain Encapsulated Integrated Circuit Devices and Products Containing Same; Notice of a Commission Final Determination of Violation of Section 337; Issuance of a Limited Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, by respondents Carsem (M) Sdn Bhd; Carsem Semiconductor Sdn Bhd; and Carsem, Inc. (collectively, ''Carsem,'' or respondents) in the above-captioned investigation. The Commission has issued a limited exclusion order directed to the infringing products of Carsem and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on December 19, 2003, based on a complaint filed by Amkor Technology Inc. (''Amkor''). *See* 68 FR 70836 (Dec. 19, 2003). Amkor alleged a violation of section 337 by respondents Carsem in the importation, sale for importation, and sale within the United States after importation of certain encapsulated integrated circuit devices and products containing same in connection with claims 1–4, 7, 17, 18 and 20–23 of U.S. Patent No. 6,433,277 (''the '277 patent''); claims 1–4, 7 and 8 of U.S. Patent No. 6,630,728 (''the '728 patent''); and claims 1, 2, 13 and 14 of U.S. Patent No. 6,455,356 (''the '356 patent''). All three patents are owned by Amkor. The investigation also concerns a third-party, ASAT, Inc. (''ASAT''), and its invention (''ASAT invention''), which Carsem argued was invalidating prior art to Amkor's asserted patents.

On November 18, 2004, the ALJ issued a final initial determination (''Final ID'') finding no violation of section 337. After reviewing the Final ID in its entirety, the Commission on March 31, 2005, modified the ALJ's claim construction and remanded the investigation to the ALJ with instructions ''to conduct further proceedings and make any new findings or changes to his original findings that are necessitated by the Commission's new claim construction.'' Commission Order ¶ 8 (March 31, 2005). On November 9, 2005, the ALJ issued a remand initial determination (''Remand ID''). The Remand ID found a violation of section 337 with regard to six claims of the '277 patent, but found no violation in connection with the asserted claims of the '728 or '356 patents.

Completion of this investigation was delayed because of difficulty in obtaining from third-party ASAT certain documents that Carsem asserted were critical for its affirmative defenses. The Commission's efforts to enforce a February 11, 2004, subpoena *duces tecum* and *ad testificandum* directed to ASAT resulted in a July 1, 2008, order and opinion of the U.S. District Court for the District of Columbia granting the Commission's second enforcement petition. On July 1, 2009, after ASAT had complied with the subpoena, the Commission issued a notice and order remanding this investigation to the ALJ so that the ASAT documents could be considered. On October 30, 2009, the ALJ issued a supplemental ID (''First Supplemental ID''), finding that the ASAT invention was not prior art, and reaffirming his finding of a violation of section 337.

On February 18, 2010, the Commission reversed the ALJ's finding that ASAT invention is not prior art to Amkor's asserted patents, and remanded the investigation to the ALJ to make necessary findings in light of the Commission's determination that the ASAT invention is prior art. On March 22, 2010, the ALJ issued a Supplemental ID (''Second Supplemental ID'') in which he found that the '77 and '728 patents were invalid in view of ASAT prior art and determined that there was no violation of Section 337 in the present investigation. On July 20, 2010, the Commission determined not to review the ALJ's Remand ID and Second Supplemental ID. As a result, the Commission determined that there is no violation of section 337 in this investigation. Amkor appealed the Commission's decision to the U.S. Court of Appeals for the Federal Circuit (''the Court'').

On August 22, 2012, the Court ruled on Amkor's appeal reversing the Commission's determination that the '277 Patent is invalid under 35 U.S.C. 102(g)(2), declining to affirm the Commission's invalidity determination on the alternative grounds raised by Carsem, and remanding for further proceedings consistent with its opinion. *Amkor Technology Inc.* v. *International Trade Commission,* 692 F.3d 1250 (Fed. Cir. 2012) (''*Amkor Technology''*). On October 5, 2012, Carsem filed a combined petition for panel rehearing and for rehearing *en banc.* The Court denied Carsem's petition on December 7, 2012, and issued its mandate on December 19, 2012, returning jurisdiction to the Commission.

On January 14, 2013, the Commission issued an Order (''Commission's Order'') directing the parties to the investigation to submit their comments regarding what further proceedings must be conducted to comply with the August 22, 2012, judgment of the Court in *Amkor Technology.* The parties filed their initial and responsive submissions.

On June 5, 2013, the Commission issued a Notice (''Commission's Notice'') requesting briefing on remedy, bonding and the public interest in the above-captioned investigation, as well as responses to certain questions posed by the Commission regarding the economic prong of the domestic industry requirement and the public interest. 78 FR 35051 (June 11, 2013). The Commission also set a schedule for the filing of written submissions. The parties have filed their initial and reply submissions pursuant to the Commission Notice.

Having examined the record in this investigation, including the parties'

submissions filed in response to the Commission's Order and Commission's Notice, and consistent with the judgment of the Court, the Commission has determined to affirm the ALJ's First Supplemental ID and Remand ID thus finding a violation of section 337. The Commission has also determined as follows with respect to the specific issues raised by the parties in response to the Commission's Order and Commission Notice:

(1) To affirm the ALJ's determination that claims 2–4 and 21–23 of the '277 patent are not invalid over the ASAT invention;

(2) To affirm the ALJ's determination that Carsem failed to show that equitable estoppel defense based on Amkor's alleged failure to disclose the '277 patent to JEDEC applies in this investigation;

(3) To affirm, in light of the ALJ's express findings that Carsem failed to prove that Amkor has deceived the standard setting body or that the '277 patent is necessary to practice JEDEC's standards, the ALJ's implicit determination that Carsem failed to show that its legal estoppel defense based on Amkor's alleged failure to disclose the '277 patent to JEDEC applies in this investigation;

(4) To affirm with modifications the ALJ's finding in the 2004 Final ID that Amkor satisfied the economic prong of the domestic industry requirement under subsection 337(a)(3)(A);

(5) To affirm with modifications the ALJ's finding in the 2004 Final ID that Amkor failed to satisfy the economic prong of the domestic industry requirement under subsection 337(a)(3)(B); and

(6) To take no position on the ALJ's findings in the 2004 Final ID with respect to whether Amkor satisfied the economic prong of the domestic industry requirement under subsection 337(a)(3)(C).

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain encapsulated integrated circuit devices covered by claims 2–4 and 21–23 of the United States Patent No. 6,433,277 and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Carsem.

The Commission has further determined that the public interest factors enumerated in section 337(d)(l) (19 U.S.C. 1337(d)(l)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that Amkor is required to post a bond in the amount of a reasonable royalty rate of $0.00025 (0.025¢) per contact per covered encapsulated integrated circuit device imported during the period of Presidential review. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has therefore terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: April 4, 2014.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–08007 Filed 4–9–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–010]

Sunshine Act Meeting

TIME AND DATE: April 17, 2014 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–1214 (Final) (Steel Threaded Rod from Thailand). The Commission is currently scheduled to complete and file its determination and views of the Commission on May 1, 2014.
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: April 7, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–08133 Filed 4–8–14; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certification of Funeral Expenses

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Certification of Funeral Expenses,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 12, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201312-1240-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The OWCP administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The Act provides that reasonable funeral expenses, not to exceed $3,000, shall be paid in all compensable death cases. The OWCP has developed Form LS–265 for use in submitting the funeral expenses for payment.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0040.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on April 30, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 20, 2013 (78 FR 77169).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0040. The OMB 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; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Certification of Funeral Expenses.

OMB Control Number: 1240–0040.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 75.

Total Estimated Number of Responses: 75.

Total Estimated Annual Time Burden: 19 hours.

Total Estimated Annual Other Costs Burden: $39.

Dated: April 3, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–08050 Filed 4–9–14; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: *2014–01,* Bank of America Corporation, D–11729; *2014–02,* The ABB Inc. Cash Balance Pension Plan (the Cash Balance Plan); the Cash Balance Pension Plan for Certain Represented Employees of ABB Inc. (the Union Cash Balance Plan); the Pension Plan for Employees of the Process Analytics Division of ABB Inc. Represented by the Laborer's International Union of North America (AFL–CIO), Local No. 1304 (the Process Analytics Plan); the Pension Plan of Fischer & Porter Company (the Fischer & Porter Plan); and the ABB Inc. Pension Plan (UE 625 & 626) (the UE 625 & 626 Plan) (each a Plan, and collectively, the Plans), D–11742 thru D–11746 respectively; and *2014–03,* Intel Corporation (Intel), L–11760.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. Each notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Bank of America Corporation

Located in Charlotte, NC

[Prohibited Transaction Exemption 2014–01; Application No. D–11729]

Exemption

Section I: Covered Transactions

The restrictions of ERISA sections 406(a)(1)(D) and 406(b) and the sanctions resulting from the application of Code section 4975 (including the loss of exemption [2] by reason of Code sections 4975(c)(1)(D), (E) and (F)) shall not apply to the receipt of Relationship Benefits by an individual for whose benefit a Covered Plan is established or maintained, or by his or her Family Members, from BAC pursuant to an arrangement in which the Account Value of, or the Fees incurred for services provided to, the Covered Plan is taken into account for purposes of determining eligibility to receive such Relationship Benefits, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The Covered Plan whose Account Value, or whose Fees paid, are taken into account for purposes of determining eligibility to receive Relationship Benefits under the arrangement must be established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Relationship Benefits offered under the arrangement must be of a type that a Qualified Affiliate could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating Broker-Dealers.

(c) Where Account Values are taken into account for purposes of determining eligibility to receive benefits under the arrangement, the Account Values of Covered Plan accounts shall be treated as favorably, for purposes of satisfying such eligibility requirements, as the Account Values of other types of customer accounts.

(d) Where levels of Fees incurred are taken into account for purposes of determining eligibility to receive benefits under the arrangement, the levels of Fees incurred by Covered Plan accounts shall be treated as favorably, for purposes of satisfying such eligibility requirements, as the levels of Fees incurred by other types of customer accounts.

(e) The Relationship Benefits offered under the arrangement must be provided by a Qualified Affiliate in the ordinary course of its business as a Bank or Broker-Dealer to customers who qualify for such benefits, but who do not maintain Covered Plans with a Qualified Affiliate.

(f) The combined total of fees for the provision of services to a Covered Plan is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

(g) The investment performance of the investments made by the Covered Plan is no less favorable than the investment performance of identical investments that could have been made at the same time by a customer of BAC who is not eligible for (or who does not receive) Relationship Benefits.

(h) The Relationship Benefits offered under the arrangement to the Covered Plan customer must be the same as are offered to non-Covered Plan customers of Qualified Affiliates having the same aggregate Account Value or the same amount of Fees generated.

Section III: Definitions

The following definitions apply to this exemption:

(a) The term ''Account Value'' means investments in cash or securities held in the account for which market quotations are readily available. For purposes of the exemption, the term ''cash'' includes savings accounts that are insured by a federal deposit insurance agency and constitute deposits as that term is defined in 29 CFR 2550.408b–4(c)(3). The term ''Account Value'' does not include investments that are offered by BAC (or a Qualified Affiliate) exclusively to Covered Plans.

(b) The term ''affiliate'' includes any person directly or indirectly controlling, controlled by, or under common control with Bank of America Corporation.

(c) The term ''Bank'' means a bank described in Code section 408(n).

(d) The term ''BAC'' means Bank of America Corporation and any of its affiliates.

(e) The term ''Broker-Dealer'' means a broker-dealer registered under the Securities Exchange Act of 1934, as amended.

(f) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) The term ''Covered Plan'' means an IRA or other savings account described in section III(j) of this exemption or a Keogh Plan described in section III(k) of this exemption that is established with BAC as trustee or custodian.

(h) The term ''Family Members'' means beneficiaries of the individual for whose benefit the Covered Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or a spouse of a brother or sister.

(i) The term ''Fees'' means commissions and other fees received by a Broker-Dealer from the Covered Plan for the provision of services, including but not limited to: Brokerage commissions, investment management fees, investment advisory fees, custodial fees, and administrative fees.

(j) The term ''IRA'' means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a Coverdell education savings account described in Code section 530, an Archer MSA described in Code section 220(d), or a health savings account described in Code section 223(d). For purposes of this exemption, the term ''IRA'' does not include an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in Code section 408(k) and a Simple Retirement Account described in Code section 408(p) that provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(k) The term ''Keogh Plan'' means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in Code section 401(c). For purposes of this exemption, the term ''Keogh Plan'' does not include an employee benefit plan covered by Title I of ERISA.

(l) The term ''Qualified Affiliate'' means any person directly or indirectly controlling, controlled by, or under common control with BAC that is a Bank or Broker-Dealer.

(m) The term ''Relationship Benefits'' means reduced or no cost financial products and services, including premium rates of account or investment interest, discounted rates of interest on loans, reductions or waivers of otherwise applicable fees and charges, and/or differentiated servicing.

[2] Pursuant to Code section 408(e)(2)(A)(for an individual retirement account or individual retirement annuity); Code section 530(e) (for a Coverdell education savings account); Code section 220(e)(2) (for an Archer medical savings account); or Code section 223(e)(2) (for a health savings account).

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on November 6, 2013, at 78 FR 66769. All comments and requests for hearing were due by December 21, 2013. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11729), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 6, 2013, at 78 FR 66769.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

The ABB Inc. Cash Balance Pension Plan (the Cash Balance Plan); the Cash Balance Pension Plan for Certain Represented Employees of ABB Inc. (the Union Cash Balance Plan); the Pension Plan for Employees of the Process Analytics Division of ABB Inc. Represented by the Laborer's International Union of North America (AFL–CIO), Local No. 1304 (the Process Analytics Plan); the Pension Plan of Fischer & Porter Company (the Fischer & Porter Plan); and the ABB Inc. Pension Plan (UE 625 & 626) (the UE 625 & 626 Plan) (each a Plan, and collectively, the Plans)

Located in Cary, NC

[Prohibited Transaction Exemption 2014–02; Application Nos. D–11742 thru D–11746 respectively]

Exemption

The restrictions of sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of ERISA and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code,[3] shall not apply, to the in-kind contribution (the Contribution) of certain U.S. Treasury Bills (the Securities) to the Plans by ABB Inc., a party in interest with respect to the Plans, on September 14, 2012, provided that the following conditions are satisfied:

(a) The fair market value of the Securities was determined by ABB Inc. based on the closing price of the Securities on the date of Contribution (the Contribution Date) as quoted by Bloomberg L.P., an independent third party in the business of providing financial data;

(b) The Securities represented less than 12% of the assets of any Plan;

(c) The terms of the Contribution were no less favorable to the Plans than those negotiated at arm's length under similar circumstances between unrelated parties;

(d) The Plans paid no commissions, costs or fees with respect to the Contribution; and

(e) ABB Inc. reviewed the methodology used to value the Securities and ensured that the Plans received the fair market value of the Securities.

Effective Date: This exemption is effective as of September 14, 2012.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice) on or before September 5, 2013. During the comment period, the Department received two written comments which generally involved matters outside the scope of the proposed exemption. The Department also received one written comment from ABB Inc. (the Applicant). The Applicant's comment and the Department's response thereto are described below.[4]

Applicant's Comment

The Applicant's comment generally provided clarifications and/or updates of the names of certain corporate entities of ABB Inc. and the Plans' actuary, the number of employees of ABB Inc., and the numbers of participants and beneficiaries of the Plans. In this regard, Paragraph 1 of the Facts and Representations section of the Notice (the F&R) describes ABB Inc. as the U.S. subsidiary of Asea Brown Boveri Ltd., and further describes ABB Inc. as employing approximately 20,000 employees in the U.S. The Applicant clarifies that ABB Inc. is the indirect U.S. subsidiary of *ABB Ltd.,* and that ABB Inc. employs approximately 8,000 individuals in the U.S. Paragraphs 2 and 7 of the F&R describe the risk management team that advises the ABB Inc. Pension Review Committee with respect to the investment of the assets in the ABB Inc. Master Trust as the Pension and Risk Management Committee. The Applicant clarifies that this entity is called *Pension and Thrift Management.* Section 2 of the F&R describes the Plans' actuary as Towers Watson. The Applicant clarifies that the actuary for each of the Plans is *Towers Watson Delaware Holdings, Inc.* The Department takes note of the Applicant's clarifications to Paragraphs 1, 2, and 7 of the F&R.

Paragraph 1 of the F&R provides the participant counts for each of the Plans as of June 26, 2012, as that was the most recent audited information available at the time of the proposed exemption. The Applicant's comment provides an updated participant count for the Plans as of December 31, 2012, as follows: The Cash Balance Plan has 15,796 participants and beneficiaries; the Union Cash Balance Plan has 701 participants and beneficiaries; the Process Analytics Plan has 162 participants and beneficiaries; the Fischer & Porter Plan has 1,380 participants and beneficiaries; and the UE 625 & 626 Plan has 218 participants and beneficiaries. The Department takes note of the Applicant's update to the numbers of participants and beneficiaries of the Plans in Paragraph 1 of the F&R.

The Applicant also provided a correction to the table in Paragraph 9 of the F&R that describes the increase in the estimated AFTAP for each Plan that occurred as a result of the Contribution. In this regard, the Applicant states that the table provided the correct AFTAP amounts but attributed such amounts to the incorrect Plans, and that the following table correctly reflects the AFTAP amounts for each Plan:

[3] For purposes of this exemption, references to the provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[4] Capitalized terms not defined herein have the meanings ascribed to them in the facts and representations of the proposed exemption.

Plan	Estimated AFTAP without discounted securities contribution (percent)	AFTAP with discounted securities contribution	Increase in AFTAP due to securities contribution (percent)
Cash Balance Plan	110.44	112.29	1.85
Union Cash Balance Plan	112.35	113.72	1.37
Process Analytics Plan	111.74	120.39	8.65
UE 625 & 626 Plan	109.09	121.70	12.61
Fischer & Porter Plan	112.78	114.16	1.38

The Department notes the changes to the table in Paragraph 9 of the F&R and a conforming change to Paragraph 12 as well.

Finally, the Applicant seeks to clarify that Paragraph 10 of the Summary of F&R, should read that the Contribution may have violated sections 406(b)(1) and (2) of the Act. The Department acknowledges this clarification.

After giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption, as described above. The complete application file is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the **Federal Register** on July 22, 2013, at 78 FR 43935.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693–8352. (This is not a toll-free number.)

Intel Corporation (Intel)

Located in Santa Clara, CA

[Prohibited Transaction Exemption 2014–03; Exemption Application No. L–11760]

Exemption

Section I. Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Act shall not apply, effective January 1, 2013, to:

(a) The reinsurance of risks and the receipt of premiums therefrom by Technology Assurance Limited (TAL), an affiliate of Intel, as the term ''affiliate'' is defined in Section III(a) below, in connection with basic and supplemental group term life insurance sold by the Minnesota Life Insurance Company (MN Life), or any successor insurance company which is unrelated to Intel (the Fronting Insurer), to the Intel Group Life Insurance Plan (the Life Plan); and

(b) The reinsurance of risks and the receipt of premiums therefrom by TAL, in connection with basic and supplemental accidental death and dismemberment (AD&D) insurance sold by the Fronting Insurer to the Intel Group Accidental Death and Dismemberment Plan (the AD&D Plan); [5] provided the conditions set forth in Section II, below, are satisfied.

Section II. Conditions

(a) TAL—-

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Intel that is described in section 3(14)(E) or 3(14)(G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one ''State,'' as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Hawaii Department of Insurance, which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction covered by this exemption; or

(B) Has undergone a financial examination by the HIDOI within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has occurred; and

(5) Is licensed to conduct reinsurance transactions by Hawaii, whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority.

(b) The Plans pay no more than adequate consideration for the insurance contracts.

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof.

(d) In the initial year of every reinsurance contract involving TAL and a Fronting Insurer, there is an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits continue in all subsequent years of each such contract of reinsurance and in every renewal of each such contract, and will at least approximate the increase in benefits that will be effective as of January 1, 2013, as described in the Notice of Proposed Exemption (the Notice).

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs.

(f) The Fronting Insurer has a financial strength rating of ''A'' or better from A. M. Best Company. The reinsurance arrangement between the Fronting Insurer and TAL will be indemnity insurance only, (*i.e.,* the Fronting Insurer will not be relieved of liability to the Plans should TAL be unable or unwilling to cover any liability arising from the reinsurance arrangement).

(g) The Plans retain an independent, qualified fiduciary (the I/F) or successor to such fiduciary, as defined in Section III(c), below, to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this exemption have been satisfied.

(h) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving TAL and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participants and

[5] The AD&D Plan and the Life Plan are together referred to herein as the ''Plans.''

beneficiaries received in the initial year of each such contract involving TAL and the Fronting Insurer.

(i) The I/F will: Monitor the transactions described herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans.

(j) In connection with the provision to participants in the Plans of the insurance coverage provided by the Fronting Insurer which is reinsured by TAL, the I/F will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by TAL and must determine that the requirements of this exemption, and the terms of the increased benefits continue to be satisfied.

Section III. Definitions

(a) The term ''affiliate'' of a person includes any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term ''I/F'' describes a person, or a successor to such person, who is not Intel or TAL or an affiliate of either entity; and:

(1) Does not have an ownership interest in Intel, in TAL, or in an affiliate of either;

(2) Is not a fiduciary with respect to the Plans prior to its appointment to serve as the I/F;

(3) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(4) Has appropriate training, experience, and facilities to act on behalf of the Plans regarding the subject transactions in accordance with the fiduciary duties and responsibilities prescribed by the Act.

For purposes of this definition of an ''I/F,'' no organization or individual may serve as an I/F for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) for that fiscal year exceeds two percent (2%) of that organization's or individual's annual gross income from all sources for the prior fiscal year from Intel or from TAL, or from an affiliate of either (including amounts received for services as I/F under any prohibited transaction exemption granted by the Department).

In addition, no organization or individual who is an I/F, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Intel or from TAL, or from any affiliate of either during the period that such organization or individual serves as an I/F, and continuing for a period of six (6) months after such organization or individual ceases to be the I/F, or negotiates any such transaction during the period that such organization or individual serves as the I/F.

In the event a successor I/F is appointed to represent the interests of the Plans with respect to the subject transactions, there may be no lapse in time between the resignation or termination of the former I/F and the appointment of the successor I/F.

Effective Date: This exemption is effective as of January 1, 2013.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing within 50 days of the date of the publication on November 6, 2013, of the Notice in the **Federal Register**. The Notice stated that all comments and requests for a hearing were due by December 26, 2013. In an email dated December 4, 2013, Intel's representative confirmed that the required notification was sent to all interested persons via email and/or first class mail no later than November 15, 2013.

During the comment period, the Department received no requests for a hearing. In addition, the Department did not receive any written comments.

After full consideration and review of the entire record, the Department has decided to grant the exemption. The complete application file (L–11760) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of an exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of March, 2014.

Lyssa E. Hall,

Acting Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2014–07984 Filed 4–9–14; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications for Women in Apprenticeship and Nontraditional Occupations Technical Assistance Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY–13–08.

SUMMARY: The U.S. Department of Labor's (the Department) Women's Bureau (WB) and Employment and Training Administration (ETA), announce the availability of approximately $1.8 million in grant funds authorized by the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992, Public Law 102–530, 29 U.S.C. 2501 *et seq.* The Department plans to disburse Program Year (PY) 2013 and PY 2014 WANTO grant funds to up to four (4) community-based organization (CBO) grantees within the range of $400,000 to $650,000 for a 2-year grant period of performance. These grants are for the development and operation of innovative TA projects to improve outreach, recruitment, hiring, training, employment, and retention of women, women of color and women with disabilities in apprenticeships and nontraditional occupations.

The complete SGA and any subsequent SGA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications under this announcement is May 2, 2014. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Latifa Jeter, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3553.

Signed April 3, 2014 in Washington, DC.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2014–08052 Filed 4–9–14; 8:45 am]

BILLING CODE 4510–FN–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Merit Systems Protection Board.

ACTION: Notice and request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to the Office of Management and Budget (OMB) for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Consideration will be given to all comments received by June 9, 2014.

ADDRESSES: Written comments may be submitted to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; (202) 653–7200, by fax: (202) 653–7130, or by email: *mspb@mspb.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; phone: (202) 653–7200; fax: (202) 653–7130; or email: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between MSPB and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on MSPB's services will be unavailable.

The MSPB will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of MSPB;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data

collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 18,000.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of Activities: 12.

Average Number of Respondents per Activity: 500.

Annual Responses: 3,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 1,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of MSPB, including whether the information shall have practical utility; (b) the accuracy of MSPB'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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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.

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.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2014–08023 Filed 4–9–14; 8:45 am]

BILLING CODE 7400–01–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Submission for OMB Review, Comment Request, Proposed Collection: Heritage Health Index 2014 on the State of America's Collections (HHI 2014)

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB Review, Comment Request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). 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.

A copy of the proposed information collection request 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 *Contact* section below on or before May 9, 2014.

OMB is particularly interested in comments that help the agency to:

- 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.

ADDRESSES: Christopher J. Reich, Senior Advisor, Institute of Museum and Library Services, 1800 M St. NW., 9th Floor, Washington, DC 20036. Mr. Reich can be reached by Telephone: 202–653–4685, Fax: 202–653–4608, or by email at *creich@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of Federal support for the Nation's 123,000 libraries and 17,500 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying, and disseminating information on, the best practices of such programs; and developing plans to improve museum, library and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

Abstract: Because collections items are at the heart of all cultural heritage and collecting practices, IMLS will collect the Heritage Health Index to measure the extent and effectiveness of preservation activities and initiatives, and to identify areas for capacity building and professional development for collections stewards, from the nation's nonprofit museums, libraries, archives, historical societies/sites, and archaeological repositories.

Current Actions: This notice proposes clearance of the Heritage Health Index 2014 on the State of America's Collections (HHI 2014). The 60-day notice for the HHI 2014 (previously HHI II), was published in the **Federal Register** on December 10, 2013, (FR vol.

78, No. 237, pgs. 74173–74174). The agency has taken into consideration the one comment that was received under this notice.

Agency: Institute of Museum and Library Services.

Title: Heritage Health Index 2014 on the State of America's Collections (HHI 2014).

OMB Number: To Be Determined.

Agency Number: 3137.

Frequency: One time.

Affected Public: The target population for the HHI 2014 Survey is U.S. cultural heritage organizations, including libraries, museums, archives, and archaeological repositories. A national probability sample of institutions generated using available mailing lists will be employed by the survey. Individual survey respondents within selected institutions will be knowledgeable persons about collections care and practices. Federal Government, State, Local or Tribal Government, and not-for-profit institutions.

Number of Respondents: 4,195.

Estimated Average Burden per Response: 1.8 hours.

Estimated Total Annual Burden: 4,723 hours.

Total Annualized capital/startup costs: N/A.

Total Annualized cost to respondents: $21,130.

Total Annual costs to Federal Government: $379,542.

Contact: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: April 7, 2014.

Kim A. Miller,

Management Analyst, Office of Planning, Research, and Evaluation.

[FR Doc. 2014–08042 Filed 4–9–14; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 USC U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection.

DATES: Written comments should be received by June 9, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.*

FOR ADDITIONAL INFORMATION OR COMMENTS: ontact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title: Evaluation of National Science Foundation's Partnerships for International Research and Education Program.

OMB Approval Number: Not applicable.

Expiration Date of Approval: Not applicable.

Abstract. This is a request that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, a three year clearance for Abt Associates Inc. to conduct data collection efforts for an outcome evaluation of the National Science Foundation's Partnerships for International Research and Education (PIRE) Program. The PIRE program offers researchers an opportunity to forge collaborative relationships with foreign scientists and engineers and provides educational and professional development opportunities for U.S.-based postdoctoral fellows, graduate and undergraduate students to acquire on-site research experience at an international laboratory, institution or research site, whether university-, industry- or government-based. The PIRE program funds projects across a broad array of scientific and engineering disciplines in an effort to catalyze long-term, sustainable international partnerships for collaborative research. Across its first four award cohorts in 2005, 2007, 2010 and 2012, PIRE has made a total of 59 awards. PIRE grant awards range from $2.5 million to $5 million and typically last five years. These projects range from relatively small, bi-national consortia (e.g., two U.S. and two non-U.S. institutions in one foreign country) to large, multi-national, multi-institutional awards (e.g., a dozen U.S. institutions and 11 non-U.S. institutions representing eight foreign nations). Many are multi-disciplinary, combining, for example, the expertise of econometricians with researchers in fluid dynamics; and, notably, many feature partnerships between academic and industrial or non-profit institutions. Collectively, these 59 PIRE projects have provided research and educational opportunities for more than 100 postdoctoral fellows, more than 625 graduate students and approximately 600 undergraduates. More than 600 U.S.-based and over 400 foreign-based faculty and researchers at university and non-academic institutions have participated in one or more PIRE-funded collaborations.

To assess the program's outcomes, NSF plans to collect data to explore the number and quality of publications produced by PIRE projects and participants, the international experiences of participants, their educational and career outcomes, the extent to which program participants establish and maintain collaborations with foreign researchers, and what effect the PIRE program has on policies and practices at U.S. and foreign institutions. The primary methods of data collection will include analyses of NSF program records and bibliometric data, and web-based surveys of principal investigators, postdoctoral and student participants, foreign senior investigators, and administrative officials at U.S. institutions.

Expected Respondents: Includes PIRE principal and co-principal investigators; postdoctoral, graduate student and undergraduate PIRE participants; foreign senior investigators (individuals with whom PIRE principal investigators have formed partnerships); administrative officials within international affairs and/or study abroad offices at U.S. institutions of the lead PIRE principal investigators; and principal or co-principal investigators, postdoctoral and graduate student participants in NSF-funded projects other than PIRE, selected for similarity to PIRE based on award year, amount, and duration, research fields, and degree of emphasis on international collaboration.

Use of the Information: The purpose of these studies is to provide NSF with outcome data on the PIRE program. These data would be used for internal program management and for reporting to stakeholders within and outside of NSF.

Burden on the Public: NSF estimates 3,000 survey responses collected one

time at an average of 20 minutes per response for a total of 1,000 hours.

Consult With Other Agencies & The Public: NSF has not consulted with other agencies. However, the contractor conducting the evaluation has gathered information from an external working group of subject matter experts on the study design and data collection plan. A request for public comments will be solicited through announcement of data collection in the **Federal Register**.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 4, 2014.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–07963 Filed 4–9–14; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203A–2(d), OMB Control No. 3235–0689, SEC File No. 270–630.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title of the collection of information is: ''Exemption for Certain Multi-State Investment Advisers (Rule 203A–2(d)).'' Its currently approved OMB control number is 3235–0689. 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.

Pursuant to section 203A of the Investment Advisers Act of 1940 (the ''Act'') (15 U.S.C. 80b–3a), an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless that adviser has at least $25 million in assets under management or advises a Commission-registered investment company. Section 203A also prohibits from Commission registration an adviser that: (i) Has assets under management between $25 million and $100 million; (ii) is required to be registered as an investment adviser with the state in which it maintains its principal office and place of business; and (iii) if registered, would be subject to examination as an adviser by that state (a ''mid-sized adviser''). A mid-sized adviser that otherwise would be prohibited may register with the Commission if it would be required to register with 15 or more states. Similarly, Rule 203A–2(d) under the Act (17 CFR 275.203a–2(d)) provides that the prohibition on registration with the Commission does not apply to an investment adviser that is required to register in 15 or more states. An investment adviser relying on this exemption also must: (i) Include a representation on Schedule D of Form ADV that the investment adviser has concluded that it must register as an investment adviser with the required number of states; (ii) undertake to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that it would be required by the laws of fewer than 15 states to register as an investment adviser with the state; and (iii) maintain in an easily accessible place a record of the states in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV relying on the rule.

Respondents to this collection of information are investment advisers required to register in 15 or more states absent the exemption that rely on rule 203A–2(d) to register with the Commission. The information collected under rule 203A–2(d) permits the Commission's examination staff to determine an adviser's eligibility for registration with the Commission under this exemptive rule and is also necessary for the Commission staff to use in its examination and oversight program. This collection of information is codified at 17 CFR 275.203a–2(d) and is mandatory to qualify for and maintain Commission registration eligibility under rule 203A–2(d). Responses to the recordkeeping requirements under rule 203A–2(d) in the context of the Commission's examination and oversight program are generally kept confidential.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 152. These advisers will incur an average one-time initial burden of approximately 8 hours, and an average ongoing burden of approximately 8 hours per year, to keep records sufficient to demonstrate that they meet the 15-state threshold. These estimates are based on an estimate that each year an investment adviser will spend approximately 0.5 hours creating a record of its determination whether it must register as an investment adviser with each of the 15 states required to rely on the exemption, and approximately 0.5 hours to maintain these records. Accordingly, we estimate that rule 203A–2(d) results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 1,216 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07998 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0538, SEC File No. 270–481]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203–3, Form ADV–H.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form ADV–H under the Investment Advisers Act of 1940.'' Rule 203–3 (17 CFR 275.203–3) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) requires that registered advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV–H. Rule 204–4 (17 CFR 275.204–4) under the Investment Advisers Act of 1940 requires that exempt reporting advisers requesting a temporary hardship exemption submit the request on Form ADV–H. The purpose of this collection of information is to permit advisers to obtain a hardship exemption to not complete an electronic filing. The temporary hardship exemption that is available to registered advisers under rule 203–3 and exempt reporting advisers under rule 204–4 permits these advisers to make late filings due to unforeseen computer or software problems. The continuing hardship exemption available to registered advisers under rule 203–3 permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

The Commission has estimated that compliance with the requirement to complete Form ADV–H imposes a total burden of approximately one hour for an adviser. Based on our experience with hardship filings, we estimate that we will receive 11 Form ADV–H filings annually from registered investment advisers and three Form ADV–H filings annually from exempt reporting advisers. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 14 hours for this collection of information.

Rule 203–3, rule 204–4, and Form ADV–H do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–H consists of filings with the Commission. These filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–08002 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0313, SEC File No. 270–40]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203–2 and Form ADV–W.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Rule 203–2 (17 CFR 275.203–2) and Form ADV–W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b).'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The respondents to the collection of information are all investment advisers that are registered with the Commission or have applications pending for registration. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 600 respondents annually filing for full withdrawal and approximately 200 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 500 hours ((600 respondents × .75 hours) + (200 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential. 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 control number.

Written comments are invited on: (a) Whether the documentation of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission,
C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: April 2, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–08001 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 204–2; OMB Control No. 3235–0278, SEC File No. 270–215.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 204–2'' (17 CFR 275.204–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1). Rule 204–2 requires SEC-registered investment advisers to maintain copies of certain books and records relating to their advisory business. The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. The respondents to the collection of information are investment advisers registered with the Commission. As of December 2, 2013, there were 10,946 SEC registered advisers. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential. The records that an adviser must keep in accordance with rule 204–2 must generally be retained for not less than five years.

The Commission has estimated that compliance with the requirements of the rule imposes a total burden of approximately 181.45 hours for an adviser. Based on our experience, the Commission staff estimates a total annual burden of 1,986,152 hours for the collection of this information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–08003 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–485, OMB Control No. 3235–0547]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:
Investor Form.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) that the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

In both 2012 and 2013, the Commission received over a million contacts from investors who have complaints or questions on a wide range of investment-related issues. These contacts generally fall into the following three categories:

(a) complaints against Commission-regulated individuals or entities;

(b) questions concerning the federal securities laws, companies or firms that the Commission regulates, or other investment-related questions; and

(c) tips concerning potential violations of the federal securities laws.

Investors who submit complaints, ask questions, or provide tips do so voluntarily. To make it easier for the public to contact the agency electronically, the Commission created a series of investor complaint and question electronic forms. Investors can access forms through the *SEC Center for Complaints and Enforcement Tips* portal. The Commission consolidated four paper complaint forms into one electronic form (*the Investor Form*) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also provide the investor with automated information about their issue. The investor may describe their complaint and submit it without their name or contact information.

Although the Investor Form provides a structured format for incoming investor correspondence, the Commission does not require that investors use any particular form or format when contacting the agency. To the contrary, investors may submit complaints, questions, and tips through a variety of other means, including telephone, letter, facsimile, or email.

Approximately 20,000 investors each year voluntarily choose to use the complaint and question forms. Investors who choose not to use the Investor Form receive the same level of service as those who do. The dual purpose of the form is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to streamline the workflow of the Commission staff who handle those contacts.

The Commission has used—and will continue to use—the information that investors supply on the Investor Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, initiating enforcement investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends. Use

of the Investor Form is strictly voluntary. The Investor Form will ask investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken.

The staff of the Commission estimates that the total reporting burden for using the complaint and question forms is 5,000 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 20,000 respondents × 15 minutes = 5,000 burden hours.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F St. NE., Washington DC, 20549; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: April 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–08005 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0688; SEC File No. 270–631]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 203A–5.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is Rule 203A–5. Rule 203A–5 (17 CFR 275.203A–5) established a one-time requirement for investment advisers registered with the Commission as of January 1, 2012 to file a mandatory amendment to their Form ADV by March 30, 2012, and, if they no longer met Commission-registration eligibility requirements, to withdraw from registration by filing Form ADV–W by June 28, 2012. The deadlines for the information collected pursuant the rule were March 30, 2012 (for Form ADV amendments) and June 28, 2012 (for withdrawals). The Commission is no longer collecting any information pursuant to the rule.

Accordingly, the staff estimates that, each year, no advisers will have to file a Form ADV amendment or Form ADV–W withdrawal pursuant to rule 203A–5, and that the total burden for the information collection is zero hours at a cost of $0. Although Commission staff estimates that there is no burden associated with rule 203A–5, the staff is requesting a one hour burden for administrative purposes.

The collection of information under rule 203A–5 was mandatory. The information provided under rule 203A–5 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–08000 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 203A–2(e).
OMB Control No. 3235–0559, SEC File No. 270–501.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the previously approved collection of information discussed below.

Rule 203A–2(e),[1] which is entitled ''Internet Investment Advisers,'' exempts from the prohibition on Commission registration an Internet investment adviser who provides investment advice to all of its clients exclusively through computer software-based models or applications termed under the rule as ''interactive Web sites.'' [2] These advisers generally would not meet the statutory thresholds currently set out in section 203A of the

[1] 17 CFR 275.203A–2(e).

[2] Included in rule 203A–2(e) is a limited exception to the interactive Web site requirement which allows these advisers to provide investment advice to fewer than 15 clients through other means on an annual basis. 17 CFR 275.203A–2(e)(1)(i). The rule also precludes advisers in a control relationship with an SEC-registered Internet adviser from registering with the Commission under the common control exemption provided by rule 203A–2(b) (17 CFR 275.203A–2(b)). 17 CFR 275.203A–2(e)(1)(iii).

Advisers Act [3]—they do not manage $25 million or more in assets and do not advise registered investment companies, or they manage between $25 million and $100 million in assets, do not advise registered investment companies or business development companies, and are required to be registered as investment advisers with the states in which they maintain their principal offices and places of business and are subject to examination as an adviser by such states.[4] Eligibility under rule 203A–2(e) is conditioned on an adviser maintaining in an easily accessible place, for a period of not less than five years from the filing of Form ADV,[5] a record demonstrating that the adviser's advisory business has been conducted through an interactive Web site in accordance with the rule.[6]

This record maintenance requirement is a ''collection of information'' for PRA purposes. The Commission believes that approximately 74 advisers are registered with the Commission under rule 203A–2(e), which involves a recordkeeping requirement of approximately four burden hours per year per adviser and results in an estimated 296 of total burden hours (4 × 74) for all advisers.

This collection of information is mandatory, as it is used by Commission staff in its examination and oversight program in order to determine continued Commission registration eligibility of advisers registered under this rule. Responses generally are kept confidential pursuant to section 210(b) of the Advisers Act.[7] An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07999 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 80b–3a(a).

[4] *Id.*

[5] The five-year record retention period is a similar recordkeeping retention period as imposed on all advisers under rule 204–2 of the Advisers Act. See rule 204–2 (17 CFR 275.204–2).

[6] 17 CFR 275.203A–2(e)(1)(ii).

[7] 15 U.S.C. 80b–10(b).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15b6–1 and Form BDW, SEC File No. 270–17, OMB Control No. 3235–0018.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15b6–1 (17 CFR 240.15b6–1), under the Securities Exchange Act of 1934 (15 U.S.C 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. On average, the Commission estimates that it would take a broker-dealer approximately one hour to complete and file a Form BDW to withdraw from Commission registration as required by Rule 15b6–1. The Commission estimates that approximately 488 broker-dealers withdraw from Commission registration annually [1] and, therefore, file a Form BDW via the internet with the Central Registration Depository, a computer system operated by the Financial Industry Regulatory Authority, Inc. that maintains information regarding registered broker-dealers and their registered personnel. The 488 broker-dealers that withdraw from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately 488 hours.[2]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 2, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07997 Filed 4–9–14; 8:45 a.m.]

BILLING CODE 8011–01–P

[1] This estimate is based on Form BDW data collected over the past three years for fully registered broker- dealers. In fiscal year (from 10/1 through 9/30) 2011, 524 broker-dealers withdrew from registration. In fiscal year 2012, 428 broker-dealers withdrew from registration. In fiscal year 2013, 513 broker-dealers withdrew from registration. (524 + 428 + 513)/3 = 488.

[2] (488 × 1 hour) = 488 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71878; File No. SR–NYSEMKT–2014–25]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Introduce a New Credit for Certain Retail Providing Liquidity on the Exchange

April 4, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 24, 2014, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 to introduce a new credit for certain retail providing liquidity on the Exchange. The Exchange proposes to implement the fee change effective April 1, 2014. 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 the 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 its Price List to introduce a new credit for certain retail providing liquidity on the Exchange.[4] The Exchange proposes to implement the fee change effective April 1, 2014.

The Exchange currently operates the Retail Liquidity Program as a pilot program that is designed to attract additional retail order flow to the Exchange for Exchange-traded securities (including but not limited to Exchange-listed securities and securities listed on the Nasdaq Stock Market, LLC (''NASDAQ'') traded pursuant to unlisted trading privileges) while also providing the potential for price improvement to such order flow.[5] Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a ''Retail Order,'' which is defined in Rule 107C(a)(3)—Equities as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (''RMO''), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[6] An execution of a Retail Order is always considered to remove liquidity, whether against contra-side interest in the Retail Liquidity Program or against the Book.[7] As described in the Price List, executions of Retail Orders receive a credit of $0.0005 per share if executed against Retail Price Improvement Orders (''RPIs'') or Mid-Point Passive Liquidity (''MPL'') Orders and are otherwise charged according to standard fees applicable to non-Retail Orders if executed against the Book.[8]

The Exchange proposes to introduce a new credit of $0.0030 per share for executions of orders designated as ''retail'' that provide liquidity on the Book.[9] An order properly designated as ''retail'' would be required to satisfy the requirements of Rule 107C(a)(3)—Equities, but would not be submitted as a Retail Order within the Retail Liquidity Program and therefore would not need to be submitted by an RMO.[10] Designation of an order as ''retail'' for purposes of the proposed new credit would be separate and distinct from submission of a Retail Order for purposes of the Retail Liquidity Program, despite the characteristics being identical (i.e., they must each satisfy the requirements in Rule 107C(a)(3)—Equities).

The Exchange proposes to permit members and member organizations to designate orders as ''retail'' for the purposes of the proposed $0.0030 credit either (1) by means of a specific tag in the order entry message or (2) by designating a particular member or member organization mnemonic used at the Exchange as a ''retail mnemonic.'' A member or member organization would be required to attest, in a form and/or manner prescribed by the Exchange, that substantially all orders submitted to the Exchange satisfy the requirements of Rule 107C(a)(3)—Equities.[11]

A member or member organization would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as ''retail'' if all the requirements of Rule 107C(a)(3)—Equities are met. Such written policies and procedures must require the member or member organization to (1) exercise due diligence before entering orders designated as ''retail'' to assure that such entry is in compliance with the requirements specified by the Exchange, and (2) monitor whether orders designated as ''retail'' meet the applicable requirements. If the member or member organization represents orders designated as ''retail'' from another broker-dealer customer of the member or member organization, the member's or member organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as ''retail'' meet the requirements of Rule 107C(a)(3)—Equities. The member or member organization must (1) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as ''retail'' that entry of such orders designated as ''retail'' will be in compliance with the requirements specified by the Exchange, and (2) monitor whether its broker-dealer customer's orders designated as

[4] The proposed pricing would only apply to securities priced $1.00 or greater.

[5] *See* Rule 107C—Equities. *See also* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSEAmex–2011–84).

[6] RMO is defined in Rule 107C(a)(2)—Equities as a member organization (or a division thereof) that has been approved by the Exchange under Rule 107C—Equities to submit Retail Orders.

[7] A Retail Order is an Immediate or Cancel Order. *See* Rule 107C(a)(3)—Equities. *See also* Rule 107C(k)—Equities for a description of the manner in which a member or member organization may designate how a Retail Order will interact with available contra-side interest.

[8] RPI is defined in Rule 107C(a)(4)—Equities and consists of non-displayed interest in Exchange-traded securities that is priced better than the best protected bid (''PBB'') or best protected offer (''PBO''), as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. MPL Order is defined in Rule 13—Equities as an undisplayed limit order that automatically executes at the mid-point of the protected best bid or offer (''PBBO'').

[9] The existing rates in the Price List would apply to executions of MPL Orders (e.g., $0.0016 per share). A Supplemental Liquidity Provider (''SLP'') market maker (''SLMM'') could designate orders as ''retail'' and be eligible for the proposed new credit.

[10] The RMO aspect of Rule 107C(a)(3)—Equities would not be considered when determining whether an order designated as ''retail'' satisfies the requirements thereunder.

[11] This would be similar to the process under the Retail Liquidity Program, whereby an RMO must attest, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under Rule 107C—Equities. *See* Rule 107C(b)(C)—Equities. This would also be similar to the manner in which an Exchange Trading Permit (''ETP'') Holder on NYSE Arca Equities, Inc. (''NYSE Arca Equities'') may designate orders as ''retail'' outside of the NYSE Arca Equities Retail Liquidity Program. *See, e.g.,* Securities Exchange Act Release No. 68322 (November 29, 2012), 77 FR 72425 (December 5, 2012) (SR–NYSEArca–2012–129).

''retail'' meet the applicable requirements.[12]

Designating orders as ''retail'' would be optional. Accordingly, a member or member organization that chooses not to designate orders as ''retail'' would therefore either (1) not use the applicable tag in the order entry message or (2) not designate any of its mnemonics as ''retail mnemonics.'' The Exchange further proposes that it may disqualify a member or member organization from eligibility for the proposed new $0.0030 credit if the Exchange determines, in its sole discretion, that a member or member organization has failed to abide by any of the requirements proposed herein, including, for example, if a member or member organization (1) designates greater than a de minimis quantity of orders to the Exchange as ''retail'' that fail to meet any of the applicable requirements, (2) fails to make the required attestation to the Exchange, or (3) fails to maintain the required policies and procedures.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that members and 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,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] 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 notes that a significant percentage of the orders of individual investors are executed over-the-counter.[15] While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. In this regard, the Exchange believes that the proposed change is reasonable because it would contribute to maintaining or increasing the proportion of retail flow in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods). The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange also believes that providing a credit for executions of orders that provide liquidity on the Book and that are designated as ''retail'' is reasonable because it would create an added financial incentive for members and member organizations to bring additional retail flow to a public market. The proposed new credit is also reasonable because it would reduce the costs of members and member organizations that represent retail flow and potentially also reduce costs to their customers. The proposed change is also reasonable because it would be similar to the manner in which NASDAQ provides a $0.0033 credit for ''Designated Retail Orders'' that provide liquidity.[16]

Absent this proposal, for example, a credit of $0.0016 would apply to the retail providing liquidity that this proposal targets.[17] The Exchange believes that providing a credit of $0.0030 per share for executions of orders that provide liquidity on the Book and that are designated as ''retail'' is reasonable because it is set at a level that would reasonably incentivize members and member organizations to qualify for eligibility to designate orders as ''retail'' (e.g., attestations and procedures) as well as to actually direct such retail flow to the Exchange. Such orders designated as ''retail'' would increase the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because retail flow is likely to reflect long-term investment intentions, it promotes price discovery and dampens volatility. Accordingly, the presence of retail flow on the Exchange has the potential to benefit all market participants. For this reason, the Exchange believes that it is equitable and not unfairly discriminatory to provide a financial incentive to encourage greater retail participation on the Exchange.

The Exchange believes that the process for designating orders as ''retail'' and the requirements surrounding such designations, such as attestations and procedures, are reasonable because they would reasonably ensure that substantially all of those orders would satisfy the applicable requirements of Rule 107C(a)(3)—Equities and therefore be eligible for the corresponding credit of $0.0030 per share. These processes and requirements are also reasonable because they are substantially similar to those in effect on the Exchange for the Retail Liquidity Program and on NYSE Arca Equities related to pricing for certain retail flow.[18] More specifically, the Exchange understands that some members and member organizations represent both retail flow as well as other agency and riskless principal flow that may not meet the strict requirements of Rule 107C(a)(3)—Equities. The Exchange further understands that limitations in order management systems and routing networks used by such members and member organizations may make it infeasible for them to isolate 100% of retail flow from other agency or riskless principal, non-retail flow that they would direct to the Exchange. Unable to make the categorical attestation required by the Exchange, some members and member organizations may not attempt to qualify for the proposed new $0.0030 credit, notwithstanding that they have substantial retail flow. The Exchange believes that it is reasonable to permit a de minimis amount of orders to be designated as ''retail,'' despite not satisfying the requirements of Rule

[12] FINRA, on behalf of the Exchange, would review member and member organization compliance with these requirements through an exam-based review of the member's or member organization's internal controls.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (''Concept Release'') (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission's Web site) (''White Speech''); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site) (''Schapiro Speech''). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in ''dark'' venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[16] *See* NASDAQ Rule 7018.

[17] The Price List also provides for credits for SLPs.

[18] *See supra* note 11.

107C(a)(3)—Equities, because it would allow for enough flexibility to accommodate member and member organization system limitations while still reasonably ensuring that no more than a de minimis amount of orders submitted to the Exchange would not satisfy the requirements of Rule 107C(a)(3)—Equities. This is also equitable and not unfairly discriminatory because it will reasonably ensure that similarly situated members and member organizations that have only slight differences in the capability of their systems would be able to equally benefit from the proposed pricing for orders designated as ''retail.''

The pricing proposed herein is equitable and is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors' orders would be subject to greater transparency. As previously recognized by the Securities and Exchange Commission (''Commission''), ''markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.'' [19] The Exchange has sought to balance this view in setting the pricing of the credit available for executions of orders designated as ''retail'' that provide liquidity compared to other liquidity providing executions, recognizing that the ability of a member's or member organization's contra-side liquidity to interact with such orders designated as ''retail'' could be a potential benefit applicable to the members or member organizations submitting such contra-side liquidity.

The proposal is also equitable and not unfairly discriminatory because the ability to designate an order as ''retail'' is available to all members and member organizations that submit qualifying orders and satisfy the other related requirements.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would increase competition among execution venues and encourage additional liquidity. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market, and the pricing related thereto, would encourage competition. The proposed change would also permit the Exchange to compete with other markets, including NASDAQ, which similarly provides a credit for ''Designated Retail Orders'' that provide liquidity.[21]

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–25. 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

[19] *See* SR–NYSEAmex–2011–84, *supra* note 5. *See also* Concept Release, White Speech, Schapiro Speech, *supra* note 15.

[20] 15 U.S.C. 78f(b)(8).

[21] *See supra* note 16.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

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 inspection and copying in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet 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–2014–25 and should be submitted on or before May 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–08057 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71872; File No. SR–CBOE–2014–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Amend Its Rule 24.19

April 4, 2014.

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 March 21, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rule related to Multi-Class Broad-Based Index Option Spread Orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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 Exchange 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 Exchange 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 make changes regarding Multi-Class Broad-Based Index Option Spread Orders (''Multi-Class Spread Orders'') and its Rule 24.19. Exchange Rule 24.19 provides a definition of the term ''Broad-Based Index Option'' for the purposes of Rule 24.19. However, some of the products that qualify as ''Broad-Based Index Options'' under Rule 24.19 are not, in and of themselves, index options. As such, the Exchange proposes to rename this term ''Broad Based Option'' and replace the term ''Broad-Based Index Option'' with ''Broad-Based Option'' throughout Rule 24.19.

Similarly, Rule 24.19 provides a definition of the term ''Multi-Class Broad-Based Index Option Spread Order.'' Because of the change proposed above, the Exchange proposes to remove the word ''Index'' from this term. The Exchange also proposes to replace the word ''Spread'' with ''Complex'' in order to achieve continuity within Exchange rules (spread orders are complex orders). As such, the term would now be ''Multi-Class Broad-Based Option Complex Order'' and the Exchange proposes to replace ''Multi-Class Broad-Based Index Option Spread Order'' with ''Multi-Class Broad-Based Option Complex Order'' throughout Rule 24.19 (and to replace the shortened term, ''Multi-Class Spread Order'' with ''Multi-Class Complex Order'' throughout Rule 24.19).

The Exchange also proposes to update the definition of Multi-Class Complex Order to more clearly and accurately reflect what such an order is. Currently, the term Multi-Class Complex Order is defined as ''an order or quote to buy a stated number of contracts of a Broad-Based Option and to sell an equal number, or an equivalent number, of contracts of a different Broad-Based Option.''[3] The common conception of a Multi-Class Complex Order really involves the transaction (either a buy or a sell) of a stated number of contracts of a Broad-Based Option and the transaction (either a buy or a sell) of an equal number, or equivalent number, of contracts of a different Broad-Based Option to achieve a position in which one leg of the order generally offsets the market exposure of the other leg. Given the inherent nature of options contracts, a buy-sell structure is not necessary to achieve offsetting market exposure.

For example, because OEX is approximately half the value of SPX, a Multi-Class Complex Order including the two products would achieve a position in which one leg of the order offsets the market exposure of the other leg by trading two times as many OEX contracts as SPX contracts. But it would not necessarily require buying and selling contracts. To continue with the example, a market participant could buy 100 SPX calls and buy 200 OEX puts, thereby offsetting the market exposure of the first leg with the second leg (since the first leg creates a long position and the second leg creates a short position (and also since this would involve trading two times as many OEX contracts as SPX contracts)). Therefore, the Exchange proposes to amend this statement to replace the terms ''buy'' and ''sell'' with ''transact'', and to add the language regarding one leg of the order offsetting the market exposure of the other leg. Also, the description of a Multi-Class Complex Order being ''an order or quote'' is somewhat misleading, as a quote cannot be submitted for a Multi-Class Complex Order and may only be made in open outcry in response to a Multi-Class Complex Order. As such, the Exchange proposes to clarify that it is an ''order (or quote in response to an order) . . .'' Therefore, either an order or a quote that is in response to an order can qualify for the provisions of paragraphs (b)(iii) and (b)(iv) of Rule 24.19. In sum, the Exchange proposes to amend the beginning of Rule 24.19(a)(2) to read: ''The term ''Multi-Class Broad-Based

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See CBOE Rule 24.19(a)(2).

Option Complex Order (referred to herein as ''Multi-Class Complex Order'')'' is an order or quote in response to an order to transact a stated number of contracts of a Broad-Based Option and to transact an equal number, or an equivalent number, of contracts of a different Broad-Based Option to achieve a position in which one leg of the order offsets the market exposure of the other leg.'' [4]

Currently, not all Multi-Class Complex Orders may be entered electronically due to systems constraints. The Exchange is in the process of modifying its electronic order-entry systems to provide for the electronic entry and validation of all Multi-Class Complex Orders to the floor of the Exchange. This will provide for an enhanced audit trail that will better allow regulatory oversight for the provisions of Rule 24.19. For the Exchange's systems to be able to determine that two separate legs are part of the same Multi-Class Complex Order in order to receive treatment as a Multi-Class Complex Order, however, both legs must be entered together on a single order ticket. As such, the Exchange proposes to amend Rule 24.19 to state that ''Multi-Class Complex Orders must be entered on a single order ticket at time of systemization to be eligible for the procedures and relief set out in this Rule.'' The Multi-Class Complex Order type will enforce the permitted combinations of options covered by Rule 24.19. Multi-Class Complex Orders with invalid combinations will be rejected by the Exchange. While the proposed rule change allows for all Multi-Class Complex Orders to be entered electronically, all Multi-Class Complex Orders will still be executed in open outcry on the Exchange's trading floor.

Because the current method for representing and executing Multi-Class Complex Orders is manual and must occur only in open outcry, the current language states that a Multi-Class Complex Order may be represented at the trading station of either Broad-Based Option involved, and also requires that the Trading Permit Holder (''TPH'') initiating the order in the trading crowd to contact an Order Book Official (''OBO''), Designated Primary Market-Maker (''DPM''), or appropriate Exchange staff, as applicable, at the other trading station to have a notice of such order disseminated to the other trading crowd. The proposed rule change will require a Multi-Class Complex Order must be represented at the primary trading station, and state that the TPH representing the order must contact the DPM or Exchange staff [5] (as applicable) at the other trading station in order to provide notice of such order for dissemination to the other trading crowd. The current rules states that ''Such notice shall be disseminated by the Recipient who shall verbalize the terms of the order to the other trading crowd.'' However, the Exchange proposes to replace the word ''verbalize'' with the word ''announce'', as the Exchange is currently contemplating changes that will allow such notice to be posted on screens electronically to the other trading crowd (which could be a more efficient method of posting such order information). Each Broad-Based Option has a trading station. The primary trading station is the first trading station at which the Multi-Class Complex Order is represented. The floor broker representing the Multi-Class Complex Order may determine which trading station should be the primary trading station. This ensures that all market participants at both physical trading locations are aware of the terms of the order being processed.

The proposed rule change will enhance and improve the process of sending Multi-Class Complex Orders to the floor of the Exchange, as well as enhance the Exchange's audit trail with respect to such orders. It will also update the definition of Multi-Class Complex Order to more clearly and accurately reflect the common conception of a Multi-Class Complex Order. No later than 90 days following the effective date of the proposed rule change, the Exchange will announce to TPHs via Regulatory Circular the implementation date by which TPHs must be in compliance with the changes described herein. The implementation date will be no later than 180 days following the effective date of the proposed rule change, and will be at least 30 days following the release of the abovementioned Regulatory Circular (in order to give TPHs ample time to come into compliance with the changes described herein).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules. The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that updating the definition of Multi-Class Complex Order to more clearly and accurately reflect the common conception of a Multi-Class Complex Order will remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing investors to receive Multi-Class Complex Order treatment for trades that are commonly viewed as Multi-Class Complex Orders. Additionally, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among market participants as all market participants may participate in Multi-Class Complex Orders.

Automating the Multi-Class Complex Order creation process for all Multi-Class Complex Orders serves to remove impediments to and to perfect the mechanism for a free and open market and a national market system by providing market participants the ability to route Multi-Class Complex Orders to the Exchange electronically. The Exchange believes the proposed changes will increase opportunities for

[4] Currently, the Exchange permits Multi-Class Complex Orders in the following combinations (pursuant to CBOE Rule 24.19(a)(2) and CBOE Regulatory Circular RG14–033): (i) Any combination of options on MNX, NDX, or QQQ (as all these options are based on the NASDAQ 100 Index); (ii) any combination of options on OEF, OEX, XEO (all based on the S&P 100 Index) or SPX, SPXPM, XSP or XSPAM (all of which are based on the S&P 500 Index, which has a close relationship in price movement to the S&P 100 Index); (iii) any combination of options on SPX, SPXPM, XSP, XSPAM or SPY (all of which are based on the S&P 500 Index); (iv) any combination of options on IWM and RUT (both of which are based on the Russell 2000 Index); and (v) any combination of VIX, VXX, VXZ or VXST (all of which are based on the CBOE Volatility Index).

[5] The Exchange proposes to remove the reference to contacting an OBO, as the Exchange no longer has OBOs.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] Id.

execution of Multi-Class Complex Orders, which will benefit investors. Further, enhancing the audit trail with respect to Multi-Class Complex Orders promotes transparency and aids in surveillance, thereby protecting investors.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. Enhancing the audit trail with respect to Multi-Class Complex Orders will allow the Exchange to better enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that automating the Multi-Class Complex Order creation process for all Multi-Class Complex Orders promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefits all CBOE TPHs and all investors.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Multi-Class Complex Orders are available to all market participants through CBOE TPHs. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, again, Multi-Class Complex Orders are available to all market participants through CBOE TPHs, which makes CBOE a more effective marketplace. Further, the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE more attractive to market participants at other exchanges, such market participants may elect to become CBOE market participants.

[9] 15 U.S.C. 78f(b)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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–CBOE–2014–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–026. 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 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–026, and should be submitted on or before May 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07991 Filed 4–9–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71874; File No. SR–NASDAQ–2014–029]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Managed Data Solution for Non-Display Usage

April 4, 2014.

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 March 21, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change to modify rules of the NASDAQ Options Market, LLC (''NOM'') as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to add new Section 11 (Managed Data Solutions) to the NOM rule book to establish

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Managed Data Solution fees for Non-Display Usage.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on April 1, 2014.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these 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 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 purpose of the proposed rule change is to modify Chapter XV (Options Pricing) by adding proposed new Section 11 in the NOM rule book to establish Managed Data Solution fees. The Exchange is proposing to create a new data distribution model (a Managed Data Solution for Non-Display Usage) to further the distribution of Best of NASDAQ Options and Itch to Trade Options (''BONO and ITTO''), (together ''NOM data'').

The proposed Managed Data Solution for Non-Display Usage is similar to data distribution models currently in use and aligns the Exchange with other markets.[3]

The Managed Data Solution proposal offers a delivery method to firms seeking simplified market data administration. The Managed Data Solution for Non-Display Usage may be offered by Distributors[4] externally distributing data to clients and/or client organizations that are using the NOM data internally for Non-Display Usage. This new pricing and administrative option is in response to industry demand, as well as due to changes in the technology used to distribute market data. As such, rather than substantive changes the proposal reflects current data distribution practices in the industry. Distributors offering Managed Data Solutions for Non-Display Usage continue to be fee liable for the applicable distributor, annual administrative and other applicable fees for the receipt and distribution of NOM data.

This Managed Data Solution for Non-Display Usage is a delivery option that will assess a new, innovative fee schedule to Distributors of NOM data that provide data feed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to Recipients for Non-Display Usage with only limited entitlement controls (*e.g.,* usernames and/or passwords) (''Managed Data Recipients''). However, the Distributor must first agree to reformat, redisplay and/or alter the NOM data prior to retransmission, but not to affect the integrity of the NOM data and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. A Managed Data Solution for Non-Display Usage is any retransmission data product containing NOM data offered by a Distributor where the Distributor manages and monitors, but does not control, the information and the Recipient of a Managed Data Solution may use the information for internal Non-Display purposes only and may not distribute the information outside of their organization. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients under a Managed Data Solution.

Currently, the Exchange does not distinguish between Managed Data Solution Recipients and a recipient of an uncontrolled data product. Some Distributors believe that the Managed Data Solution for Non-Display Usage is a viable alternative to an uncontrolled data product. Some Distributors have even delayed deploying new NOM data offerings, pending the initiation of Managed Data Solutions for Non-Display Usage. Thus, offering a Managed Data Solution fee schedule would not only result in the Exchange offering lower fees for existing Managed Data Recipients utilizing a Managed Data Solution, but will allow new Distributors to deliver Managed Data Solutions to new clients, thereby increasing transparency of the market.

The Exchange proposes to establish a monthly Managed Data Solution Administration fee and a monthly Subscriber[5] fee for Distributors and Subscribers that adopt the Managed Data Solution for Non-Display Usage.[6] The proposed fees for Managed Data Solutions products for Non-Display Usage—ITTO would be $500/mo per Distributor and $125/mo per Subscriber; and for Non-Display Usage—BONO would be $500/mo per Distributor and $125/mo per Subscriber.[7] The Exchange proposes to establish a Managed Data Solution for Non-Display Usage only, as is done on other markets. The Exchange believes that the proposal is in line with current market practice.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(4) of the Act,[10] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and Recipients of NOM data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the

[3] *See* Securities Exchange Act Release Nos. 70748 (October 23, 2013), 78 FR 64569 (October 29, 2013) (SR–Phlx–2013–105) (notice of filing and immediate effectiveness of proposed rule change to establish non-display Managed Data Solution for Phlx); 70269 (August 27, 2013), 78 FR 54336 (September 3, 2013) (SR–NASDAQ–2013–106) (notice of filing and immediate effectiveness of proposed rule change to establish non-display Managed Data Solution for NASDAQ); and 69182 (March 19, 2013), 78 FR 18378 (March 26, 2013) (SR–Phlx–2013–28) (notice of filing and immediate effectiveness of proposed rule change to establish non-display Managed Data Solution for Phlx equities market PSX). *See also* Securities Exchange Act Release No. 69041 (March 5, 2013), 78 FR 15791 (March 12, 2013) (SR–BX–2013–018) (notice of filing and immediate effectiveness of proposed rule change to establish Managed Data Solution for BX).

[4] ''Distributor'' shall mean the same as in NOM Chapter XV, Section 4(b). Proposed Chapter XV, Section 11(b).

[5] ''Subscriber'' shall mean a device or computer terminal or an automated service which is entitled to receive Information. Proposed Chapter XV Section 11(c).

[6] Without a Managed Data Solution as proposed herein, the current fee for internal distribution that is not a Managed Data Solution but rather an uncontrolled NOM data product with a distributor fee of $1,500 per month would apply (along with a $5 or $10 professional subscriber fee). Per the proposal for the Managed Data Solution, on the other hand, the Managed Data Recipient fee for Non-Display internal use of NOM Orders managed data would be $125 per Subscriber for each of ITTO and BONO, thereby providing a reduced cost option where the data is for Non-Display internal use only.

[7] The proposed monthly fee would be in addition to the monthly Market Data Distributor fee of $2,000 (for external usage) currently set forth in the Options Schedule in NOM Chapter XV for recipients of BONO and ITTO options data feeds.

[8] The Exchange believes that most firms, as an example, currently use BONO and ITTO options data feeds in non-display format.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by lessening the regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[11]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I''*), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [12]

The court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in the Exchange's Statement on Burden on Competition, however, the Exchange believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[13] Moreover, the Exchange further notes that the product at issue in this filing—NOM Managed Data Solutions for Non-Display Usage fees—is quite different from the NYSE Arca depth-of-book data product at issue in *NetCoalition I.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price its Managed Data Solution products for Non-Display Usage is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for this data.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the Internet after being purchased).[14] In the Exchange's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, the Exchange would be

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[12] *NetCoalition I,* at 535.

[13] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis.

[14] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as this that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, the Exchange believes that products such as this can enhance order flow to the Exchange, thereby encouraging wider participation in the market by investors with access to the Internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ Stock Market LLC, New York Stock Exchange, The NYSE MKT LLC, NYSE Arca, Inc., BATS Exchange, Inc., and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BD production of proprietary data products. The potential sources of proprietary products are virtually limitless.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes

trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

Competition among platforms has driven the Exchange continually to improve its platform data offerings and to cater to customers' data needs. For example, the Exchange has developed and maintained multiple delivery mechanisms (e.g., IP, multi-cast) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. The Exchange has created products like Depth Data and Top of Market Data, because offering data in multiple formatting allows the Exchange to better fit customer needs. The Exchange offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. The Exchange has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting.

Despite these enhancements and a dramatic increase in message traffic, the Exchange's fees for market data have remained flat. In fact, as a percent of total Subscriber costs, Exchange data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to the Exchange's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for proprietary information is significant and the Exchange believes that this proposal itself clearly evidences such competition. The Exchange is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. The Exchange continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this proprietary information is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

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–NASDAQ–2014–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–029. 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–NASDAQ–2014–029 and should be submitted on or before May 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07993 Filed 4–9–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71879; File No. SR–NYSE–2014–15]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Introduce a New Credit for Certain Retail Providing Liquidity on the Exchange

April 4, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 24, 2014, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') 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 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 to introduce a new credit for certain retail providing liquidity on the Exchange. The Exchange proposes to implement the fee change effective April 1, 2014. 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 the 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 its Price List to introduce a new credit for certain retail providing liquidity on the Exchange.[4] The Exchange proposes to implement the fee change effective April 1, 2014.

The Exchange currently operates the Retail Liquidity Program as a pilot program that is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow.[5] Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a ''Retail Order,'' which is defined in Rule 107C(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (''RMO''), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[6] An execution of a Retail Order is always considered to remove liquidity, whether against contra-side interest in the Retail Liquidity Program or against the Book.[7] As described in the Price List, executions of Retail Orders receive a credit of $0.0005 per share if executed against Retail Price Improvement Orders (''RPIs'') or Mid-Point Passive Liquidity (''MPL'') Orders and are otherwise charged according to standard fees applicable to non-Retail Orders if executed against the Book.[8]

The Exchange proposes to introduce a new credit of $0.0030 per share for executions of orders designated as ''retail'' that provide liquidity on the Book.[9] An order properly designated as ''retail'' would be required to satisfy the requirements of Rule 107C(a)(3), but would not be submitted as a Retail Order within the Retail Liquidity Program and therefore would not need to be submitted by an RMO.[10] Designation of an order as ''retail'' for purposes of the proposed new credit would be separate and distinct from submission of a Retail Order for purposes of the Retail Liquidity Program, despite the characteristics being identical (i.e., they must each satisfy the requirements in Rule 107C(a)(3)).

The Exchange proposes to permit members and member organizations to designate orders as ''retail'' for the purposes of the proposed $0.0030 credit either (1) by means of a specific tag in the order entry message or (2) by designating a particular member or member organization mnemonic used at the Exchange as a ''retail mnemonic.'' A member or member organization would be required to attest, in a form and/or manner prescribed by the Exchange, that substantially all orders submitted to the Exchange satisfy the requirements of Rule 107C(a)(3).[11]

[16] 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 proposed pricing would only apply to securities priced $1.00 or greater.

[5] *See* Rule 107C. *See also* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55).

[6] RMO is defined in Rule 107C(a)(2) as a member organization (or a division thereof) that has been approved by the Exchange under Rule 107C to submit Retail Orders.

[7] A Retail Order is an Immediate or Cancel Order. *See* Rule 107C(a)(3). *See also* Rule 107C(k) for a description of the manner in which a member or member organization may designate how a Retail Order will interact with available contra-side interest.

[8] RPI is defined in Rule 107C(a)(4) and consists of non-displayed interest in NYSE-listed securities that is priced better than the best protected bid (''PBB'') or best protected offer (''PBO''), as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. MPL Order is defined in Rule 13 as an undisplayed limit order that automatically executes at the mid-point of the protected best bid or offer (''PBBO'').

[9] The existing rates in the Price List would apply to executions of MPL Orders (e.g., $0.0015 per share). Similarly, the existing rates in the Price List would apply to executions of Non-Displayed Reserve Orders (e.g., $0.0010 per share). A Supplemental Liquidity Provider (''SLP'') market maker (''SLMM'') could designate orders as ''retail'' and be eligible for the proposed new credit. Orders designated as ''retail'' that provide liquidity would count toward a member's or member organization's overall level of providing volume for purposes of other pricing on the Exchange that is based on such levels (e.g., the Tier 1, Tier 2 and Tier 3 Adding Credits).

[10] The RMO aspect of Rule 107C(a)(3) would not be considered when determining whether an order designated as ''retail'' satisfies the requirements thereunder.

[11] This would be similar to the process under the Retail Liquidity Program, whereby an RMO must attest, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under Rule 107C. *See* Rule 107C(b)(C). This would also be similar to the manner in which an Exchange Trading Permit (''ETP'') Holder on NYSE Arca Equities, Inc. (''NYSE Arca Equities'') may designate orders as

Continued

A member or member organization would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as ''retail'' if all the requirements of Rule 107C(a)(3) are met. Such written policies and procedures must require the member or member organization to (1) exercise due diligence before entering orders designated as ''retail'' to assure that such entry is in compliance with the requirements specified by the Exchange, and (2) monitor whether orders designated as ''retail'' meet the applicable requirements. If the member or member organization represents orders designated as ''retail'' from another broker-dealer customer of the member or member organization, the member's or member organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as ''retail'' meet the requirements of Rule 107C(a)(3). The member or member organization must (1) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as ''retail'' that entry of such orders designated as ''retail'' will be in compliance with the requirements specified by the Exchange, and (2) monitor whether its broker-dealer customer's orders designated as ''retail'' meet the applicable requirements.[12]

Designating orders as ''retail'' would be optional. Accordingly, a member or member organization that chooses not to designate orders as ''retail'' would therefore either (1) not use the applicable tag in the order entry message or (2) not designate any of its mnemonics as ''retail mnemonics.'' The Exchange further proposes that it may disqualify a member or member organization from eligibility for the proposed new $0.0030 credit if the Exchange determines, in its sole discretion, that a member or member organization has failed to abide by any of the requirements proposed herein, including, for example, if a member or member organization (1) designates greater than a de minimis quantity of orders to the Exchange as ''retail'' that fail to meet any of the applicable requirements, (2) fails to make the required attestation to the Exchange, or (3) fails to maintain the required policies and procedures.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that members and 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,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] 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 notes that a significant percentage of the orders of individual investors are executed over-the-counter.[15] While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. In this regard, the Exchange believes that the proposed change is reasonable because it would contribute to maintaining or increasing the proportion of retail flow in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods). The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange also believes that providing a credit for executions of orders that provide liquidity on the Book and that are designated as ''retail'' is reasonable because it would create an added financial incentive for members and member organizations to bring additional retail flow to a public market. The proposed new credit is also reasonable because it would reduce the costs of members and member organizations that represent retail flow and potentially also reduce costs to their customers. The proposed change is also reasonable because it would be similar to the manner in which The Nasdaq Stock Market, LLC (''NASDAQ'') provides a $0.0033 credit for ''Designated Retail Orders'' that provide liquidity.[16]

Absent this proposal, for example, a credit of $0.0022, $0.0020 or $0.0017 (or $0.0010 if a Non-Displayed Reserve Order) would apply to the retail providing liquidity that this proposal targets for a member or member organization that qualifies for the Tier 1, Tier 2 or Tier 3 Adding Credits, respectively.[17] A credit of $0.0015 per share (or $0.0010 per share if a Non-Displayed Reserve Order) would otherwise apply to the retail providing liquidity. The Exchange believes that providing a credit of $0.0030 per share for executions of orders that provide liquidity on the Book and that are designated as ''retail'' is reasonable because it is set at a level that would reasonably incentivize members and member organizations to qualify for eligibility to designate orders as ''retail'' (e.g., attestations and procedures) as well as to actually direct such retail flow to the Exchange. Such orders designated as ''retail'' would increase the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because retail flow is likely to reflect long-term investment intentions, it promotes price discovery and dampens volatility. Accordingly, the presence of retail flow on the Exchange has the potential to benefit all market

''retail'' outside of the NYSE Arca Equities Retail Liquidity Program. *See, e.g.,* Securities Exchange Act Release No. 68322 (November 29, 2012), 77 FR 72425 (December 5, 2012) (SR–NYSEArca–2012–129).

[12] FINRA, on behalf of the Exchange, would review member and member organization compliance with these requirements through an exam-based review of the member's or member organization's internal controls.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (''Concept Release'') (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission's Web site) (''White Speech''); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site) (''Schapiro Speech''). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in ''dark'' venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[16] *See* NASDAQ Rule 7018.

[17] The Price List also provides for credits for SLPs.

participants. For this reason, the Exchange believes that it is equitable and not unfairly discriminatory to provide a financial incentive to encourage greater retail participation on the Exchange.

The Exchange believes that the process for designating orders as ''retail'' and the requirements surrounding such designations, such as attestations and procedures, are reasonable because they would reasonably ensure that substantially all of those orders would satisfy the applicable requirements of Rule 107C(a)(3) and therefore be eligible for the corresponding credit of $0.0030 per share. These processes and requirements are also reasonable because they are substantially similar to those in effect on the Exchange for the Retail Liquidity Program and on NYSE Arca Equities related to pricing for certain retail flow.[18] More specifically, the Exchange understands that some members and member organizations represent both retail flow as well as other agency and riskless principal flow that may not meet the strict requirements of Rule 107C(a)(3). The Exchange further understands that limitations in order management systems and routing networks used by such members and member organizations may make it infeasible for them to isolate 100% of retail flow from other agency or riskless principal, non-retail flow that they would direct to the Exchange. Unable to make the categorical attestation required by the Exchange, some members and member organizations may not attempt to qualify for the proposed new $0.0030 credit, notwithstanding that they have substantial retail flow. The Exchange believes that it is reasonable to permit a de minimis amount of orders to be designated as ''retail,'' despite not satisfying the requirements of Rule 107C(a)(3), because it would allow for enough flexibility to accommodate member and member organization system limitations while still reasonably ensuring that no more than a de minimis amount of orders submitted to the Exchange would not satisfy the requirements of Rule 107C(a)(3). This is also equitable and not unfairly discriminatory because it will reasonably ensure that similarly situated members and member organizations that have only slight differences in the capability of their systems would be able to equally benefit from the proposed pricing for orders designated as ''retail.''

[18] *See supra* note 11.

The pricing proposed herein is equitable and is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors' orders would be subject to greater transparency. As previously recognized by the Securities and Exchange Commission (''Commission''), ''markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.'' [19] The Exchange has sought to balance this view in setting the pricing of the credit available for executions of orders designated as ''retail'' that provide liquidity compared to other liquidity providing executions, recognizing that the ability of a member's or member organization's contra-side liquidity to interact with such orders designated as ''retail'' could be a potential benefit applicable to the members or member organizations submitting such contra-side liquidity.

The proposal is also equitable and not unfairly discriminatory because the ability to designate an order as ''retail'' is available to all members and member organizations that submit qualifying orders and satisfy the other related requirements.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would increase competition among execution venues and encourage additional liquidity. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market, and the pricing related thereto, would encourage competition. The proposed change would also permit the Exchange to compete with other markets, including NASDAQ, which similarly provides a credit for ''Designated Retail Orders'' that provide liquidity.[21]

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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. If the Commission takes such action, the Commission shall institute proceedings

[19] *See* SR–NYSE–2011–55, *supra* note 5. *See also* Concept Release, White Speech, Schapiro Speech, *supra* note 15.

[20] 15 U.S.C. 78f(b)(8).

[21] *See supra* note 16.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

under Section 19(b)(2)(B)[24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–15. 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 inspection and copying in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet 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–2014–15 and should be submitted on or before May 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

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[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71880; File No. SR–CBOE–2014–036]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the End of Trading on CBSX

April 4, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the '' Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 1, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 51.2 to permit CBOE to end trading on the CBOE Stock Exchange, LLC (''CBSX'') as of the close of business on April 30, 2014 (the ''Closing Date''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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 Exchange 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 Exchange 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

CBSX, of which CBOE is a partial owner, is regulated as a stock trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.[3] Section 9.15 of the Third Amended and Restated Operating Agreement of CBOE Stock Exchange, LLC, dated as of December 30, 2011 between CBOE and the other owners (''Non-CBOE Owners'') of CBSX (''Operating Agreement''), requires the prior affirmative vote of CBOE,[4] as well as the affirmative vote by each of the CBSX Board and a Super Majority of the Owners of CBSX,[5] prior to CBSX: (i) Materially changing CBSX's business model; or (ii) changing the status of or registration of CBSX as a facility of CBOE. Each of CBOE, the Board, and a Super Majority of Owners has affirmatively approved the ending of CBSX trading operations and ceasing to operate CBSX as a facility of the Exchange. This rule filing is not proposing any change to the ownership structure of CBSX. The proposed rule change is intended to further the Exchange's strategic goal to focus its resources on other business opportunities while fulfilling its regulatory obligations under the Exchange Act. CBSX's Trading Permit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In 2007, the Commission approved the establishment of CBSX as a facility of the Exchange. *See* Securities Exchange Act Release No. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007).

[4] CBOE's prior affirmative vote is required so that CBOE will have the opportunity to determine, in advance of action taken by the CBSX Board of Directors (''Board'') or the Non-CBOE Owners, whether a proposed action, transaction, or aspect of an action or transaction requiring a Super Majority of the Owners (as defined below) would interfere with the performance of CBOE's regulatory functions, its responsibilities under the Exchange Act or as specifically required by the SEC (''Regulatory Requirements'').

[5] Section 2.1(a)(26) of the Operating Agreement generally defines ''Super Majority of the Owners'' to mean, subject to the prior affirmative vote of CBOE as to its Regulatory Requirements, the affirmative vote of both: (i) All of the Owners of the Series A voting shares at the time (currently CBOE), and (ii) Owners of Series B voting shares representing at least a 20% interest in CBSX. While not material to a Super Majority, the Exchange notes that CBSX also has Series C non-voting restricted shares for Management Owners.

Holders (''TPHs'') will continue to be able to execute transactions in stocks on other stock-trading venues.

Within seven days of filing the proposed rule change, the Exchange will inform all CBSX TPHs by Regulatory Circular that CBSX will end trading operations as of the close of business on the Closing Date. The Regulatory Circular will also inform all TPHs that the Exchange will terminate the TPH status of any remaining CBSX TPHs on August 7, 2014,[6] although CBSX TPHs may voluntarily terminate their TPH status prior to that date.[7] Once the proposed rule change is operative, CBSX will no longer accept new TPH applications or further consider any pending TPH applications.

CBOE will continue to act as designated examining authority (''DEA'') for each CBSX TPH, for which CBOE is DEA, until the Securities and Exchange Commission (the ''Commission'') selects another self-regulatory organization (''SRO'') to perform that function or until August 7, 2014, whichever occurs first.[8] Moreover, all CBOE rules applicable to CBSX (''CBSX Rules'')[9] will remain in effect after the Closing Date, so that CBOE will retain disciplinary jurisdiction over all CBSX TPHs and persons associated with CBSX TPHs with respect to all matters that occurred on or before the Closing Date, pursuant to CBOE Rules 17.1 and 50.2.[10] CBOE Rule 17.1 generally provides that a TPH or a person associated with a TPH shall continue to be subject to the disciplinary jurisdiction of the Exchange following such person's termination as a TPH or person associated with a TPH with respect to matters that occurred prior to such termination or with respect to the failure to honor an arbitration award pursuant to Chapter XVIII of CBOE Rules; provided that written notice of the commencement of an inquiry into such matter is given by the Exchange to such former TPH or former person associated with a TPH within one year of termination of TPH or person associated with a TPH status. Such notice requirement does not apply to a TPH or person associated with a TPH who at any time after a termination subjects himself to the disciplinary jurisdiction of the Exchange by becoming a TPH or person associated with a TPH. CBOE Rule 50.2 (and CBSX Appendix A) incorporates by reference the application of CBOE Rule 17.1 to CBSX TPHs and persons associated with CBSX TPHs.

CBSX, CBOE and each of the Non-CBOE Owners will each continue to be required to maintain books and records as required under the Operating Agreement.[11] Also, pursuant to Section 5.7 of the Operating Agreement, CBSX, and to the extent that it relates to CBSX, each Owner, agrees to comply with the federal securities laws and the rules and regulations thereunder; to cooperate with the Commission and CBOE pursuant to their regulatory authority and the provisions of the Operating Agreement; and to engage in conduct that fosters and does not interfere with the CBSX's and CBOE's ability 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange represents that it will retain its status as SRO to the CBSX facility under Section 1.7 of the Operating Agreement for as long as CBSX is a facility under the Exchange Act. The Exchange further represents that there will be adequate funding to carry out regulatory obligations related to CBSX until it ceases to be a facility of CBOE. Lastly, under the proposed rule change, CBOE will not be able to begin trading in securities other than options without first filing a proposed rule change with the Commission pursuant to Rule 19b–4 under the Exchange Act.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Exchange Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with

[6] All CBSX TPHs are required to become members of a national securities association (*i.e.,* the Financial Industry Regulatory Authority (FINRA)) on or before August 7, 2014. *See* Securities Exchange Act Release No. 71513 (February 7, 2014), 79 FR 8771 (February 13, 2014) (SR–CBOE–2013–100) (order approving proposed rule change relating to CBSX TPH eligibility).

[7] As of April 1, 2014, there are seven CBSX TPHs that are not members of another SRO (as defined below) (''CBSX-only TPHs''). None of the CBSX-only TPHs effect trades, nor have they effected trades in recent months, on CBSX.

[8] The Exchange also represents that it will move to amend or cancel its participation in any existing Exchange Act Rule 17d–2 Plans for Allocation of Regulatory Responsibilities regarding CBSX as appropriate in connection with the conclusion of all open matters relating to the Exchange's regulation of CBSX.

[9] *See* CBOE Rules Chapter L–LIV (including Appendix A).

[10] Because all CBSX Rules will remain in effect after the close of business on the Closing Date, CBOE Rule 50.6, which limits the liability of CBSX under the same terms and conditions as CBOE Rules 2.24, 6.7 and 6.7A limits the liability of CBOE, will also remain in effect.

[11] Section 6.15(a) of the Operating Agreement states that CBOE and each of the Non-CBOE Owners acknowledge that to the extent the following are related to the CBSX trading platform for securities other than options, the books, records, premises, officers, directors, agents and employees of each of the Non-CBOE Owners shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act. Section 6.15(b) provides that the books, records, premises, officers, directors, agents, and employees of CBSX, to the extent related to its activities as a stock trading facility of CBOE, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act. Section 6.15(c) provides that CBSX and its Owners and their respective officers, directors, agents, and employees irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and CBOE for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, CBSX in its capacity as a stock trading facility of CBOE (and shall be deemed to agree that CBSX may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency. Section 6.15(c) further provides that for so long as CBSX is a facility of CBOE and to the extent related to CBSX's activities as a stock trading facility, the provisions of paragraph (c) shall not apply to CBOE and its respective officers, directors, agents and employees. Finally, Section 6.15(d) provides that, with respect to Section 6.15, CBSX and each of its Owners shall take such action as is necessary, unless otherwise provided for by law, written statement of policy, individual contract or otherwise, to ensure that their officers, directors, agents, and employees consent in writing to the applicability of this provision with respect to CBSX-related activities.

[12] 17 CFR 240.19b–4.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change will allow CBOE to focus its resources on business opportunities other than stock trading on CBSX and to fulfill its regulatory obligations under the Exchange Act. Current CBSX TPHs will continue to be able to send stock trades to other stock trading venues, which include other national securities exchanges, alternative trading systems, and the over-the-counter market generally. Under the proposal, in addition to this filing, TPHs will receive prior written notice by Regulatory Circular of CBSX's intention to cease trading operations so that the TPHs will have time to route their future stock transactions to other markets.[16] Moreover, all CBSX TPHs will receive prior notice that CBOE will terminate their TPH status in CBSX as of August 7, 2014, unless the TPH voluntarily terminates its TPH status prior to such date.[17] CBOE will remain DEA of each CBSX TPH for which it currently performs that function until the Commission selects another SRO to perform that function or until August 7, 2014, whichever comes first. The proposed rule change is therefore consistent with the requirements of Section 6(b)(5) of the Exchange Act, that rules of an exchange be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Exchange believes further that the proposed rule change promotes the protection of investors and the public interest, in that it is intended to permit the CBOE to devote its resources more fully to other business opportunities, while fulfilling its regulatory obligations under the Exchange Act. Moreover, because all CBSX Rules will remain in effect after the close of business on the Closing Date, CBOE will retain disciplinary jurisdiction over all CBSX TPHs and persons associated with CBSX TPHs with respect to all matters that occurred through the Closing Date, pursuant to CBOE Rules 17.1 and 50.2. CBSX, CBOE and each of the Non-CBOE Owners will also each continue to be required to maintain books and records as required under the Operating Agreement. The Exchange therefore also believes the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act,[18] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Exchange Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange is not proposing any change to the ownership structure of CBSX via this rule filing, nor to CBOE's obligations to supervise trading on CBSX or to supervise CBSX TPHs in general, as long as they remain CBSX TPHs. The proposal therefore protects and maintains the integrity of the self-regulatory function of CBOE with respect to CBSX as a facility of CBOE.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 Exchange Act. The closing of the CBSX stock trading facility as of the close of business on the Closing Date will result in one fewer stock trading facilities. However, there are numerous stock exchanges and trading platforms on which market participants may trade equities. CBSX currently has less than 0.1% of market share among national stock exchanges. In light of the low trading volume on CBSX and the ability of CBSX TPHs to trade equity securities on a large number of other trading venues, CBOE does not believe that ceasing trading on CBSX will unduly burden competition in equities trading.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received 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:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[19] and Rule 19b–4(f)(6)[20] thereunder.[21] 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2014–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–036. 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

[15] *Id.*

[16] The Exchange notes that CBSX has already made CBSX TPHs aware of its intention to shut down via an Information Circular issued in February 2014. *See* Information Circular IC14–011.

[17] *See* note 6, *supra*.

[18] 15 U.S.C. 78f(b)(1).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

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–CBOE–2014–036 and should be submitted on or before May 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07994 Filed 4–9–14; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71873; File No. SR–BOX–2014–13]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Interpretive Material to BOX Rule 5050 To Replace the Reference To ''GOOG'' With ''GOOGL''

April 4, 2014.

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 April 3, 2014, BOX Options Exchange LLC (the ''Exchange'') 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend interpretive material to BOX Rule 5050 (Series of Options Contracts Open for Trading) to replace the reference to ''GOOG'' with ''GOOGL''. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 IM–5050–10 to Rule 5050 (Series of Options Contracts Open for Trading) to replace the reference to ''GOOG'' with ''GOOGL''. This is a competitive filing that is based on a proposal recently submitted by the Chicago Board Options Exchange, Incorporated (''CBOE'').[3]

The Exchange is proposing to make a change to IM–5010–10 to enable the continued trading of mini options on Google's class A shares. The Exchange is proposing to make this change because, on April 2, 2014, Google will issue a new class of shares (class C) to its shareholders in lieu of a cash dividend payment. Additionally, this new class C of shares will be given the current Google ticker, ''GOOG''. As a result, a new ticker, ''GOOGL'', will be issued to the class A shares. The Exchange is proposing to change the Google ticker referenced in Exchange Rule IM–5010–10 from ''GOOG'' to ''GOOGL''.

This change to IM–5010–10 shall become effective on April 3, 2014 which is the day after Google officially changes their ticker. The purpose of this change is to ensure that IM–5010–10 properly reflects the intention and practice of the Exchange to trade mini options on only an exhaustive list of underlying securities outlined in IM–5010–10. This change is meant to continue the inclusion of class A shares of Google in the current list of underlying securities that mini options can be traded on, while making it clear that class C shares of Google are not part of that list as that class of options has not been approved for mini option trading. As a result, the proposed change will also help avoid confusion.

[3] *See* SR–CBOE–2014–030 (submitted by the CBOE on March 28, 2014).

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[4] in general, and Section 6(b)(5) of the Act,[5] in particular, 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to change the Google class A ticker to its new designation is consistent with the Act because the proposed change is merely updating the corresponding ticker to allow for continued mini option trading on Google's class A shares. The proposed change will allow for continued benefit to investors by providing them with additional investment alternatives.

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 not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by the CBOE.[7] The proposed change does not impose any burden on intramarket competition because it applies to all Participants. There is no burden on intermarket competition as the proposed change is merely attempting to update the new ticker for Google class A for mini options. As a result, there will be no

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] *See supra,* note 3.

substantive changes to the Exchange's operations or its rules.

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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to continue to list mini options on the Google Class A shares following the issuance of a new class of Google shares (class C) on April 2, 2014. For this reason, the Commission designates the proposed rule change to be operative upon filing.[12]

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 Number SR–BOX–2014–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2014–13. 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–BOX–2014–13 and should be submitted on or before May 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07992 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71868; File No. SR–FINRA–2014–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule Cross-References and Make Non-Substantive Technical Changes to Certain FINRA Rules

April 4, 2014.

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 March 31, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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 the Substance of the Proposed Rule Change

FINRA is proposing to update cross-references and make other non-substantive changes within FINRA rules, primarily as the result of approval of new consolidated FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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. FINRA 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

FINRA is in the process of developing a consolidated rulebook (''Consolidated FINRA Rulebook'').[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive changes in the Consolidated FINRA Rulebook.

The proposed rule change would make several such changes, as well as other non-substantive changes unrelated to the adoption of rules in the Consolidated FINRA Rulebook.

First, the proposed rule change would update rule cross-references to reflect the adoption of new consolidated financial and operational rules. On November 27, 2013, the SEC approved a proposed rule change to adopt Incorporated NYSE Rules 296 and 402 as FINRA Rules 4314, 4330 and 4340, with several changes. FINRA also deleted in their entirety the corresponding NASD Rules 2330 and NASD Interpretive Materials 2330.[5] The new rules will be implemented on May 1, 2014. As such, the proposed rule change would update references to the new rule numbers in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities), 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities) and 9810 (Initiation of Proceeding).

Second, the proposed rule change would make technical changes to FINRA Rule 2111.01 (General Principle) to reflect FINRA Manual style convention changes.

Third, FINRA is proposing to make non-substantive changes to FINRA Rule 6272 (Character of Quotations) to update cross-references resulting from changes adopted in a FINRA proposed rule change regarding Firm Quotations.[6]

Finally, the proposed rule change would also delete from FINRA Manual the Series heading for NASD Rule 2100 (General Standards) and IM–2110–1 (Reserved) to reflect that the NASD Rule 2100 Series have fully been consolidated into the FINRA Rules.[7]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be May 1, 2014.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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–FINRA–2014–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–016. 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

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 70958 (November 27, 2013), 78 FR 72951 (December 4, 2013) (Order Approving File No. SR–FINRA–2013–035).

[6] *See* Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (Order Approving File No. SR–FINRA–2010–049).

[7] Securities Exchange Act Release No. 67774 (September 4, 2012), 77 FR 55519 (September 10, 2012) (Order Approving File No. SR–FINRA–2012–025).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2014–016 and should be submitted on or before May 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07990 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71881; File No. SR–MIAX–2014–14]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period Applicable to Rule 530 Relating to Limit Up/Limit Down

April 4, 2014.

Pursuant to the provisions of 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 April 3, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 530 to extend the pilot period for the treatment of erroneous transactions during a Limit or Straddle State.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing*, at MIAX's principal office, 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 Exchange 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 Exchange 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 530 (Limit Up-Limit Down) in order to (i) extend the pilot period for the treatment of erroneous transactions that occur in a Limit or Straddle State until February 20, 2015; and (ii) to provide that paragraphs (a)–(i) of the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS.

Exchange Rule 530(j) provides for the treatment of erroneous transactions occurring during Limit and Straddle States. Specifically, once an NMS Stock has entered a Limit or Straddle State, the Exchange will nullify a transaction in an option overlying such an NMS Stock as provided in the Rule 530(j). This provision was adopted for a one year pilot period beginning on the date of the implementation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, April 8, 2013.[3] The Exchange proposes extending the pilot period for Rule 530(j) until February 20, 2015 in order to allow the Exchange and the Commission additional time to collect and analyze data regarding the impact of Rule 530(j) on liquidity and market quality in the options markets.

To assist the Commission in its analysis, the Exchange will continue to provide the Commission with data and analysis during the duration of the pilot in order to evaluate the impact of Limit and Straddle States on liquidity and market quality in the options markets. Specifically, by September 30, 2014, the Exchange represents that it shall provide the Commission assessments relating to the impact of the obvious error Rules during Limit and Straddle States that (i) evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (ii) assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic. Additionally, each month during the pilot period the Exchange shall provide to the Commission and the public a dataset containing the data for each Straddle and Limit State in optionable stocks. For each stock that reaches a Straddle or Limit State, the number of options included in the dataset can be reduced by selecting options in which at least one (1) trade occurred on the Exchange during the Straddle or Limit State. For each of those options affected, each data record should contain the following information: (i) Stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state; and (ii) for activity on the exchange—(A) executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, (B) high execution price, low execution price, (C) number of trades for which a request for review for error was received during Straddle and Limit States, (D) an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise) and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 503(j). *See also* Securities Exchange Act Release Nos. 69210 (March 22, 2013), 78 FR 18637 (March 27, 2013) (SR–MIAX–2013–12); 69342 (April 8, 2013), 78 FR 22017 (April 12, 2013) (SR–MIAX–2013–12); 69234 (March 25, 2013), 78 FR 19344 (March 29, 2013) (SR–MIAX–2013–15); 69354 (April 9, 2013), 78 FR 22357 (April 15, 2013) (SR–MIAX–2013–15).

start of the Limit or Straddle state. The Exchange notes that it will also update the data available on the Exchange's Web site for the period April 2013 through January 2014 with the revised parameters described above once the Exchange has completed its analysis and review of such data.

The Exchange also proposes to amend Rule 530 to provide that paragraphs (a)–(i) of the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS. The proposed change will allow the Exchange's Limit Up-Limit Down Rule to continue without interruption for as long as corresponding pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS remains in effect and will also more closely align the pilot language to that of other options exchanges.[4]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b)[5] of the Act in general, and furthers the objectives of Section 6(b)(5)[6] of the Act in particular, 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, 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. Specifically, the proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stock options as a result of extraordinary market volatility. In addition, the Exchange believes that the extension of the pilot will help ensure that market participants continue to benefit from the protections of the Limit Up-Limit Down Rules which will protect investors and the public interest while allowing the Exchange and the Commission additional time to collect and analyze data regarding the impact of Rules on liquidity and market quality in the options markets.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to extend the pilot program that provides for how the Exchange shall treat orders and quotes in options overlying NMS stocks when the Limit Up-Limit Down Plan is in effect and will not impose any burden on competition while providing certainty of treatment and execution of options orders during periods of extraordinary volatility in the underlying NMS stock, and facilitating appropriate liquidity during a Limit State or Straddle State.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. For this reason, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[9]

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–MIAX–2014–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–14. 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

[4] *See* NYSE MKT Rule 953.1NY; NYSE Arca Options Rule 6.65A.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[9] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–MIAX–2014–14 and should be submitted on or before May 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07995 Filed 4–9–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8688]

In the Matter of the Designation of Ansar Bayt al-Maqdis, Also Known as Ansar Jerusalem, Also Known as Supporters of Jerusalem, Also Known as Ansar Bayt al-Maqdes, Also Known as Ansar Beit al-Maqdis, Also Known as Jamaat Ansar Beit al-Maqdis, Also Known as Jamaat Ansar Beit al-Maqdis fi Sinaa, Also Known as Supporters of the Holy Place as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA'') (8 U.S.C. 1189), exist with respect to as Ansar Bayt al-Maqdis, also known as Ansar Jerusalem, also known as Supporters of Jerusalem, also known as Ansar Bayt al-Maqdes, also known as Ansar Beit al-Maqdis, also known as Jamaat Ansar Beit al-Maqdis, also known as Jamaat Ansar Beit al-Maqdis fi Sinaa.

Therefore, I hereby designate the aforementioned organization and its aliases as a foreign terrorist organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: March 28, 2014.

John F. Kerry,

Secretary of State, Department of State.

[FR Doc. 2014–07955 Filed 4–9–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8689]

In the Matter of the Designation of Ansar Bayt al-Maqdis, Also Known as Ansar Jerusalem, Also Known as Supporters of Jerusalem, Also Known as Ansar Bayt al-Maqdes, Also Known as Ansar Beit al-Maqdis, Also Known as Jamaat Ansar Beit al-Maqdis, Also Known as Jamaat Ansar Beit al-Maqdis fi Sinaa, Also Known as Supporters of the Holy Place, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as Ansar Bayt al-Maqdis, also known as Ansar Jerusalem, also known as Supporters of Jerusalem, also known as Ansar Bayt al-Maqdes, also known as Ansar Beit al-Maqdis, also known as Jamaat Ansar Beit al-Maqdis, also known as Jamaat Ansar Beit al-Maqdis fi Sinaa, also known as Supporters of the holy place, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 28, 2014.

John F. Kerry

Secretary of State, Department of State.

[FR Doc. 2014–07949 Filed 4–9–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8691]

Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on April 23, 2014 at 9:00 a.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street NW., Washington, DC. The meeting will last until approximately 2:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on December 9, 2013 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2014 through March 30, 2014.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an email to *WallaceJA@State.gov* by April 15 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: April 9, 2014.

Marcee Craighill,

Fine Arts Committee, Department of State.

[FR Doc. 2014–08115 Filed 4–9–14; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Public Notice 8690]

Notice of Public Comments on FY 2015 U.S. Refugee Admissions Program

The United States actively supports efforts to provide protection, assistance, and durable solutions for refugees. The U.S. Refugee Admissions Program (USRAP) is a critical component of the United States' overall refugee protection efforts around the globe. In Fiscal Year 2014, the President established the refugee admissions level into the United States of up to 70,000 refugees.

As we begin to prepare the FY 2015 U.S. Refugee Admission Program, we welcome the public's input. Persons wishing to submit written comments on the appropriate size and scope of the FY 2015 U.S. Refugee Admissions Program should submit them by 5 p.m. on Thursday, May 29, 2014 via email to *spruellda@state.gov* or fax (202) 453–9393.

If you have questions about submitting written comments, please contact Delicia Spruell, PRM/

Admissions Program Officer at (202) 453–9257. Information about the U.S. Refugee Admissions Program may be found at *http://www.state.gov/g/prm./*

Dated: April 2, 2014.

Simon Henshaw,

Principal Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2014–08113 Filed 4–9–14; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 29, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0038.

Date Filed: March 25, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 15, 2014.

Description: Application of Grossmann Jet Service spol. s.r.o. requesting a foreign air carrier permit and corresponding exemption authority to the full extent authorized by the Air Transport Agreement by the United States and the European Community and its Member States to enable it to engage in: (i) Foreign charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area (''ECAA''); (iii) other charters; and (iv) transportation authorized by any additional route rights made available to European Community carriers in the future.

Docket Number: DOT–OST–2014–0041.

Date Filed: March 28, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 18, 2014.

Description: Application of Qatar Executive requesting a foreign air carrier permit and related exemption that would enable it to provide charter foreign air transportation of persons, property and mail between any point or points in Qatar and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Qatar for the purposes of carrying local traffic between Qatar and the U.S.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–08068 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation: Black Sky Training Safety Approval Performance Criteria

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This is notification of criteria used to evaluate the Black Sky Training, Inc. (BST) safety approval application. The FAA issued BST a safety approval, subject to the provisions of Title 51 U.S.C Subtitle V, ch. 509, and the orders, rules and regulations issued under it. Pursuant to Title 14 Code of Federal Regulations (14 CFR) § 414.35, this Notice publishes the criteria that were used to evaluate the safety approval application.

FOR FURTHER INFORMATION CONTACT: For questions about the performance criteria, you may contact Randal Maday, Licensing and Evaluation Division (AST–200), FAA Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–8652; Email *randal.maday@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background: BST applied for, and received, a safety approval for its ability to provide a service that includes Spaceflight 101, Crew Resource Management, High Altitude Physiology, Disorientation and G Force Management, Vehicle Energy Management, and Rocket Powered Transition training for crew and space flight participants. BST may offer its space flight training service to a prospective launch and reentry operator to meet the applicable crew and space flight participant training requirements of 14 CFR 460.5 and 14 CFR 460.51.

Criteria Used to Evaluate Safety Approval Application: The performance criteria for this safety approval include: AC60–22 Aeronautical Decision Making, AC120–51E Crew Resource Management Training, NASA Space Flight Resource Management (SFRM) training methods, FAA–H8083–25A Pilot Handbook of Aeronautical Knowledge, AC61–107A AC 61–107A—Operations of Aircraft at Altitudes Above 25,000 feet MSL and/or Mach Numbers Greater than .75, FAA AM–400–03/1 Spatial Disorientation, AC91–61 A Hazard in Aerobatics: Effects of G-Forces of Pilots, FAA–H8083–3b Airplane Flying Handbook, FAA–H8083–13 Glider Flying Handbook, FAA–H8083–25A Pilot Handbook of Aeronautical Knowledge, and FAA–S–8081–SF Airline Transport Pilot and Aircraft Type Rating Practical Test Standards for Airplane. The performance criteria also include 14 CFR 61.31(g) for additional training required for operating pressurized aircraft capable of operating at high altitudes. These criteria include FAA regulations, advisory circulars, and current industry practices which are acceptable technical criteria for reviewing a safety approval application per 14 CFR 414.19. Many aspects of aviation training also apply to aerospace operations because it addresses human-vehicle interactions common to both aviation and aerospace.

The FAA's evaluation included assessment of BST's space flight training service lesson plans and objectives, which include classroom, simulator, and flight training for crew and space flight participants to experience and demonstrate knowledge of the following through testing:

- Understand the fundamentals of space flight, which include terminology, rocket operations, and space flight hazards.
- Understand and apply the concepts of space flight resource management.
- Understand and experience the symptoms associated with high altitude physiology.

• Demonstrate techniques used to mitigate the physical effects of G forces and vertigo due to unusual attitudes.

• Demonstrate vehicle energy management principles.

• Demonstrate proficiency in the operation of a rocket-propelled simulator from liftoff to landing.

Issued in Washington, DC, on 24 February 2014.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2014–08117 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation: Waypoint 2 Space Safety Approval Performance Criteria

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This is notification of criteria used to evaluate the Waypoint 2 Space, Inc. (W2S) safety approval application. The FAA issued W2S a safety approval, subject to the provisions of Title 51 U.S.C Subtitle V, ch. 509, and the orders, rules and regulations issued under it. Pursuant to Title 14 Code of Federal Regulations (14 CFR) § 414.35, this Notice publishes the criteria that were used to evaluate the safety approval application.

FOR FURTHER INFORMATION CONTACT: For questions about the performance criteria, you may contact Randal Maday, Licensing and Evaluation Division (AST–200), FAA Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–8652; Email *randal.maday@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background: W2S applied for, and received, a safety approval for its ability to provide as a service that includes classroom training in: Aerospace Physiology, Centrifuge, Altitude Chambers, Weightlessness, Neutral Buoyancy, Aerobatic Flight, Spacecraft Systems, Crew Resource Management, Pilot Procedures, Nominal and Off Nominal Procedures, Emergency Procedures, Egress, Survival, Search and Rescue, and Extra-Vehicular Activity. The training service includes Space Flight Participant, Commercial Payload Specialist, and Spaceflight Instructor Training Programs. In addition, the service includes practical Sub-Orbital and Orbital Flight training in: Neutral Buoyancy Environments, Parabolic Flight, Flight Simulators, Altitude Chambers, Spin and Upset Recovery, and G-Force adaptation.

W2S may offer its commercial space training service to a prospective launch and reentry operator to meet the applicable crew and space flight participant training requirements of 14 CFR 460.5 and 14 CFR 460.51.

Criteria Used To Evaluate Safety Approval Application

The performance criteria for this safety approval include: Air Education and Training Instruction 11–219 Initial Flight Screening, Air Force Instruction (AFI) 11–401 Aerospace Physiological Training Program, AFI 11–202V1 Aircrew Training, AFI11–202V2 Aircrew Standardization/Evaluation Program, NASA/TP–2001–213726 A Review of Training Methods and Instructional Techniques, AFI 11–2C–130V1 C–130 Aircrew Training, and AFI 11–301V1 Aircrew Flight Equipment (AFE) Program. Furthermore, the performance criteria include 14 CFR 61.31(g) for additional training required for operating pressurized aircraft capable of operating at high altitudes. These United States Air Force, NASA, and FAA criteria are acceptable technical criteria for reviewing a safety approval application per 14 CFR 414.19. Many aspects of aviation training also apply to aerospace operations because it addresses human-vehicle interactions common to both aviation and aerospace. Training for Extra Vehicular Activity (EVA) is also applicable because it pertains to operations that include Intra Vehicular Activity (IVA) in microgravity, which is performed during ascent and entry.

The Spaceflight Instructor Training Program serves to develop instructors to better train space flight participants and crew. The FAA's evaluation included assessment of W2S's commercial space training service lesson plans and objectives, which include classroom, simulator, and flight training for crew and space flight participants to experience and demonstrate knowledge of the following through testing:

• Understand operations, environments, and the physiological effects associated with space flight.

• Understand and demonstrate crew resource management operations.

• Demonstrate adaptation and the ability to conduct applicable operations in spaceflight environments, which include flight during high and low gravity phases.

• Demonstrate competence in operations requiring use of a partial pressure suit.

• Demonstrate emergency egress procedures and proper use of life support equipment without assistance.

• Understand and experience nominal and off nominal vehicle conditions during flight.

Issued in Washington, DC, on February 24, 2014.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2014–08116 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Cleveland Hopkins International, Cleveland, Ohio.

SUMMARY: The FAA is considering a proposal to change approximately 2.54 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease of airport property located at Cleveland Hopkins International, Cleveland, Ohio. The aforementioned land is not needed for aeronautical use.

The property is located near the northwest corner of Brook Park Road and Rocky River Drive, north of the airport and outside the airport fence line. The property is currently vacant land not being used by the airport and is flat, weedy, and grassy. The property will be leased for the development of a gas/service station.

DATES: Comments must be received on or before May 12, 2014.

ADDRESSES: Documents are available for review by appointment at the FAA Airports District Office, Marlon Peña, Program Manager, Detroit Airport District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone: (734) 229–2909/Fax: (734) 229–2950 and Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, Ohio 44181, Telephone: (216) 265–6793.

Written comments on the Sponsor's request must be delivered or mailed to: Marlon Peña, Program Manager, Federal Aviation Administration, Airports District Office, Detroit Airport District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174,

Telephone Number: (734) 229–2909/ FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Marlon Peña, Program Manager, Federal Aviation Administration, Airports District Office, Detroit Airport District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734) 229–2909/ FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property was originally acquired by the City of Cleveland for potential airport development. The Federal Aviation Administration did not participate in the acquisition of this property. The U.S. Government did not convey the property or transfer under surplus property. The sponsor is now proposing to lease this parcel for Fair Market Value and utilize the proceeds to help improve the existing airport infrastructure and bring it up to FAA standards.

The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696). This notice announces that the FAA is considering the release of the subject airport property at the Cleveland Hopkins International, Cleveland, Ohio from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Following is a legal description of the property located in the City of Cleveland, County of Cuyahoga, State of Ohio, and known as being part of Original Rockport Section and described as follows:

PARCEL NO. 1

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA, AND STATE OF OHIO: AND KNOWN AS BEING PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4, AND ALL OF SUBLOTS NOS. 1, 2, 3, 149, 150, 151 AND 152 IN WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4, AS SHOWN BY THE RECORDED PLAT IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY RECORDS, AND TOGETHER FORMING A PARCEL OF LAND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING IN THE NORTHWESTERLY LINE OF ROCKY RIVER DRIVE SW., (70 FEET WIDE), AT ITS INTERSECTION WITH THE SOUTHERLY LINE OF WEST LAWN ROAD SW.; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF SAID ROCKY RIVER DRIVE SW., 148.27 FEET TO THE SOUTHEASTERLY CORNER OF SAID SUBLOT NO. 1; THENCE EASTERLY ALONG THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID SUBLOT NO. 1, 38.49 FEET TO THE CENTER LINE OF SAID ROCKY RIVER DRIVE SW.; THENCE SOUTHWESTERLY ALONG SAID CENTER LINE, 137.46 FEET TO THE SOUTHERLY LINE OF SAID ORIGINAL SECTION NO. 3, WHICH IS ALSO THE OLD CENTER LINE OF BROOKPARK ROAD, SW., (30 FEET WIDE); THENCE WESTERLY ALONG THE OLD CENTER LINE OF BROOKPARK ROAD SW., 319.87 FEET TO ITS INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF SUBLOT NO. 153 IN THE WEST LAWN SUBDIVISION AS AFORESAID; THENCE NORTHERLY ALONG SAID SOUTHERLY PROLONGATION AND ALONG THE EASTERLY OF LINE OF SAID SUBLOT NO. 153, 125 FEET TO THE SOUTHWESTERLY CORNER OF SUBLOT NO. 147 IN SAID WEST LAWN SUBDIVISION; THENCE EASTERLY ALONG THE SOUTHERLY LINES OF SUBLOTS NOS. 147 AND 148 IN SAID WEST LAWN SUBDIVISION, 82.83 FEET TO THE SOUTHWESTERLY CORNER OF SAID SUBLOT NO. 149; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID SUBLOT NO. 149, 134.82 FEET TO THE SOUTHERLY LINE OF SAID WEST LAWN ROAD SW.; THENCE EASTERLY ALONG SAID SOUTHERLY LINE, 317.42 FEET TO THE PLACE OF BEGINNING, EXCEPTING THEREFROM THE PART OF PREMISES DESCRIBED ABOVE DEDICATED TO PUBLIC USE AS A PART OF BROOKPARK ROAD AS SHOWN ON THE PLAT OF DEDICATION OF BROOKPARK ROAD IN VOLUME 127 OF MAPS, PAGE 29 OF CUYAHOGA COUNTY RECORDS. EXCEPTING THEREFROM THAT PART CONVEYED TO THE STATE OF OHIO BY DEED DATED DECEMBER 28, 1978 AND FILED IN VOLUME 14895, PAGE 765 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 2

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 153 IN THE VAN DE BOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 73.67 FEET ON THE NORTHERLY SIDE OF BROOK PARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 117.82 FEET AND HAVING A REAR LINE OF 73.67 FEET.

PARCEL NO. 3

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 148 AND PART OF SUBLOT NO. 147 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING IN THE SOUTHERLY LINE OF WEST LAWN AVENUE SW., (45 FEET WIDE) AT ITS INTERSECTION WITH THE EASTERLY LINE OF SAID SUBLOT NO. 148; THENCE WESTERLY ALONG SAID SOUTHERLY LINE 40.00 FEET TO THE EASTERLY LINE OF SAID SUBLOT NO. 147; THENCE S. 13°39′42″ W. 21.00 FEET TO A POINT; THENCE S. 3°29′25″ W. 91.00 FEET TO A POINT; THENCE SOUTHERLY PARALLEL WITH SAID EASTERLY LINE OF SUBLOT NO. 147, 23.58 FEET TO THE SOUTHERLY LINE THEREOF; THENCE EASTERLY ALONG SAID SOUTHERLY LINE AND THE SOUTHERLY LINE OF SUBLOT NO. 148, 50.50 FEET TO THE AFORESAID EASTERLY LINE OF SUBLOT NO. 148; THENCE NORTHERLY ALONG SAID EASTERLY LINE, 134.82 FEET TO THE PLACE OF BEGINNING. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOLUME 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 4

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING PART OF SUBLOT NO. 147 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING IN THE SOUTHERLY LINE OF WEST LAWN AVENUE SW., (45 FEET WIDE) AT ITS INTERSECTION WITH THE WESTERLY LINE OF SAID SUBLOT NO. 147; THENCE EASTERLY ALONG SAID SOUTHERLY LINE OF WEST LAWN AVENUE 40.00 FEET TO THE EASTERLY LINE THEREOF; THENCE S. 13°39′42″ W. 21.00 FEET TO A POINT; THENCE S. 3°29′25″ W. 91.00 FEET TO A POINT; THENCE SOUTHERLY PARALLEL WITH SAID EASTERLY LINE OF SUBLOT NO. 147, 23.58 FEET TO A POINT IN THE SOUTHERLY LINE THEREOF; THENCE WESTERLY ALONG SAID SOUTHERLY LINE 32.33 FEET TO A WESTERLY LINE THEREOF; THENCE NORTHERLY ALONG SAID WESTERLY LINE 22.82 FEET TO AN ANGLE POINT THEREIN; THENCE EASTERLY AT RIGHT ANGLES TO SAID LAST DESCRIBED COURSE 2.83 FEET TO THE WESTERLY LINE OF SAID SUBLOT NO. 147; THENCE NORTHERLY ALONG SAID WESTERLY LINE 112.00 FEET TO THE PLACE OF BEGINNING. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED

1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PG. 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 5

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN BEING ALL OF SUBLOT NO. 146 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 40.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVE. SW., (45 FEET WIDE) A EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 6

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 145 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 40.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 40.00 FEET. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 7

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 144 IN THE VAN DEBOE HAGER COMPANY'S SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 40.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 40.00 FEET. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 8

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NOS. 140, 141, 142 AND 143 IN THE VAN DE–BOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOTS HAVING A FRONTAGE OF 160.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 160.00 FEET. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 9

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 139 IN THE VAN DE–BOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 45.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 45.00 FEET. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 10

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 138 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 45.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET; THE EASTERLY LINE OF SAID SUBLOT BEING ALSO THE WESTERLY LINE OF WEST 191ST STREET.

PARCEL NO. 11

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NOS. 25, 26, 27, 28, 29, 30, 35, 36, 130, 131, 135, AND 137 IN THE VAN DE–BOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOTS NOS. 25, 26, 27, 28, 29, 30, 35, 36, EACH HAVING A FRONTAGE OF 40.00 FEET ON THE NORTHERLY SIDE OF WEST LAWN AVENUE, SW. AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND EACH HAVING A REAR LINE OF 40.00 FEET; SAID SUBLOTS NOS. 130, 131 AND 135 EACH HAVING A FRONTAGE OF 40.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND EACH HAVING A REAR LINE OF 40.00 FEET; SAID SUBLOT NO. 137 HAVING A FRONTAGE OF 45.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW. AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 45.00 EET. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 12

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO, AND KNOWN AS BEING SUBLOT NO. 136 IN WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4, AS SHOWN BY THE RECORDED PLAT IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY RECORDS, AND BEING 45.00 FEET FRONT ON THE SOUTHERLY SIDE OF WEST LAWN ROAD, (NOW KNOWN AS WEST LAWN AVENUE SW.), AND EXTENDING BACK OF EQUAL WIDTH 112.00 FEET DEEP, AS APPEARS BY SAID PLAT.

PARCEL NO. 13

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 134 IN THE VAN DE BOE–HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT NO. 134 HAVING A FRONTAGE OF 40.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVE., SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 40.00 FEET.

PARCEL NO. 14

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING SUBLOTS NOS. 132 AND 133 ON WEST LAWN AVENUE IN THE WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTION NO. 3 & 4, AS APPEARS BY SAID PLAT RECORDED IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 15

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOTS NOS. 128 AND 129 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOTS TOGETHER FORMING A PARCEL OF LAND HAVING A FRONTAGE OF 80.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 80.00 FEET.

PARCEL NO. 16

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOTS NOS. 126 AND 127 IN THE VAN DE BOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOTS TOGETHER FORMING A PARCEL OF LAND HAVING A FRONTAGE OF 80.00 FEET ON THE SOUTHERLY LINE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 80.00 FEET.

PARCEL NO. 17

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING SUBLOT NO. 125, IN THE VAN DE BOE–HAGER COMPANY'S ''WEST LAWN'' SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4, AS SHOWN BY THE RECORDED PLAT IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 18

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOTS NOS. 124 AND 174 IN THE VAN DE BOE–HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT NO. 124 HAVING A FRONTAGE OF 40.00 FEET ON THE SOUTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH, 112.00 FEET AND HAVING A REAR LINE OF 40.00 FEET; SAID SUBLOT NO. 174 HAVING A FRONTAGE OF 40.00 FEET ON THE NORTHERLY SIDE OF BROOKPARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH, 117.82 FEET AND HAVING A REAR LINE OF 40.00 FEET.

PARCEL NO. 19

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 173 IN THE VAN DE BOE–HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 40.00 FEET ON THE NORTHERLY SIDE OF BROOK PARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH, 117.82 FEET AND HAVING A REAR LINE OF 40.00 FEET.

PARCEL NO. 20

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING SUB LOT NOS. 171 AND 172 IN WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 & 4, AS SHOWN BY THE RECORDED PLAT IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS.

PARCEL NO. 21

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOTS NOS. 169 AND 170 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOTS TOGETHER FORMING A PARCEL OF LAND HAVING A FRONTAGE OF 80.00 FEET ON THE NORTHERLY SIDE OF BROOK PARK ROAD, SW. AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 117.82 FEET AND HAVING A REAR LINE OF 80.00 FEET.

PARCEL NO. 22

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO, AND KNOWN AS BEING SUBLOT NOS. 167 AND 168 IN THE WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTIONS NOS. 3 & 4, AS SHOWN BY THE RECORDED PLAT IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS.

PARCEL NO. 23

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING SUB–LOTS NOS. 165 AND 166, IN THE VAN DE BOE–HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF THE CUYAHOGA COUNTY MAP RECORDS; TOGETHER FORMING A PARCEL OF LAND HAVING A FRONTAGE OF 80.00 FEET ON THE NORTHERLY SIDE OF BROOKPARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 117.82 FEET AND HAVING A REAR LINE OF 80.00 FEET.

PARCEL NO. 24

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 164 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 40.00 FEET ON THE NORTHERLY SIDE OF BROOK PARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 117.82 FEET AND HAVING A REAR LINE OF 40.00 FEET.

PARCEL NO. 25

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING SUBLOT NO. 163 IN THE WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4 AS SHOWN BY THE RECORDED IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY RECORDS, AND 40 FEET FRONT ON THE NORTHERLY SIDE OF BROOKPARK ROAD AND EXTENDING BACK BETWEEN PARALLEL LINES 117.82 FEET, AS APPEARS BY SAID PLAT.

PARCEL NO. 26

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING SUBLOT NO. 162 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY RECORDS; SAID SUBLOT HAVING A FRONT AGE OF 45.00 FEET ON THE NORTHERLY SIDE OF BROOK PARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 117.82 FEET AND HAVING A REAR LINE OF 45.00 FEET.

PARCEL NO. 27

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUB LOTS NOS. 160 AND 161 IN THE VAN DEBOE–HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4 AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY RECORDS, SAID SUBLOTS TOGETHER FORMING A PARCEL OF LAND HAVING FRONTAGE OF 90.00 FEET ON THE NORTHERLY SIDE OF BROOKPARK ROAD SW. AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 117.82 FEET AND HAVING A REAR LINE OF 90.00 FEET.

PARCEL NO. 28

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOTS NOS. 158 AND 159 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION, OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOTS TOGETHER FORMING A PARCEL OF LAND HAVING FRONTAGE OF 85.00 FEET ON THE NORTHERLY SIDE OF BROOK PARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 117.82 FEET AND

HAVING A REAR LINE OF 85.00 FEET; THE WEST LINE OF SAID SUBLOT NO. 159 BEING ALSO THE EASTERLY LINE OF WEST 191ST STREET.

PARCEL NO. 29

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOTS NOS. 155, 156, 157 IN THE VAN DE BOE–HAGER COMPANY'S WEST LAWN SUBDIVISION, OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOTS EACH HAVING A FRONTAGE OF 40.00 FEET ON THE NORTHERLY SIDE OF BROOKPARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 117.82 FEET AND HAVING A REAR LINE OF 40.00 FEET, AS APPEARS BY SAID PLAT.

PARCEL NO. 30

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 154 IN THE VAN DE BOE–HAGER COMPANY'S WEST LAWN SUBDIVISION, OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT NO. 154 HAVING A FRONTAGE OF 43.50 FEET ON THE NORTHERLY SIDE OF BROOK PARK ROAD SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH, 117.82 FEET AND HAVING A REAR LINE OF 43.50 FEET.

PARCEL NO. 31

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING SUB–LOT NO. 31 IN THE VAN DE BOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4, AS SHOWN BY THE RECORDED PLAT OF SAID SUBDIVISION IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY RECORDS AND BEING 40 FEET FRONT ON THE NORTHERLY SIDE OF WEST LAWN AVE. SW., AND EXTENDS BACK BETWEEN PARALLEL LINES 112 FEET, AS APPEARS BY SAID PLAT. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 32

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOTS NO. 32 IN THE VAN DE BOE–HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; HAVING A FRONTAGE OF 40.00 FEET ON THE NORTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 40.00 FEET. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 33

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING SUB–LOT NO. 33 IN THE VAN DE BOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS NOS. 3 AND 4, AS SHOWN BY THE RECORDED PLAT OF SAID SUBDIVISION IN VOLUME 70 OF MAPS, PAGE 28 OF CUYAHOGA COUNTY RECORDS, AND BEING 40 FEET FRONT ON THE NORTHERLY SIDE OF WEST LAWN AVENUE SW., AND EXTENDING BACK OF EQUAL WIDTH 112 FEET, AS APPEARS BY SAID PLAT. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 34

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 34 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP SECTIONS 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY MAP RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 40.00 FEET ON THE NORTHERLY SIDE OF WEST LAWN AVENUE SW. AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET AND HAVING A REAR LINE OF 40.00 FEET. EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 35

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO: AND KNOWN AS BEING ALL OF SUBLOT NO. 37 IN THE VAN DEBOE HAGER COMPANY'S WEST LAWN SUBDIVISION OF PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTIONS NOS. 3 AND 4, AS RECORDED IN VOLUME 70, PAGE 28 OF CUYAHOGA COUNTY RECORDS; SAID SUBLOT HAVING A FRONTAGE OF 40.00 FEET ON THE NORTHERLY SIDE OF WEST LAWN AVE. SW., (45 FEET WIDE) AND EXTENDING BACK BETWEEN PARALLEL LINES OF EQUAL DEPTH 112.00 FEET.

EXCEPTING THEREFROM THE ABOVE DESCRIBED PREMISES, THAT PORTION OF THE PROPERTY CONVEYED TO THE STATE OF OHIO BY DEED DATED 1/20/1970 AND RECORDED 1/21/1970 IN VOL. 12585, PAGE 339 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 36

THAT PORTION OF WEST LAWN AVENUE, SW. AND WEST 191ST STREET AS SHOWN BY THE VACATION PLATS IN VOLUME 195 OF MAPS, PAGE 75 AND VOLUME 217 OF MAPS, PAGE 57 OF CUYAHOGA COUNTY RECORDS. EXCEPTING THEREFROM ANY OF THE PREVIOUSLY DESCRIBED PARCELS OF LAND, ANY PORTION THEREOF WITHIN THE BOUNDS OF RELOCATED BROOKPARK ROAD, AS SHOWN IN CENTERLINE SURVEY PLAT IN VOLUME 313 OF MAPS, PAGES 97, 98 AND 99 OF CUYAHOGA COUNTY RECORDS.

PARCEL NO. 37

SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA AND STATE OF OHIO AND KNOWN AS BEING PART OF ORIGINAL ROCKPORT SECTION 3, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A STONE MONUMENT IN THE CENTERLINE OF ROCKY RIVER DRIVE SW. AT ITS INTERSECTION WITH THE SOUTHERLY LINE OF SAID SECTION NO. 3 (WHICH IS ALSO THE CENTERLINE OF BROOKPARK ROAD SW.); THENCE NORTHEASTERLY ALONG THE CENTERLINE OF ROCKY RIVER DRIVE SW. 175 FEET; THENCE EASTERLY PARALLEL WITH SAID SOUTHERLY LINE OF SAID SECTION, 237.72 FEET; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 159.24 FEET TO THE SOUTHERLY LINE OF SAID SECTION; THENCE WESTERLY ON SAID SOUTHERLY LINE, 309.38 FEET TO THE PLACE OF BEGINNING AND CONTAINING ONE ACRE OF LAND.

EXCEPTION PARCELS

EXCEPTING THEREFROM PARCEL NO. 592 WL–1 (HIGHWAY) AND PARCEL NO. 592 WL–2 (HIGHWAY) APPROPRIATED BY THE STATE OF OHIO AND DESCRIBED IN THE JOURNAL ENTRY ON VERDICT FILED FOR RECORD JANUARY 20, 1970 AND RECORDED IN VOLUME 12585, PAGE 519 OF CUYAHOGA COUNTY RECORDS DESCRIBED AS FOLLOWS: PARCEL NO. 592 WL–1 (HIGHWAY) SITUATED IN THE CITY OF CLEVELAND, COUNTY OF CUYAHOGA, AND STATE OF OHIO, AND BEING, PART OF ORIGINAL ROCKPORT TOWNSHIP, SECTION NO. 3 AND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A STONE MONUMENT IN THE CENTERLINE OF ROCKY RIVER DRIVE (70 FEET WIDE) AT ITS INTERSECTION WITH THE SOUTHERLY LINE OF SAID ORIGINAL ROCKPORT TOWNSHIP SECTION NO. 3, WHICH IS ALSO THE CONSTRUCTION BASE LINE OF BROOKPARK ROAD (S.R. 17); THENCE NORTH 24 DEGREES 58 MINUTES 22 SECONDS EAST 175.00 FEET ALONG THE SAID CENTERLINE OF ROCKY RIVER DRIVE (70 FEET WIDE) TO A POINT, SAID POINT BEING OWNERS' NORTHEASTERLY PROPERTY CORNER; THENCE SOUTH 89 DEGREES 38 MINUTES 58 SECONDS EAST 230.72 FEET ALONG THE SAID OWNERS'

NORTHERLY PROPERTY LINE TO A POINT BEING 365.73 FEET RIGHT OF STATION 443 PLUS 66.41 OF INTERSTATE 80 CENTERLINE AND, THE PRINCIPAL PLACE OF BEGINNING; THENCE SOUTH 89 DEGREES 38 MINUTES 58 SECONDS EAST 7.00 FEET CONTINUING ALONG SAID OWNERS' NORTHERLY PROPERTY LINE TO A POINT, SAID POINT BEING OWNERS' NORTHEASTERLY PROPERTY CORNER; THENCE SOUTH 00 DEGREES 30 MINUTES 02 SECONDS WEST 60.00 FEET ALONG SAID OWNERS' EASTERLY PROPERTY LINE TO A POINT; THENCE NORTH 06 DEGREES 09 MINUTES 59 SECONDS WEST 60.39 FEET TO THE PRINCIPAL PLACE OF BEGINNING, CONTAINING 210 SQUARE FEET, MORE OR LESS, EXCLUSIVE OF ALL LEGAL HIGHWAYS. TOGETHER WITH ALL RIGHTS OR EASEMENTS OF ACCESS TO OR FROM SAID LIMITED ACCESS HIGHWAY, FROM OR TO THE LAND OF SAID PERSONS ABUTTING UPON THAT PORTION OF SAID LIMITED ACCESS HIGHWAY, AS SHOWN BY THE PLANS OF SAID IMPROVEMENT HEREIN REFERRED TO. DESCRIPTION FOR THE ABOVE PARCELS IS BASED ON A SURVEY MADE BY NORMAN H. WILKE, REGISTERED SURVEYOR NO. 598.

PARCEL NO. 592 WL–2 (HIGHWAY)

BEGINNING AT A STONE MONUMENT IN THE CENTERLINE OF ROCKY RIVER DRIVE (70 FEET WIDE) AT ITS INTERSECTION WITH THE SOUTHERLY LINE OF SAID ORIGINAL ROCKPORT TOWNSHIP SECTION 3, WHICH IS ALSO THE CONSTRUCTION BASE LINE OF BROOKPARK ROAD (S.R. 17); THENCE SOUTH 89 DEGREES 29 MINUTES 58 SECONDS EAST 90.00 FEET ALONG THE SAID NORTHERLY LINE OF BROOKPARK ROAD (100 FEET WIDE) TO A POINT; THENCE NORTH 60 DEGREES 57 MINUTES 36 SECONDS EAST 34.48 FEET TO A POINT, SAID POINT BEING ON OWNERS' EASTERLY PROPERTY LINE; THENCE SOUTH 00 DEGREES 30 MINUTES 02 SECONDS WEST 17.00 FEET ALONG THE SAID OWNERS' EASTERLY PROPERTY LINE TO A POINT, SAID POINT BEING ON THE NORTHERLY LINE OF BROOKPARK ROAD (100 FEET WIDE); THENCE SOUTH 00 DEGREES 30 MINUTES 02 SECONDS WEST 30.00 FEET CONTINUING ALONG SAID OWNERS' EASTERLY PROPERTY LINE TO A POINT, SAID POINT BEING ON THE CONSTRUCTION BASE LINE OF BROOKPARK ROAD (S.R. 17), WHICH IS ALSO THE SOUTHERLY LINE OF ORIGINAL ROCKPORT TOWNSHIP SECTION NO. 3 AS AFORESAID; THENCE NORTH 89 DEGREES 29 MINUTES 58 SECONDS WEST 122.92 FEET ALONG THE SAID CONSTRUCTION BASE LINE OF BROOKPARK ROAD (S.R. 17) TO THE PRINCIPAL PLACE OF BEGINNING, CONTAINING 255 SQUARE FEET, MORE OR LESS EXCLUSIVE OF THE PRESENT ROAD WHICH OCCUPIES 3,644 SQUARE FEET, MORE OR LESS. TOGETHER WITH ALL RIGHTS OR EASEMENTS OF ACCESS TO OR FROM SAID LIMITED ACCESS HIGHWAY, FROM OR TO THE LAND OF SAID PERSONS ABUTTING UPON THAT PORTION OF SAID LIMITED ACCESS HIGHWAYS, AS SHOWN BY THE PLANS OF SAID IMPROVEMENT HEREIN REFERRED TO. DESCRIPTION FOR THE ABOVE PARCEL IS BASED ON NORMAN M. WILKE, REGISTERED SURVEYOR NO. 598.

This property contains approximately 2.54 acres.

Issued in Romulus, Michigan, on March 28, 2014.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2014–08111 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2011–0097]

Pilot Program on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), U.S. DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces the availability of and requests public comment on data and information about Importaciones y Distribuciones Latina America Gami SA de CV (IDLA), a new motor carrier that does not currently have a U.S. Department of Transportation (U.S.DOT) registration number. IDLA applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

DATES: Comments must be received on or before April 21, 2014.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0097 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Fax: 1- 202–493–2251. Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, North American Borders Division, (202) 510–0211; *marcelo.perez@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Barbara Hairston, Acting Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number (FMCSA–2011–0097), indicate the specific question to which each comment

applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and type ''FMCSA–2011–0097'' in the search box. Locate this document in the list and click on ''Comment Now!'' If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and type ''FMCSA–2011–0097'' in the search box and locate this document in the list. Next, click ''Open Docket Folder'' and click on the title of the document you wish to view. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007). Section 6901 of the Act requires that certain actions be taken by the DOT as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** (76 FR 40420) its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice (76 FR 20807). The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment comprehensive data and information on the Pre-Authorization Safety Audits (PASAs) conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is seeking public comment about the data and information relating to a PASA completed on January 14, 2014. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed the PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 (all titled ''Successful Pre-Authorization Safety Audit (PASA) Information'') set out additional information on the carrier(s) noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *FMCSA Register Number:* The number assigned to the Mexico-domiciled motor carrier's operating authority as found in the FMCSA Register.

E. *PASA Initiated:* The date the PASA was initiated.

F. *PASA Completed:* The date the PASA was completed.

G. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

H. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (e.g., [MX–12345]);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

The FMCSA Register may be accessed through FMCSA's Licensing and Insurance public Web site at *http://li-public.fmcsa.dot.gov/,* and selecting FMCSA Register in the drop down menu.

I. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

J. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

K. *Passed Verification of 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR part 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections as required by 49 CFR part 396, and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

L. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item K above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

M. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

N. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

O. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

P. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

Q. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; Driving and Parking Rules).

R. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

S. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal, if the inspection is passed successfully. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection at the time of the PASA decal as a result of a passed inspection.

T. *Number U.S. Vehicles Issued CVSA decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

U. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

V. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier that has completed the PASA.

TABLE 1

Row number in Tables 2, 3 and 4 of the Appendix to today's notice	Name of carrier	U.S. DOT No.
1	Importaciones y Distribuciones Latina America Gami SA de CV	N/A

TABLE 2—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION

[See also Tables 3 and 4]

Column A—Row No.	Column B—Name of carrier	Column C—US DOT No.	Column D—FMCSA Register No.	Column E—PASA initiated	Column F—PASA completed	Col. G—PASA results	Col. H—FMCSA register	Col. I—US drivers	Col. J—US vehicles
1	Importaciones y Distribuciones Latina America Gami SA de CV (IDLA).	N/A	MX–861978	01/06/2014	01/14/2014	PASS	03/31/2014	1	1

TABLE 3—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION

[See also Tables 2 and 4]

Column A—Row No.	Column B—Name of carrier	Column C—US DOT No.	Column D—FMCSA Register No.	Column K—Passed verification of 5 elements (Yes/No)	Column L—If no, which element failed	Column M—passed phase 1 factor 1	Column N—passed phase 1 factor 2	Column O—passed phase 1 factor 3	Column P—passed phase 1 factor 4
1	Importaciones y Distribuciones Latina America Gami SA de CV (IDLA).	N/A	MX–861978	Yes	N/A	Yes	Yes	Yes	Yes.

TABLE 4—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION AS OF SEPTEMBER 9, 2011

[See also Tables 2 and 3]

Column A—Row No.	Column B—name of carrier	Column C—US DOT No.	Column D—FMCSA Register No.	Column Q—Passed Phase I Factor 5	Column R—Passed Phase I Factor 6	Column S—Number US vehicles inspected	Column T—Number US vehicles issued CVSA decal	Column U controlled substance collection	Column V—Name of controlled substances and alcohol Collection Facility
1	Importaciones y Distribuciones Latina America Gami SA de CV (IDLA).	N/A	MX–861978	Yes	Yes	1	1	N/A	N/A

In an effort to provide as much information as possible for review, the application and PASA results for this carrier are posted at the Agency's Web site for the pilot program at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* For carriers that participated in the Agency's demonstration project that ended in 2009, copies of the previous PASA and compliance review, if conducted, are also posted. All documents were redacted so that personal information regarding the drivers is not released. Sensitive business information, such as the carrier's tax identification number, is also redacted. In response to previous comments received regarding the PASA notice process, FMCSA also posted copies of the vehicle inspections conducted during the PASA in the PASA document.

IDLA is a Mexico-domiciled motor carrier based in Tijuana, Baja California del Norte, Mexico. The applicant is not currently registered as an OP–2 commercial zone carrier. The applicant has no history in the Demonstration Project. The applicant does not have any existing inspections or SMS scores.

A list of the carrier's vehicles approved by FMCSA for use in the pilot program is also available at the above referenced Web site. IDLA will be operating a vehicle that is less than 26,001 pounds. Therefore, IDLA is not subject to controlled substances and alcohol testing requirements found in 49 CFR part 40 and Part 382.

In its application, IDLA acknowledged an affiliation with Hector Serrano Lee dba Importaciones y Distribuciones Latina America Gami, a U.S.-domiciled motor carrier with USDOT number 1983616 and MC number 702408. The affiliated motor carrier, Hector Serrano Lee, has no identified safety issues, and no Safety Measurement System scores at or above alert thresholds as of February 21, 2014. Hector Serrano Lee has no enforcement history with FMCSA.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue

to examine the public docket for new material.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of publication of notice in the FMCSA Register.

Issued On: April 2, 2014.

Anne S. Ferro,

Administrator.

[FR Doc. 2014–08064 Filed 4–9–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35808 (Sub-No. 1)]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial Revocation of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board revokes the class exemption as it pertains to the trackage rights described in Docket No. 35808 [1] to permit the trackage rights to expire at midnight on October 31, 2014, in accordance with the agreement of the parties, subject to the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Betweem Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

DATES: This decision is effective on May 10, 2014. Petitions to stay must be filed by April 21, 2014. Petitions for reconsideration must be filed by April 30, 2014.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to Docket No. FD 35808 (Sub-No. 1) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on BNSF's representative, Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 655 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: April 4, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–08051 Filed 4–9–14; 8:45 am]

BILLING CODE 4915–01–P

[1] In that docket, on February 28, 2014, BNSF Railway Company (BNSF) filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice addressed an agreement in which Union Pacific Railroad Company (UP) granted temporary local trackage rights to BNSF over UP's lines extending between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of approximately 126.2 miles, and (2) UP milepost 219.4 at Elsey, Cal., and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. BNSF states that the trackage rights that were granted there are only temporary rights, but, because they are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R.,* FD 35808 (STB served Mar. 24, 2014).

DEPARTMENT OF THE TREASURY

Monitoring Availability and Affordability of Auto Insurance

AGENCY: Federal Insurance Office, Treasury.

ACTION: Notice; Request for information.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act provides the Federal Insurance Office with a number of authorities including monitoring the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance. Treasury issues this notice to elicit comment from state insurance regulators, consumer organizations, representatives of the insurance industry, policyholders, academia, and others as appropriate regarding: (1) A reasonable and meaningful definition of affordability; and (2) the metrics and data FIO should use to monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable auto insurance.

DATES: Comments must be received on or before June 9, 2014.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov*, or by mail (if hard copy, preferably an original and two copies) to the Federal Insurance Office, Attention: Lindy Gustafson, Room 1319 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. As postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''Monitoring Availability and Affordability of Auto Insurance.'' Please include your name, group affiliation, if any, address, email address and telephone number(s) in your comment.

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Lindy Gustafson, Federal Insurance Office, 202–622–6245 (not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background: Congress passed and President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203) in July 2010. Subtitle A of Title V of the Dodd-Frank Act established the Federal Insurance Office (FIO) in the U.S. Department of the Treasury (Treasury). The statute provides FIO with a number of authorities including monitoring the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance.

A number of insurance products provide essential financial security to consumers, in addition to satisfying certain state laws or requirements, including, but not limited to, personal auto insurance, homeowners insurance, life insurance, and annuities. FIO proposes to monitor the availability and affordability of personal auto insurance for the following reasons:

1. With the exception of New Hampshire, all states and the District of Columbia require consumers to

maintain auto liability insurance as a condition of automobile ownership.

2. The percentage of uninsured motorists countrywide has hovered around 14 percent between 2002 and 2009.

3. Owning an automobile is likely associated with a higher probability of employment and other factors associated with economic well-being.

4. Industry representatives assert that auto insurance has become more affordable over time but consumer representatives assert auto insurance has become less affordable for low-income consumers and minorities.

While the definition of availability is largely settled, the definition of the affordability of personal auto insurance remains unclear. Last year, the Availability and Affordability Subcommittee of the Treasury Department's Federal Advisory Committee on Insurance (FACI Subcommittee) suggested the following definition for affordability: affordability means that the cost of [personal auto insurance] is a reasonable percentage of a consumer's income.

Measuring affordability according to the FACI Subcommittee definition is a difficult and subjective task. One approach may be to interpret personal auto insurance premium payments as affordable if such payments do not prohibit individuals and/or families from purchasing other required necessities. Or, personal auto insurance may be interpreted as affordable if it is actually purchased by individuals and/or families.

Studies have used various metrics to measure availability and affordability of personal auto insurance. These include:

1. The market share of the top ten writers of personal auto insurance;

2. The market share of the residual market;

3. The average auto insurance premium;

4. The loss ratio; and

5. An affordability index calculated by dividing the average auto insurance premium by median household income.

These metrics may be calculated only for the auto insurance coverage mandated by most states (*e.g.,* bodily injury and property damage) or all auto insurance coverage (*e.g.,* bodily injury, property damage, uninsured/underinsured motorist, collision, and comprehensive).

A data source is needed to monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable auto insurance. While data on average personal auto insurance premium by coverage is collected by the National Association of Insurance Commissioners, other data sources will likely be needed.

II. General Solicitation for Comments: The FIO hereby solicits comments, including supporting and illustrative information in support of such comments where appropriate and available, regarding:

1. A reasonable and meaningful definition of affordability of personal auto insurance;

2. The appropriate metrics to use in order to monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable personal auto insurance; and

3. The data source(s) FIO should use to monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable auto insurance.

III. Solicitation for Specific Comments. All comments received will be available to the public.

Authority: FIO Act 31 U.S.C. 313–14.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2014–08100 Filed 4–9–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[OCC Charter Number 702692]

First Federal Savings and Loan Association of Hammond, Hammond, Indiana; Supervisory Conversion Application

Notice is hereby given that on March 13, 2014, the Office of the Comptroller of the Currency (OCC) approved the application of First Federal Savings and Loan Association of Hammond, Hammond, Indiana, to undertake a voluntary supervisory conversion and merge with and into Peoples Bank SB, Munster, Indiana. Copies of the application are available on the OCC Web site at the FOIA Reading Room (*https://foia-pal.occ.gov/palMain.aspx*) under Mutual to Stock Conversions. If you have any questions, please contact Licensing Activities at (202) 649–6260.

Dated: April 3, 2014.

By the Office of the Comptroller of the Currency.

Stephen A. Lybarger,

Deputy Comptroller for Licensing.

[FR Doc. 2014–08118 Filed 4–9–14; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Supplemental Identification Information for One (1) Individual Designated Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing supplemental information for the names of one (1) individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The publishing of updated identification information by the Director of OFAC of the one (1) individual in this notice, pursuant to Executive Order 13224, is effective on April 1, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

On April 1, 2014 the Director of OFAC supplemented the identification information for one (1) individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The supplementation identification information for the individual is as follows:

Individual

1. RAUF, Hafiz Abdur (a.k.a. RAOUF, Hafiz Abdul; a.k.a. RAUF, Hafiz Abdul), 4 Lake Road, Room No. 7, Choburji, Lahore, Pakistan; Dola Khurd, Lahore, Pakistan; 129 Jinnah

Block, Awan Town, Multan Road, Lahore, Pakistan; 33 Street No. 3, Jinnah Colony, Tehsil Kabir Wala, District Khanewal, Pakistan; 5-Chamberlain Road, Lahore, Pakistan; DOB 25 Mar 1973; POB Sialkot, Punjab Province, Pakistan; Passport CM1074131 (Pakistan) issued 29 Oct 2008 expires 29 Oct 2013; alt. Passport Booklet: A7523531 (Pakistan); National ID No. CNIC: 35202–5400413–9 (Pakistan); alt. National ID No. NIC: 277–93–113495 (Pakistan); alt. National ID No. 27873113495 (Pakistan) (individual) [SDGT].

Dated: April 1, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–08104 Filed 4–9–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Notice With Request for Comment

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice with request for comment.

SUMMARY: The United States Mint hosted a meeting with coin industry stakeholders on March 13, 2014, at which bureau officials solicited individual input and answered questions from participants on the effects of changing the metal composition of circulating United States coinage (See **Federal Register**, February 4, 2014). This notice and request for comment is to supplement the information that the United States Mint has received to date from its stakeholders on factors identified as a result of the bureau's research and development efforts on alternative metals for circulating United States coinage.

Specifically, we are seeking input on these factors that the United States Mint identified in its *Biennial Report to Congress on the Current Status of Coin Production Costs and Analysis of Alternative Content* submitted to Congress in December 2012, which is available at the following Web site: *http://www.usmint.gov/about_the_mint/PDFs/United_States_Mint_Report_2012_Biennial_Report_to_the_Congress_on_the_Current_Status_of_Coin_Production_Costs_and_Analysis_of_Alternative_Content_December_2012.pdf,* These factors include changes in weight, color, electromagnetic signature, environmental impact, and transition/implementation period.

DATES: Submit either electronic or written comments by 60 days after the notice is published.

ADDRESSES: Submit electronic comments on the collection of information to *Coin.Stakeholders Response@usmint.treas.gov.* Submit all written comments to Coin Stakeholders Response, Office of Coin Studies, United States Mint, 801 9th Street NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Coin Modernization, Oversight, and Continuity Act of 2010 (Pub. L. 111–302) provides to the Secretary of the Treasury research and development authority for alternative metallic coinage materials. Specifically, the Secretary of the Treasury is authorized to—(1) conduct any appropriate testing of metallic coinage materials within or outside of the Department of the Treasury, and (2) solicit input from or otherwise work in conjunction with federal and non-federal entities, including independent research facilities or current or potential suppliers of the metallic material used in volume production of circuiting coins. In accordance with Public Law 111–302, section 2(b), in conducting research or soliciting input, the Secretary of the Treasury shall consider the following:

1. Factors relevant to the potential impact of any revisions to the composition of the material used in coin production on the current coinage material suppliers;
2. Factors relevant to the ease of use and ability to co-circulate of new coinage materials, including the effect on vending machines and commercial coin processing equipment and making certain, to the greatest extent practicable, that any new coins work without interruption in existing coin acceptance equipment without modification; and
3. Such other factors that the Secretary of the Treasury, in consultation with merchants who would be affected by any change in the composition of circulating coins, vending machine and other coin acceptor manufacturers, vending machine owners and operators, transit officials, municipal parking officials, depository institutions, coin and currency handlers, armored-car operators, car wash operators, and American-owned manufacturers of commercial coin processing equipment, considers to be appropriate and in the public interest.

The Secretary of the Treasury has delegated to the United States Mint the authority to conduct research and development for alternative metallic coinage materials, consider the factors specified in Public Law 111–302, section 2(b), and prepare a biennial report to the Congress on the current status of coin production costs and analysis of alternative metallic coinage materials. Accordingly, the United States Mint conducted research and development, and the bureau described its initial efforts in its first biennial report submitted to the House Financial Services Committee and the Senate Committee on Banking, Housing, and Urban Affairs in December 2012.

Previously, the United States Mint requested public comment on the metallic content of all circulating coins, based on the factors specified in Public Law 111–302, in the **Federal Register,** March 4, 2011.

The United States Mint is now seeking written comments from coin industry stakeholders on the effects of changing qualities such as weight, color and electromagnetic signature of our circulating coinage. Comments on other possible impacts are also welcome, along with comments on possible environmental impacts and the length of time necessary for a transition and/or implementation period if coinage material were to be changed.

Themes of Stakeholder Input

Upon reviewing and considering the feedback that the United States Mint received at its March 13, 2014, coin industry stakeholder meeting, the bureau has categorized the feedback among one or more themes listed below. The enumeration of these themes is merely intended to evoke additional consideration and feedback. Coin industry stakeholders that respond to this request for comment do not need to limit their input to these themes.

1. A change to the diameter or thickness of U.S. coins would have a significant negative impact.
2. The quarter-dollar coin is the workhorse of circulating coins. Across stakeholders, any change to the quarter-dollar coin would bring about the most costly conversion to a new alternative metal quarter-dollar coin.
3. Aluminum alloy coins do not perform well at high speeds and high pressures of coin sorting and handling equipment.
4. A generous amount of communication and education is both needed and expected before implementing the use of alternative materials for the nation's circulating coins.
5. If new coin handling equipment or software is needed, manufacturers of coin handling equipment need six to 12 months with production sample coins before they can begin shipping the new updated equipment to end users.
6. The transition period for end users to implement an alternative material

coin should be at least 18 months from the date the alternative material coin is announced and before it is put into circulation.

7. The total time period needed for a smooth transition is 18 to 30 months.

United States Mint Assessment to Date

The United States Mint has removed from consideration the change listed below. However, coin industry stakeholders that respond to this request for comment may provide input in favor of this change.

- Aluminum alloy metals are not being considered.

Industry stakeholders are encouraged to review the *Alternative Metals Study,* August 31, 2012, submitted to the United States Mint by Concurrent Technologies Corporation. Specifically, *Chapter 4.0 Outreach, Validation of Alternative material Candidate Nonsense Pieces and Security,* which includes previous industry feedback. The report is available at the following Web site: *http://www.usmint.gov/about_the_mint/PDFs/ctcr-alternative-metals-study-2012-08-31.pdf*

Specific Factors

Stakeholders are specifically invited to comment on the following factors:

- Costs to convert to circulating coins composed of alternative metals given the following possible changes to coins:
  - Weight
  - Electromagnetic signature
  - Visual changes, such as color and relief
- Transition time needed to introduce a circulating coin composed of an alternative metal.
- Comments on how best to inform and educate both affected industries and the public on changes to circulating coins.
- Environmental impact from the use of circulating coins composed of alternative metals.
- Other issues of importance not identified above.

FOR FURTHER INFORMATION CONTACT: Office of Coin Studies at *OfficeofCoinStudies@usmint.treas.gov*, or by calling 202–354–6600.

Authority: Pub. L. 111–302, section 2(a)(2) & (b)(3); 31 U.S.C. 5112(p)(3)(A).

Dated: April 4, 2014.

Beverly Ortega Babers,

Chief Administrative Officer, United States Mint.

[FR Doc. 2014–08022 Filed 4–9–14; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Lesser Prairie-Chicken; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0071; 4500030113]

RIN 1018–AY21

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Lesser Prairie-Chicken

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened species status for the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a grassland bird known from southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and the Texas Panhandle, under the Endangered Species Act of 1973, as amended (Act). This final rule implements the Federal protections provided by the Act for the lesser prairie-chicken. Critical habitat is prudent but not determinable at this time. Elsewhere in this issue of the **Federal Register**, we published a final special rule under section 4(d) of the Act for the lesser prairie-chicken.

DATES: This rule is effective on May 12, 2014.

ADDRESSES: *Document availability:* You may obtain copies of this final rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0071 or by mail from the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** below). Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; telephone 918–581–7458; facsimile 918–581–7467.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, Acting Field Supervisor, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; by telephone 918–581–7458 or by facsimile 918–581–7467. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document consists of: (1) A final rule to list the lesser prairie-chicken as a threatened species; and (2) a finding that critical habitat is prudent but not determinable at this time.

Why we need to publish a rule. Under the Endangered Species Act (Act), a species may warrant protection through listing if it is an endangered or threatened species throughout all or a significant portion of its range. The Act sets forth procedures for adding species to, removing species from or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. In this final rule, we explain why the lesser prairie-chicken warrants protection under the Act. This rule lists the lesser prairie-chicken as a threatened species throughout its range.

The Act provides the basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The primary factors supporting the determination of threatened status for the lesser prairie-chicken are the ongoing and probable future impacts of cumulative habitat loss and fragmentation. These impacts are the result of: Conversion of grasslands to agricultural uses; encroachment by invasive, woody plants; wind energy development; petroleum production; and presence of roads and manmade vertical structures including towers, utility lines, fences, turbines, wells, and buildings.

We requested peer review of the methods used in making our final determination. We obtained opinions from knowledgeable individuals having scientific expertise in this species or related fields (such as range and fire ecology, shrub management and grouse management) and solicited review of the scientific information and methods that we used in developing the proposal. We obtained opinions from two knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, adherence to regulations, and whether we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final listing rule.

We sought public comment on the proposed listing rule and the proposed special rule under section 4(d) of the Act. During the first comment period, we received 879 comment letters directly addressing the proposed listing and critical habitat designation. During the second comment period, we received 56,344 comment letters addressing the proposed listing rule, proposed special rule, and related rangewide conservation plan. During the third comment period, we received 12 comments regarding the proposed listing. During the fourth comment period, we received 74 comments, primarily related to the proposed revised special rule.

Previous Federal Actions

In 1973, the Service's Office of Endangered Species published a list of threatened wildlife of the United States in Resource Publication 114, often referred to as the ''Red Book.'' While this publication did not, by itself, provide any special protections, the publication served, in part, to solicit additional information regarding the status of the identified taxa. The lesser prairie-chicken was one of 70 birds included in this publication (Service 1973, pp. 134–135), but little Federal regulatory action occurred on the lesser prairie-chicken until 1995.

On October 6, 1995, we received a petition, dated October 5, 1995, from the Biodiversity Legal Foundation, Boulder, Colorado, and Marie E. Morrissey (petitioners). The petitioners requested that we list the lesser prairie-chicken as threatened throughout its known historical range in the United States. The petitioners defined the historical range to encompass west-central Texas north through eastern New Mexico and western Oklahoma to southeastern Colorado and western Kansas, and they stated that there may have been small populations in northeastern Colorado and northwestern Nebraska. The petitioners also requested that critical habitat be designated as soon as the needs of the species are sufficiently well known. However, from October 1995 through April 1996, we were under a moratorium on listing actions as a result of Public Law 104–6, which, along with a series of continuing budget resolutions, eliminated or severely reduced our listing budget through April 1996. We were unable to act on the petition during that period. On July 8, 1997 (62 FR 36482), we announced our 90-day finding that the petition presented substantial information

indicating that the petitioned action may be warranted. In that notice, we requested additional information on the status, trend, distribution, and habitat requirements of the species for use in conducting a status review. We requested that information be submitted to us by September 8, 1997. In response to a request by the Lesser Prairie-Chicken Interstate Working Group dated September 3, 1997, we reopened the comment period for an additional 30 days, beginning on November 3, 1997 (62 FR 59334). We subsequently published our 12-month finding for the lesser prairie-chicken on June 9, 1998 (63 FR 31400), concluding that the petitioned action was warranted but precluded by other higher priority listing actions.

The 12-month finding initially identified the lesser prairie-chicken as a candidate for listing with a listing priority number (LPN) of 8. Our policy (48 FR 43098; September 21, 1983) requires the assignment of an LPN to all candidate species. This listing priority system was developed to ensure that we have a rational system for allocating limited resources in a way that ensures those species in greatest need of protection are the first to receive such protection. The listing priority system considers magnitude of threat, immediacy of threat, and taxonomic distinctiveness in assigning species numerical listing priorities on a scale from 1 to 12. In general, a smaller LPN reflects a greater need for protection than a larger LPN. The lesser prairie-chicken was assigned an LPN of 8, indicating that the magnitude of threats was moderate and the immediacy of the threats to the species was high.

On January 8, 2001 (66 FR 1295), we published our resubmitted petition findings for 25 animal species, including the lesser prairie-chicken, having outstanding ''warranted-but-precluded'' petition findings as well as notice of one candidate removal. The lesser prairie-chicken remained a candidate with an LPN of 8 in our October 30, 2001 (66 FR 54808); June 13, 2002 (67 FR 40657); May 4, 2004 (69 FR 24876); May 11, 2005 (70 FR 24870); September 12, 2006 (71 FR 53756); and December 6, 2007 (72 FR 69034) candidate notices of review. In our December 10, 2008 (73 FR 75176), candidate notice of review, we changed the LPN for the lesser prairie-chicken from an 8 to a 2. This change in LPN reflected a change in the magnitude of the threats from moderate to high primarily due to an anticipated increase in the development of wind energy and associated placement of transmission lines throughout the estimated occupied range of the lesser prairie-chicken. Our June 9, 1998, 12-month finding (63 FR 31400) did not recognize wind energy and transmission line development as a threat because such development within the known range was almost nonexistent at that time. Changes in the magnitude of other threats, such as conversion of certain Conservation Reserve Program (CRP) lands from native grass cover to cropland or other less ecologically valuable habitat and observed increases in oil and gas development, also were important considerations in our decision to change the LPN. The immediacy of the threats to the species did not change and continued to be high. Our November 9, 2009 (74 FR 57804), November 10, 2010 (75 FR 69222), and October 26, 2011 (76 FR 66370) candidate notices of review retained an LPN of 2 for the lesser prairie-chicken.

Since making our 12-month finding, we have received several 60-day notices of intent to sue from WildEarth Guardians (formerly Forest Guardians) and several other parties for failure to make expeditious progress toward listing of the lesser prairie-chicken. These notices were dated August 13, 2001; July 23, 2003; November 23, 2004; and May 11, 2010. WildEarth Guardians subsequently filed suit on September 1, 2010, in the U.S. District Court for the District of Colorado. A revised notice of intent to sue dated January 24, 2011, in response to motions from New Mexico Oil and Gas Association, New Mexico Cattle Growers Association, and Independent Petroleum Association of New Mexico to intervene on behalf of the Secretary of the Interior, also was received from WildEarth Guardians.

This complaint was subsequently consolidated in the U.S. District Court for the District of Columbia along with several other cases filed by the Center for Biological Diversity or WildEarth Guardians relating to petition finding deadlines and expeditious progress toward listing. A settlement agreement in *In re Endangered Species Act Section 4 Deadline Litigation,* No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011) was reached with WildEarth Guardians in which we agreed to submit a proposed listing rule for the lesser prairie-chicken to the **Federal Register** for publication by September 30, 2012.

On September 27, 2012, the settlement agreement was modified to require that the proposed listing rule be submitted to the **Federal Register** on or before November 29, 2012. On December 11, 2012, we published a proposed rule (77 FR 73828) to list the lesser prairie-chicken as a threatened species under the Act (16 U.S.C. 1531 *et seq.*). Publication of the proposed rule opened a 90-day comment period that closed on March 11, 2013. We held a public meeting and hearing in Woodward, Oklahoma, on February 5, 2013; in Garden City, Kansas, on February 7, 2013; in Lubbock, Texas, on February 11, 2013; and in Roswell, New Mexico, on February 12, 2013.

On May 6, 2013, we announced the publication of a proposed special rule under the authority of section 4(d) of the Act. At this time, we reopened the comment period on the proposed listing rule (77 FR 73828) to provide an opportunity for the public to simultaneously provide comments on the proposed listing rule, the proposed special rule, and a draft rangewide conservation plan for the lesser prairie-chicken. This comment period was open from May 6 to June 20, 2013.

On July 9, 2013, we announced a 6-month extension (78 FR 41022) of the final listing determination based on our finding that there was substantial disagreement regarding the sufficiency or accuracy of the available data relevant to our determination regarding the proposed listing rule. We again reopened the comment period to solicit additional information. This comment period closed on August 8, 2013. We reopened the comment period again on December 11, 2013 (78 FR 75306), to solicit comments on a revised proposed special rule and our December 11, 2012, proposed listing rule. This comment period closed on January 10, 2014. However, the endorsed version of the Western Association of Fish and Wildlife Agencies' Lesser Prairie-Chicken Range-wide Conservation Plan was not available on the Web sites, as stated in the December 11, 2013, revised proposed special 4(d) rule (78 FR 75306), at that time. We subsequently reopened the comment period on January 29, 2014 (79 FR 4652), to allow the public the opportunity to have access to this rangewide plan and submit comments on the revised proposed special rule and our December 11, 2012, proposed listing rule. This comment period closed on February 12, 2014.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed listing of the lesser prairie-chicken during five comment periods: December 11, 2012, to March 11, 2013; May 6 to June 20, 2013; July 9 to August 8, 2013; December 11, 2013, to January 10, 2014; and January 29 to February 12, 2014. Additionally four public hearings were held in February 2013; February 5th in

Woodward, Oklahoma; February 7th in Garden City, Kansas; February 11th in Lubbock, Texas; and February 12th in Roswell, New Mexico. We also contacted appropriate Federal, Tribal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule, proposed special rule, draft rangewide conservation plan, and final rangewide conservation plan during the respective comment periods.

Over the course of the five comment periods, we received approximately 57,350 comment submissions. Of these, approximately 56,800 were form letters. Additionally, during the February 2013 public hearings, 85 individuals or organizations provided comments on the proposed rule. All substantive information provided during these comment periods, including the public hearings, has either been incorporated directly into this final determination or is addressed below. Comments from peer reviewers and State agencies are grouped separately. In addition to the comments, some commenters submitted additional reports and references for our consideration, which we reviewed and incorporated into this final rule as appropriate.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from nine knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occur, and conservation biology principles. We received responses from two of the nine peer reviewers we contacted.

We reviewed all comments received from the two peer reviewers regarding the analysis of threats to the lesser prairie-chicken and our proposed threatened listing determination. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule, as appropriate.

(1) *Comment:* Conservation efforts to date have not been adequate to address known threats.

Our Response: While considerable effort has been expended over the past several years to address some of the known threats throughout portions or all of the species' estimated occupied range, threats to the continued viability of the lesser prairie-chicken into the future remain. Recent development of conservation plans has highlighted the importance of not only habitat restoration and enhancement but also the role of the States and other partners in reducing many of the known threats to the lesser prairie-chicken. Consequently, we proposed a special rule under section 4(d) of the Act that facilitates conservation implementation and threat reduction through development or implementation of certain types of conservation plans and efforts. Such plans will help provide the ongoing, targeted implementation of appropriate conservation actions that are an important aspect of collaborative efforts to improve the status of the species. We discuss the various conservation efforts occurring within the estimated occupied range of the lesser prairie-chicken in more detail in the Summary of Ongoing and Future Conservation Efforts, below.

(2) *Comment:* Grain crops may be used by lesser prairie-chickens more extensively than indicated in the rule, particularly considering that conversion of the prairies to crop production led to expansion, at least temporarily, of lesser prairie-chicken populations.

Our Response: Grain crops are used by lesser prairie-chickens and may have temporarily led to range expansion, but the best available information does not detail how extensively grains are used by lesser prairie-chickens. Considering food is likely rarely limiting for lesser prairie-chickens, grains are likely used advantageously and are not necessary for survival. However, lesser prairie-chickens may be more dependent upon waste grain during drought or prolonged periods of extreme winter weather. Lesser prairie-chickens tend to predominantly rely on cultivated grains when production of natural foods, such as acorns and grass and forb seeds, are deficient (Copelin 1963, p. 47). Therefore, agricultural grain crops, particularly when irrigated and with additional nutrient inputs, can be a more reliable, but temporary, food source than native foods that fluctuate with environmental conditions. However, there is a cost to the species associated with using grain fields in terms of exposure to predation, energy expenditure, and weather. Copelin (1963, entire) indicates that lesser prairie-chickens will occasionally use grain crops, but it appears that native foods are generally preferred. Additionally, as the extent of agricultural lands increases within the landscape, native grass and shrubland habitats that are used by lesser prairie-chickens for all life-history stages, not limited to foraging, decline. Kukal (2010, pp. 22, 24) found that lesser prairie-chickens did not move long distances to access grain fields and may spend the fall and winter exclusively in grasslands even when grain fields, primarily wheat, are available. While this likely indicates that wheat is not a preferred grain source, or that grains are not readily available on winter wheat fields, the best scientific information indicates that crop fields are less important to lesser prairie-chicken survival than are native grasslands in good condition because native grasslands are more likely to provide necessary habitat for lekking, nesting, brood rearing, feeding for young, and feeding for adults, among other things. Accordingly, this rule characterizes waste grains and grain agriculture as important during prolonged periods of adverse winter weather but unnecessary for lesser prairie-chicken survival during most years and in most regions. A more detailed discussion of lesser prairie-chicken use of grain crops is provided in the ''Life-History Characteristics'' section, below.

(3) *Comment:* The Service should not list population segments of the lesser prairie-chicken in Kansas, where those populations meet or exceed population thresholds established by an objective and independent team of species experts. Specifically, the Service could designate a distinct population segment in Kansas and exclude it from any listing action.

Our Response: The Act allows us to list only species, subspecies, or distinct population segments of a species or subspecies, as section 3(16) of the Act defines species to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The Service and the National Marine Fisheries Service jointly published a ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS Policy, three factors are considered in a decision concerning whether to establish and classify a possible DPS. The first two factors, (1) discreteness of the population segment in relation to the remainder of the taxon and (2) the significance of the population segment to the taxon to which it belongs, bear on whether the population segment can be a possible DPS. The third factor bears on answering the question of whether the population segment, when treated as if it were a species, is endangered or threatened. In order to establish a DPS, all three factors must be met. Under the

DPS Policy, a population may be considered discrete if (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries with differences in control of exploitation, management of habitat, conservation status, or relevant regulatory mechanisms. The best scientific and commercial information available does not indicate that lesser prairie-chicken populations in Kansas are discrete from the populations in the neighboring States of Colorado or Oklahoma because there is no marked separation from other populations. Thus, we do not have the discretion to exclude populations in Kansas from the listing because they do not meet the definition of a listable (or delistable) entity. Please refer to the Determination section of this final listing rule for further discussion.

(4) *Comment:* A recovery team should be established and critical habitat proposed as quickly as possible following the final listing decision.

Our Response: Under section 4(f)(1) of the Act, we are required to develop and implement plans for the conservation and survival of endangered and threatened species, unless the Secretary of the Interior finds that such a plan will not promote the conservation of the species. We will move to accomplish these tasks as soon as feasible. We have determined in this final rule that critical habitat is not determinable at this time; however, we are required under section 4(b)(6)(C)(ii) of the Act to make our critical habitat determination within one year from the publication date of this final rule.

(5) *Comment:* Speciation in members of the genus *Tympanuchus* may be incomplete, and statements regarding taxonomy should be revised to more fully disclose the current state of genetic and taxonomic information. Electronic copies of several publications were provided to aid the Service's review of this information.

Our Response: As stated in the final rule, we agree that there is some uncertainty regarding the taxonomic status of the lesser prairie-chicken and other related members of the genus. For example, Johnsgard (1983, p. 316) initially considered the greater and lesser prairie-chickens to be allopatric subspecies, meaning that they originated as the same species but populations became isolated from each other to an extent that prevented genetic interchange, causing speciation. However, the American Ornithologists Union recognizes the lesser prairie-chicken as a species, and we have concluded that the lesser prairie-chicken is sufficiently distinct from other members of the genus to meet the Act's definition of a species. The American Ornithologists Union considers the lesser prairie-chicken to be distinct from the greater prairie-chicken based on known differences in behavior, habitat affiliation, and social aggregation (Ellsworth *et al.* 1994, p. 662). We have revised the rule to include a more thorough discussion of prairie grouse phylogeny (the evolutionary history of taxonomic groups).

(6) *Comment:* Under conditions of high production and large population size, lesser prairie-chickens would be able to disperse up to 48 kilometers (km) (30 miles (mi)) annually and be able to recolonize areas fairly quickly. Similarly, if birds were at least partially migratory in the past, recolonization could occur more rapidly than indicated in the proposed rule.

Our Response: There is limited information available on the dispersal capabilities of lesser prairie-chickens, but the best scientific information available to us supports that lesser prairie-chickens exhibit limited dispersal tendencies and do not disperse over long distances. In Texas, Haukos (1988, p. 46) recorded daily movements of 0.1 km (0.06 mi) to greater than 6 km (3.7 mi) by female lesser prairie-chickens prior to onset of incubation. Taylor and Guthery (1980b, p. 522) documented a single male moving 12.8 km (8 mi) in 4 days, which they considered to be a dispersal movement. This information does not support the conclusion that individuals have or could disperse up to 48 km (30 mi). Due to their heavy wing loading, they are relatively poor fliers. For these reasons, we do not consider lesser prairie-chickens to be good dispersers.

The existence of large-scale migration movements of lesser prairie-chickens is not known, but it is possible that the species was at least partially migratory in the past. Both Bent (1932, pp. 284–285) and Sharpe (1968, pp. 41–42) thought that the species, at least historically, might have been migratory with separate breeding and wintering ranges. Taylor and Guthery (1980a, p. 10) also thought the species was migratory prior to widespread settlement of the High Plains, but migratory movements have not recently been documented. The lesser prairie-chicken is now thought to be nonmigratory.

The species' limited dispersal and migration capabilities are unlikely to significantly contribute to recolonization under current conditions, particularly considering the fragmented nature of the occupied range.

Recolonization of former lesser prairie-chicken habitat is most likely to occur in habitats that are located in close proximity to existing populations, particularly considering the extent of habitat fragmentation that exists within the occupied range and reduced population size. Due to the lesser prairie chicken's relatively limited movements, their site fidelity, and difficulty in translocating individuals, management efforts are best concentrated on improving habitat conditions in areas adjacent to existing populations and allowing individuals to recolonize those habitats naturally. Under appropriate conditions, populations can recolonize these adjacent areas relatively quickly, provided surplus numbers exist to support dispersal. As evidenced by the reoccupation of former range in Kansas, where large blocks of high-quality habitat were created through the CRP, recolonization is possible but is most likely to occur over the long term (8 to 12 years) in habitats within close proximity to existing populations. As conservation efforts for this species continue and recovery planning would be initiated post-listing, conservation actions such as habitat improvement may include areas that are most likely to support population expansion.

(7) *Comment:* The extent of the historical range provides little information with regard to density of lesser prairie-chickens, and some portions of the historical range may not have been suitable for lesser prairie-chickens even 100 years ago. The extent of the historical range is a somewhat arbitrary benchmark and should not be used when making comparisons with respect to currently occupied range.

Our Response: We recognize that not all of the Service's defined historical range was optimal habitat, and very little information regarding historical densities of lesser prairie-chickens exists. However, one of the factors we must consider in our listing determination relates to the present or threatened destruction, modification, or curtailment of a species' habitat or range. Accordingly, comparing the likely extent of historical range with currently occupied range provides insight into whether the range of a species has been lost or reduced over time. We agree that the extent of the historical range is an estimate and use this term, and the term ''approximate,'' in referring to the historical range. We also recognize that the extent of historical range may have fluctuated over time, based on habitat conditions

evident at any one period, and the estimated historical range may represent the maximum range that was occupied during historical times. The information we present in this rule serves to reflect the estimated extent of the historical range based on the best available information and provides some context with which we can discuss the estimated occupied range. While our calculations of the loss of historical range are an estimate and not an exact value, they demonstrate that the range of the lesser prairie-chicken likely has contracted substantially since pre-European settlement.

(8) *Comment:* The rule fails to consider that the occupied range of the lesser prairie-chicken has expanded to include portions of northwest Kansas and may be larger than in the recent past.

Our Response: Our proposed rule clearly states that the lesser prairie-chicken occupies areas in Ellis, Graham, Sheridan, and Trego Counties in Kansas that extend beyond the previously delineated historical range. Our calculations of the estimated occupied range and the estimated occupied range plus a 16-km (10-mi) buffer also recognize the existence of populations in those counties. However, the best scientific and commercial information available indicates the range in northwestern Kansas does not represent a range expansion for lesser prairie-chicken; instead, we consider this to be a reoccupation of former range.

(9) *Comment:* The extent of agricultural land within the range of the lesser prairie-chicken may decline, particularly considering the High Plains (Ogallala) Aquifer may be economically depleted in 20 years.

Our Response: The best scientific and commercial information available does not indicate that the extent of agricultural land will decline significantly in the near future, even if the level of the High Plains Aquifer declines. Terrell *et al.* (2002, p. 35), Sophocleous (2005, p. 361), and Drummond (2007, p. 142) all concluded that, while declining water levels in the High Plains Aquifer may cause some areas of cropland to revert to grassland, most of the irrigated land likely will transition to dryland agriculture, despite the increased use of more efficient methods of irrigation in response to declining water supplies for irrigation. This information has been incorporated into this final rule.

(10) *Comment:* Work by Hovick *et al.* (unpublished manuscript in review) on anthropogenic structures and grouse that has been submitted for publication should be considered. This work shows a consistent and negative relationship between grouse and certain manmade structures, including oil and gas infrastructure, power lines, and wind turbines.

Our Response: We agree with this comment and have incorporated the findings of this study into this rule. This study examined the effect of 23 different types of anthropogenic structures on grouse displacement behavior and found that all structure types examined resulted in displacement, but oil structures and roads had the greatest impact on grouse avoidance behavior (Hovick *et al.* unpublished manuscript under review, p. 11). They also examined the effect of 17 of these structures on survival and found all of the structures examined also decreased survival in grouse, with lek attendance declining at a greater magnitude than other survival parameters measured (Hovick *et al.* unpublished manuscript under review, p. 12). This information supports our conclusion that the presence of vertical structures contributes to functional fragmentation of lesser prairie-chicken habitat.

(11) *Comment:* Statements regarding the impact of recreational viewing, particularly with respect to the size of the lek, are speculative and more information should be provided.

Our Response: There is little direct evidence regarding impacts of recreational viewing at lesser prairie-chicken leks. Consequently, we cannot provide more definitive information within this section than the discussion in the proposed and final rules. Based on the best scientific and commercial information available at this time, we do not consider recreational viewing to be a significant impact to the species as a whole. Please refer to the *Hunting and Other Forms of Recreational, Educational, or Scientific Use* section, below, for our discussion of potential impacts from recreational viewing.

(12) *Comment:* In the section on hybridization, the Service incorrectly describes the lesser prairie-chicken populations in Kansas that occur north of the Arkansas River as low density.

Our Response: We have revised that discussion to more clearly reflect observed densities in the area of hybridization.

(13) *Comment:* The section on hybridization should be expanded and clarified with respect to the fertility of hybrids. Populations within the zone of overlap are not low density or ephemeral, and the zone of overlap is more extensive than indicated by Bain and Farley (2000). The hybridization issue, combined with information on speciation and possibility of introgression, should be a high priority for research.

Our Response: We have expanded the section on hybridization to include discussion related to fertility of first and second generation hybrids. We have concerns with respect to the implications of hybridization, but the best available information at this time does not indicate that hybridization is a threat at current levels.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for [her] failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the States of Colorado, Kansas, New Mexico, Oklahoma, and Texas regarding the proposal to list the lesser prairie-chicken as a threatened species are addressed below.

(14) *Comment:* Evidence shows that the lesser prairie-chicken population is not only surviving, but has stabilized or increased, despite other conditions, including drought in much of the region. This conclusion is supported by Hagen 2012. Lesser prairie-chicken populations can experience large fluctuations in numbers, but they have remained within normal limits given annual precipitation over the past 12 years with no significant decrease; further, they have demonstrated the ability to recover from similar drought episodes in the past.

Our Response: In June 2012, we were provided with the referenced interim assessment of lesser prairie-chicken population trends since 1997 (Hagen 2012, entire). While the results of this analysis suggest that lesser prairie-chicken population trends have increased since 1997, we are reluctant to place considerable weight on the interim assessment for a number of reasons as discussed in the rule. The ''Rangewide Population Estimates'' section of this final listing rule includes a full discussion of these reasons, in addition to a full discussion of population estimates for the species. In summary, Hagen's preliminary analysis evaluates lesser prairie-chicken population trends from 1997 to 2012, whereas the Service's analysis of population estimates as presented in the final rule dates back as far as records are available.

Although lesser prairie-chicken populations can fluctuate considerably from year to year in response to variable weather and habitat conditions, generally the overall population size has continued to decline from the estimates of population size available in the early

1900s (Robb and Schroeder 2005, p. 13). The ability of any species to recover from an event, such as drought, is fully dependent upon the density of individuals, the environmental conditions, the time that those environmental conditions persist, and, most importantly, the habitat quality and quantity available (including connectivity of that habitat). An examination of anecdotal information on historical numbers of lesser prairie-chickens indicates that numbers likely have declined from possibly millions of birds to current estimates of thousands of birds. Further, examination of the trends in the five lesser prairie-chicken States for most indicator variables, such as males per lek and lek density, over the last 3 years are indicative of declining populations. The total estimated abundance of lesser prairie-chickens in 2012 was 34,440 individuals (90 percent upper and lower confidence intervals of 52,076 and 21,718 individuals, respectively; McDonald *et al.* 2013, p. 24). The total estimated abundance of lesser prairie-chickens in 2013 dropped to 17,616 individuals (90 percent upper and lower confidence intervals of 20,978 and 8,442 individuals, respectively) (McDonald *et al.* 2013, p. 24). The best scientific and commercial information available supports that lesser prairie-chicken populations have declined since pre-European settlement.

(15) *Comment:* Listing the lesser prairie-chicken is contrary to the best available science and current information. Current research and conservation efforts support that the species does not warrant listing.

Our Response: As required by section 4(b) of the Act, we used the best scientific and commercial data available in making this final determination. We solicited peer review from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles to ensure that our listing is based on scientifically sound data, assumptions, and analysis. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the proposed rule. Comments and information we received helped inform this final rule. We used multiple sources of information including: Results of numerous surveys, peer-reviewed literature, unpublished reports by scientists and biological consultants, geospatial analysis, and expert opinion from biologists with extensive experience studying the lesser prairie-chicken and its habitat. The commenter provides no rationale (e.g., literature or scientific evidence) to indicate the species does not meet the definition of a threatened species under the Act. Please refer to the Determination section of this final listing rule for further discussion on whether or not the species meets the definition of an endangered or threatened species.

(16) *Comment:* A final determination to list the species as endangered or threatened would have negative impacts on economics, communities, and private landowners. Economic impacts may affect agriculture (farming and ranching), oil and gas, potash, dairy, wind energy, electricity generation, mineral royalties, and transportation. Many industries may incur additional project costs and delays due to the regulatory and economic burden created by the listing. As industry experiences economic impacts, commenters stated that additional impacts could include decreased tax revenues; a reduction in jobs; effects to school, hospital, and county government operations; increased development pressure; and greater land fragmentation.

Our Response: For listing actions, the Act requires that we make determinations ''solely on the basis of the best available scientific and commercial data available'' (16 U.S.C. 1533(b)(1)(A)). Therefore, we do not consider information concerning economic impacts when making listing determinations. However, 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. Therefore, we will consider the provisions of 4(b)(2) when we designate critical habitat for the species in the future.

(17) *Comment:* The proposed listing is premature. Adequate time must be provided to determine if conservation efforts, such as the candidate conservation agreements with assurances (CCAAs) and the Lesser Prairie-Chicken Range-wide Conservation Plan, are sufficient to maintain a viable lesser prairie-chicken population.

Our Response: We recognize the significant efforts of all of our partners in the conservation of the lesser prairie-chicken, and these conservation efforts and the manner in which they are helping to ameliorate threats to the species are considered in our final listing determination. Section 4(b)(1)(A) of the Act requires us to take into account those efforts being made by a State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, and we fully recognize the contributions of the State and local programs. However, the Act requires us to make determinations based on the best scientific and commercial data available ''at the time of listing'' after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

The lesser prairie-chicken has been identified as a candidate species since 1998. Since that time, annual candidate notices of review have been conducted, and the scientific literature and data continued to indicate that the lesser prairie-chicken is detrimentally impacted by ongoing threats, and we continued to find that listing the species was warranted. Our determination is guided by the Act and its implementing regulations, considering the five listing factors and using the best available scientific and commercial information.

(18) *Comment:* The Lesser Prairie-Chicken Range-wide Conservation Plan effectively addresses the threats being faced by the species throughout the range. By using voluntary, incentive-based programs, the Range-wide Conservation Plan encourages effective management on private lands for the lesser prairie-chicken and implements mechanisms for industry to avoid, minimize, and mitigate impacts to the species' habitat. These efforts effectively ameliorate the threats identified in the proposed rule for listing and, therefore, support a not-warranted finding.

Our Response: The Service supports the efforts of the Western Association of Fish and Wildlife Agencies (WAFWA) in the development of the rangewide plan and has recognized it as a landmark effort in collaborative, rangewide planning for conservation of an at-risk species. On October 23, 2013, the Service announced its endorsement of the plan as a comprehensive conservation program that reflects a sound conservation design and strategy that, when implemented, will provide a net conservation benefit to lesser prairie-chicken. The plan includes a strategy to address threats to the prairie-chicken throughout its range, establishes measurable biological goals and objectives for population and habitat, provides the framework to achieve these goals and objectives, demonstrates the administrative and financial mechanisms necessary for

successful implementation, and includes adequate monitoring and adaptive management provisions. For these reasons, elsewhere in today's **Federal Register**, we are finalizing a special rule under section 4(d) of the Act that, among other things, specifically exempts from regulation the take of lesser prairie-chicken if that take is incidental to carrying out the rangewide plan.

The Service's Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) provides guidance on how to evaluate conservation efforts that have not yet been fully implemented or have not yet demonstrated effectiveness. The policy presents criteria for evaluating the certainty of implementation and the certainty of effectiveness for such conservation efforts. The Service has evaluated the rangewide plan under the PECE criteria. A summary of that evaluation follows.

At the time of the listing decision, based upon the criteria in PECE, the Service is uncertain concerning availability of funding and the level of voluntary participation in the rangewide plan in the future. At this time, the measures in the rangewide plan do not allow the Service to conclude that the lesser prairie-chicken no longer meets the Act's definition of a threatened or endangered species. Additionally, due to the flexibility that is necessarily built into the implementation of the rangewide plan, there is uncertainty about when and where impacts and offsets will occur. Most importantly, even if the plan is implemented in the future as written and is effective at achieving its goals, we must be able to show that the plan has contributed to the elimination of one or more threats to the species identified through the 4(a)(1) analysis at the time of the listing determination such that the species no longer meets the definition of threatened or endangered. Largely as a result of the degree of coordination and adaptive management built into the rangewide plan, there is a high degree of certainty that the plan will achieve its stated purposes of creating a net conservation benefit to the species and moving the species towards its population goals if there is sufficient participation and enrollment from landowners and industry. However, generally owing to the uncertainty of the timing of conservation delivery and the funds generated by current industry enrollment, the rangewide plan has not eliminated or adequately reduced the threats identified such that the species no longer meets the Act's definition of threatened or endangered at this time, as discussed below.

The conservation strategy employed in the rangewide plan (1) complements and builds on existing conservation efforts (e.g., CRP), (2) uses an ''avoid, minimize, and mitigate'' strategy to address industry impacts, and (3) provides financial incentives to landowners to manage lands to benefit lesser prairie-chickens. Through the mitigation framework and application of adaptive management principles, the rangewide plan, if enrollment is sufficient and if the plan is appropriately managed, will provide a net conservation benefit to the species and result in incremental improvements to the level and quality of suitable habitat over time.

Lands to be enrolled as offsets to impacts are not necessarily currently occupied high quality habitats, and the location of offset units is entirely driven by the willingness of landowners to participate. They are lands where management practices are to be implemented that would improve the suitability of those lands for lesser prairie-chickens. These landowners are not required to implement identical management practices, but are rather provided a suite of management options for their lands. Until those practices are identified for each parcel combined with the length of the contract and the quality and location of the lands, we have little certainty about how much conservation uplift can be expected or in what timeframe the benefit will accrue. Even if there would be significant enrollment of lands into the rangewide plan in the short term, it will still take several years for habitat improvement practices to take effect for some of the conservation practices and for lesser prairie-chicken populations to improve.

The effectiveness of the rangewide plan is further complicated by the impact of continued drought on the landscape. If the current drought subsides, the rangewide plan's improved management on lands could result in an upturn in the status of the species. However, if the drought persists, the rangewide plan will not create additional usable habitat necessary for the species quickly or at all. This particular threat is largely outside of the ability of management actions to address; therefore, it is a threat that is not addressed by the rangewide plan, at least over the short term. Given the particularly dire status of the lesser prairie-chicken in 2013 due to ongoing drought (approximately 17,000 birds estimated), this threat is of high magnitude and immediacy. Over the longer term, the rangewide plan may ameliorate the threat of drought by creating additional habitat so that the birds can rebound to higher numbers that can better withstand this threat.

Finally, the Service is uncertain concerning the potential for a lag time between authorizing impacts, securing contracts with landowners to apply conservation to mitigate for those impacts, and implementing the conservation actions through those contracts. While mitigation fees must be paid and conservation contracts must be in place prior to impacts occurring, the rangewide plan does not require habitat improvement or creation of suitable habitat prior to impacts occurring. The rangewide plan grants a waiver period for the oil and gas industry wherein while all impacts must ultimately be mitigated for, the waiver grants oil and gas impacters the ability to develop enrolled lands in advance of conservation delivery. The mitigation metrics are set up such that over the life of the plan, we anticipate improvement in the status of the species, but that some of the conservation delivery will take at least a few years to start being realized. At the time of the listing decision, we do not have certainty of the timeframe and the extent of the habitat improvement.

In conclusion, we have a high level of certainty that the rangewide plan will improve the status of the species into the future if sufficient enrollment occurs and the plan is implemented accordingly. However, the rangewide plan has not contributed to the elimination or adequate reduction of the threats to the species at the current time to the point that the species does not meet the definition of threatened or endangered.

Public Comments

Species' Populations

(19) *Comment:* The proposed rule states that very little information is available regarding lesser prairie-chicken population size prior to 1900 and further states that rangewide population estimates were almost nonexistent until the 1960s. The lack of practical baseline population estimates and historical population studies result in considerable data gaps regarding the significance of population fluctuations as well as the establishment of a trend-line on the actual population estimates of the species. Commenters question how the Service can make a reasonable determination that listing is warranted without historical information prior to 1900.

Our Response: We recognize that data gaps exist in the estimated historical population size of the species and in the development of population trends for the species, but we are required by the Act to determine whether or not the species meets the definition of an endangered or threatened species on the basis of the best scientific and commercial data available. We recognize that population fluctuations are common for the lesser prairie-chicken in response to variable weather and habitat conditions, but the best available science supports that the overall population size has likely declined from possibly millions of birds to current estimates of thousands of birds. We present the best available information on population sizes in the ''Rangewide Population Estimates'' and ''State-by-State Information on Population Status'' sections of this final determination. Under section 4(a)(1) of the Act, we determine whether a species is an endangered or threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. We examined the best scientific and commercial information available regarding present and future threats faced by the lesser prairie-chicken in the Summary of Factors Affecting the Species. Please refer to the Determination section of this final listing rule for further discussion.

(20) *Comment:* The Service incorrectly points to the effects of inconsistent data, methods, and effort levels in existing survey and trend data and then dismisses a study that scientifically addresses these flaws. The Interim Assessment of Lesser Prairie-Chicken Trends since 1997 (Hagen 2012) standardizes inconsistencies among previous survey studies and calculates the population trend of the species from the standardized survey data. At a minimum, the Service should explain why it dismissed this study.

Our Response: We discuss the Hagen (2012) interim assessment in the ''Rangewide Population Estimates'' of this final listing determination. We are reluctant to place considerable weight on this interim assessment for several reasons, as discussed below in that section. We evaluated all sources of the best scientific and commercial data available and found other lines of evidence more compelling. More specifically, the rangewide aerial survey results show that the total estimated abundance of lesser prairie-chickens dropped from 34,440 individuals (90 percent upper and lower confidence intervals of 52,076 and 21,718 individuals, respectively) in 2012, to 17,616 individuals (90 percent upper and lower confidence intervals of 20,978 and 8,442 individuals, respectively) in 2013 (McDonald *et al.* 2013, p. 24).

(21) *Comment:* The Service needs a scientifically sound estimate of current lesser prairie-chicken populations and habitats to use as a baseline to determine future population increases and to delineate critical habitat. Similarly, the Service should define a population threshold necessary to be considered recovered post-listing.

Our Response: In the springs of 2012 and 2013, the States, in conjunction with the Western Association of Fish and Wildlife Agencies, implemented a rangewide sampling framework and survey methodology. This aerial survey protocol was developed to provide a more consistent approach for detecting rangewide trends in lesser prairie-chicken. The aerial surveys conducted in 2012 and 2013 provide the best estimate of current rangewide population size of the lesser prairie-chicken. The results of the aerial surveys are discussed in more detail in the ''Rangewide Population Estimates'' section of this final listing determination. Recovery planning, as outlined in more detail in section 4(f)(1) of the Act, is the mechanism by which the Service determines what is necessary for the conservation and survival of the species. Recovery plans must include objective, measurable criteria that, when met, would result in a determination that the species be removed from the List of Endangered and Threatened Wildlife. As mentioned above, recovery planning for the lesser prairie-chicken will be initiated after the listing determination is finalized.

Species' Habitat

(22) *Comment:* The Service inaccurately identified the lesser prairie-chicken's historical range in the proposed rule. Some areas identified as historical range have never been lesser prairie-chicken habitat.

Our Response: As required by section 4(b) of the Act, we used the best scientific and commercial data available in this final listing determination. The commenters provided no indication of specific areas they believe were inaccurately identified as part of the historical range and, similarly, provided no rationale (e.g., literature or scientific evidence) to indicate any specific areas that should be removed from the historical range. Please refer to the ''Historical Range and Distribution'' section for a discussion of the best scientific and commercial data available regarding the historical range of the lesser prairie-chicken. In addition, please refer to our response to comment 7 in *Peer Reviewer Comments,* above.

(23) *Comment:* Based on anecdotal evidence and specimen collections, the actual historical range of the lesser prairie-chicken for a period from at least 1877 through 1925 may have included from southwestern Nebraska (northern limits) and southeastward to southwestern Missouri (eastern limits). Given this information, the apparent ''increased range expansion'' in Kansas is really movement back into its previous range, and not an expansion. Additionally, this reestablishment back to its former range appears to be within artificial habitat (i.e., CRP grasslands).

Our Response: The extent of the historical range is an estimate, and we, therefore, use this term and the term ''approximate'' in referring to the historical range in this final listing rule. We also recognize that the extent of the historical range may have fluctuated over time, based on habitat conditions evident at any one period. The information we present in our rule serves to reflect the estimated extent of the historical range and provides some context with which we can discuss the estimated occupied range. We recognize that lesser prairie-chickens have been documented from Nebraska based on specimens collected during the 1920s. Sharpe (1968, pp. 51, 174) considered the occurrence of lesser prairie-chickens in Nebraska to be the result of a short-lived range expansion facilitated by settlement and cultivation of grain crops. Sharpe did not report any confirmed observations since the 1920s (Sharpe 1968, entire), and no sightings have been documented despite searches over the last 5 years in southwestern Nebraska (Walker 2011, entire). Therefore, Nebraska is not included in the delineated historical range of the species; further, the best scientific and commercial information available does not indicate that lesser prairie-chickens currently occur in Nebraska.

Lawrence (1877), as cited in the comment, documented finding 30 lesser prairie-chicken specimens for sale in New York that he ascertained had originated from southern Missouri; however, the origin of these birds is questionable (Sharpe 1968, p. 42). This anecdotal evidence is the only evidence that the species may have one time occurred in Missouri; therefore, there is

not enough evidence to support that Missouri was within the historical range of the species. Thus, Nebraska and Missouri are not included in the estimated historical range of the species. However, as discussed in our response to comment 8 above, given the historical records, we agree that the currently occupied range in northwestern Kansas does not represent a range expansion for lesser prairie-chicken. Instead, we consider this to be a reoccupation of former range.

(24) *Comment:* The data cited and relied upon by the Service show that previous declines in lesser prairie-chicken range have stabilized. The Service argues that range occupation trends are key indicators in determining whether the lesser prairie-chicken is a threatened species; however, the data provided and utilized by Service show that, between 1980 and 2007, the occupied range increased 159 percent. The increase over that period totaled more than 43,253 square kilometers (sq km) (16,700 square miles (sq mi)). In its evaluation of whether the lesser prairie-chicken range is increasing, the Service examined the period preceding European settlement of the United States to 1980. The Service failed to consider all range-occupancy trend data after 1980. The Service should explain its decision to base range decline estimates on the time period from pre-European settlement to 1980 when more recent and reliable data were available.

Our Response: The total maximum historically occupied range prior to European settlement is estimated to be about 466,998 sq km (180,309 sq mi), whereas the total estimated occupied range is now estimated to encompass 70,602 sq km (27,259 sq mi) as of 2007. The currently occupied range now represents roughly 16 percent of the estimated historical range. This value is a close approximation because a small portion of the range in Kansas lies outside the estimated maximum historical range and was not included in this analysis. This is further explained in the ''Historical Range and Distribution'' and ''Current Range and Distribution'' sections of the rule. Thus, we based our range decline estimates on the time period from pre-European settlement to 2007. At stated in the response to comment 7 under *Peer Reviewer Comments,* above, our calculations of the loss of historical range are an estimate and not an exact value, but they demonstrate that the range of the lesser prairie-chicken likely has contracted substantially since historical times. In the Summary of Factors Affecting the Species, we provide evidence to support that the species is imperiled throughout all of its range due to ongoing and future impacts of cumulative habitat loss and fragmentation as a result of conversion of grasslands to agricultural uses; encroachment by invasive, woody plants; wind energy development; petroleum production; roads; and the presence of manmade vertical structures. These threats are currently impacting lesser prairie-chickens throughout their range and are projected to continue and to increase in severity into the future.

(25) *Comment:* The lesser prairie-chicken does not naturally exist in Deaf Smith County, Texas, and was incorrectly identified in the area occupied by the species.

Our Response: In March 2007, the Texas Parks and Wildlife Department (TPWD) reported that lesser prairie-chickens were suspected in portions of Deaf Smith County. Aerial and road surveys conducted in 2010 and 2011 did not detect lesser prairie-chickens in Deaf Smith County; however, in 2012, Timmer (2012, pp. 36, 125–131) observed lesser prairie-chickens in Deaf Smith County. The western portion of Deaf Smith County is included in the Lesser Prairie-Chicken Range-wide Conservation Plan as part of the shinnery oak prairie (Van Pelt *et al.* 2013, p. 87). Based upon a review of the best scientific and commercial information available, Deaf Smith County is included as part of the estimated occupied range of the species.

(26) *Comment:* Southwest Quay County, New Mexico, is incorrectly identified in the lesser prairie-chicken ecoregion map as being comprised of shinnery oak prairie. There are no shinnery oak vegetative sites within the Southwest Quay Soil and Water Conservation District.

Our Response: On *http://www.regulations.gov,* we provided an estimated occupied range map as supporting information for the proposed listing rule; although Quay County is identified in the map as part of the estimated historical range, the current estimated occupied range includes only very small portions of southeastern Quay County. The ecoregion map referenced by the commenter is provided in the Lesser Prairie-Chicken Range-wide Conservation Plan. Southeastern Quay County is identified as part of the shinnery oak prairie in the figures provided in the Lesser Prairie-Chicken Range-wide Conservation Plan, but the southwestern portion of the county is not included (Van Pelt *et al.* 2013, p. 80). As stated in the proposed rule, the New Mexico Department of Game and Fish (NMDGF) reports that no leks have been detected in northeastern New Mexico, where Quay County occurs. However, habitat in this area appears capable of supporting lesser prairie-chicken, but the lack of any known leks in this region since 2003 suggests that lesser prairie-chicken populations in northeastern New Mexico, if still present, are very small.

(27) *Comment:* The outer extent of the currently defined range is drawn, especially in the southeast quadrant, based on references to places where prairie-chickens were reported to have been seen with no documentation to indicate the resident or transient status of the birds. Thus, the potential range of the species needs to be better defined.

Our Response: In the ''Current Range and Distribution'' section, we discuss the currently occupied range as provided by a cooperative mapping effort between the Playa Lakes Joint Venture and the five State wildlife agencies within the range of the lesser prairie-chicken. The resulting map was provided on *http://www.regulations.gov* as supplemental information to the proposed rule. We consider this mapping effort the best scientific and commercial data available regarding the estimated current occupied range. The commenter provided no rationale (e.g., literature or scientific evidence) to indicate which specific areas they believe should or should not be included in the range map.

(28) *Comment:* Grain production in certain areas has provided desirable, though unnatural, feeding habitat for lesser prairie-chickens in the past. However, changes in farming practices and decline in grain production, rather than habitat degradation, has caused the appearance of lesser prairie-chicken population declines.

Our Response: The Service recognizes that, when available, lesser prairie-chickens will use cultivated grains, such as grain sorghum (*Sorghum vulgare*) and corn (*Zea mays*), during the fall and winter months (Snyder 1967, p. 123; Campbell 1972, p. 698; Crawford and Bolen 1976c, pp. 143–144; Ahlborn 1980, p. 53; Salter *et al.* 2005, pp. 4–6). However, lesser prairie-chickens tend to predominantly rely on cultivated grains when production of natural foods, such as acorns and grass and forb seeds, are deficient, particularly during drought and severe winters (Copelin 1963, p. 47; Ahlborn 1980, p. 57). Overall, the amount of land used for crop production nationally has remained relatively stable over the last 100 years, although the distribution and composition have varied (Lubowski *et al.* 2006, p. 6; Sylvester *et al.* 2013, p. 13). Despite the stability in crop

production, the availability of grains has not slowed the decline of the species since pre-European settlement. As some cropland is transitioned to non-agricultural uses, new land is being brought into cultivation helping to sustain the relatively constant amount of cropland in existence over that period. Nationally, the amount of cropland that was converted to urban uses between 1982 and 1997 was about 1.5 percent (Lubowski *et al.* 2006, p. 3). During that same period nationally, about 24 percent of cultivated cropland was converted to less intensive uses such as pasture, forest, and CRP (Lubowski *et al.* 2006, p. 3). Thus, a decline in grain production is not directly associated with lesser prairie-chicken population declines.

Threats

(29) *Comment:* Members of the public stated that hunting is driving the species to extinction and should be banned before listing is enacted. Others simply stated that hunting (or overutilization) is not a significant issue for the species or a cause for overutilization.

Our Response: Hunting programs are administered by State wildlife agencies. Currently, lesser prairie-chicken harvest is allowed only in Kansas. As discussed in the *Hunting and Other Forms of Recreation, Educational, or Scientific Use* section of the rule, we do not consider hunting to be a threat to the species at this time. However, as populations become smaller and more isolated by habitat fragmentation, their resiliency to the influence of any additional sources of mortality will decline. Intentional hunting of the lesser prairie-chicken will be prohibited when this listing goes into effect. Please refer to the final 4(d) special rule published elsewhere in today's **Federal Register** for an explanation of the prohibited actions, and exceptions to those prohibitions, that are necessary and advisable for the conservation of the lesser prairie-chicken.

(30) *Comment:* The proposed rule indicates that collisions with fences are an important source of mortality, but no actual data or numbers killed were given. Further, any risk posed by fences should be discounted because ranchers will remove or replace fences in the future, which could benefit lesser prairie-chickens. The most recent data do not support that fence collision takes a significant number of birds (Hagen 2012, entire; Grisham *et al.* 2012, entire). Additionally, the Service fails to acknowledge the amount of fence removal conducted through conservation efforts like the Wildlife Habitat Incentive Program (WHIP).

Our Response: We provide a complete discussion of the impacts associated with fence collisions in the *Collision Mortality* section of the Summary of Factors Affecting the Species. This section also includes metrics on collision mortality associated with fences and other manmade structures; however, precisely quantifying the scope of the impact of fence collisions rangewide is largely unquantified due to a lack of relevant information. However, the prevalence of fences and power lines within the species' range suggests these structures may have at least localized, if not widespread, detrimental effects. While some conservation programs, including WHIP, have emphasized removal of unneeded fences, it is likely that a majority of existing fences will remain on the landscape indefinitely without substantially increased removal efforts. Existing fences likely operate cumulatively with other mechanisms described in this rule to diminish the ability of the lesser prairie-chicken to persist, particularly in areas with a high density of fences.

(31) *Comment:* Disease and predation are not significant issues for the lesser prairie-chicken.

Our Response: We do not consider disease or parasite infections to be a significant factor in the decline of the lesser prairie-chicken. However, should populations continue to decline or become more isolated by fragmentation, even small changes in habitat abundance or quality could have a more significant influence on the impact of parasites and diseases. Alternatively, predation has a strong relationship with certain anthropogenic factors, such as fragmentation, vertical structures, and roads, and continued development is likely to increase the effects of predation on lesser prairie-chickens beyond natural levels. As a result, predation is likely to contribute to the declining status of the species. This is discussed further in the *Predation* section of the final rule. The commenter provides no rationale (e.g., literature or scientific evidence) to support his assertion that predation is not a threat to the lesser prairie-chicken.

(32) *Comment:* The broad statement regarding the avian toxicity of dimethoate (an insecticide) to lesser prairie-chickens made by the Service is not scientifically defensible. The statement was based on a single study that was outdated and of questionable quality and the Service's conclusion attributing sage grouse mortality to the chemical is not supported by the study. First, the study was on sage grouse, which have very different behavior patterns than lesser prairie-chickens; this makes data from a sage grouse field study a poor surrogate for assessing risks to lesser prairie-chickens. Second, it is unclear from the study if the source of toxicity was the application of the insecticide to the alfalfa field or a different insecticide applied to a nearby field prior to initiation of the study.

Our Response: We stated in the proposed rule that in the absence of more conclusive evidence, we do not currently consider application of insecticides for most agricultural purposes to be a threat to the species. However, we also state the primary conclusion of the only study we are aware of that has evaluated the use of dimethoate on grouse species. The study finds that, of approximately 200 greater sage grouse known to be feeding in a block of alfalfa sprayed with dimethoate, 63 were soon found dead, and many others exhibited intoxication and other negative symptoms (Blus *et al.* 1989, p. 1139). Because lesser prairie-chickens are known to selectively feed in alfalfa fields (Hagen *et al.* 2004, p. 72), there is cause for concern that similar impacts could occur. Although we acknowledge that greater sage grouse have different behavior patterns than the lesser prairie-chicken, there are no peer-reviewed studies available to us that specifically analyze the effects of insecticides on lesser prairie-chickens. Therefore, it is reasonable to use this study to draw a broad conclusion that similar impacts to the lesser prairie-chicken are possible. The researchers note that a flock of about 200 sage grouse occupied a field that was sprayed with the insecticide on August 1; about 30 intoxicated and dead grouse were observed the following day with the last verified insecticide-related mortality occurring on August 12 (Blus *et al.* 1989, p. 1142). The study further verifies, through brain chemistry analysis of the greater sage grouse, that at least 10 deaths directly resulted from dimethoate (Blus *et al.* 1989, p. 1142). Therefore, this study represents the best available science and provides evidence to support that insecticides may present a concern for the lesser prairie-chicken; however, we also recognize that there is not enough evidence provided to determine that insecticides present a threat to the species as a whole.

(33) *Comment:* The proposed rule states the distance that the lesser prairie-chicken avoids around manmade infrastructure, including a wind turbine, is more than 1.6 km (1 mi). The Service should provide conclusive evidence or studies that birds entirely disappear from a habitat area due to manmade structures. The science is unclear on

whether or not individual birds will return to areas where wind and transmission lines have been developed after initial construction ceases.

Our Response: In the ''Causes of Habitat Fragmentation Within Lesser Prairie-Chicken Range'' section, we present the results of the following studies to provide evidence that natural vertical features like trees and artificial above ground vertical structures such as power poles, fence posts, oil and gas wells, towers, and similar developments can cause general habitat avoidance and displacement in lesser prairie-chickens and other prairie grouse: Anderson 1969, entire; Robel 2002, entire; Robel *et al.* 2004, entire; Hagen *et al.* 2004, entire; Pitman *et al.* 2005, entire; Pruett *et al.* 2009a, entire; and Hagen *et al.* 2011 entire. This avoidance behavior is presumably a behavioral response that serves to limit exposure to predation.

The observed avoidance distances vary depending upon the type of structure and are likely also influenced by disturbances such as noise and visual obstruction associated with these features. According to Robel (2002, p. 23), a single commercial-scale wind turbine creates a habitat avoidance zone for the greater prairie-chicken that extends as far as 1.6 km (1 mi) from the structure. Pitman *et al.* 2005 (pp. 1267–1268) provides evidence to support that lesser prairie-chickens likely exhibit a similar response to tall structures like wind turbines. These studies do not indicate that lesser prairie-chickens will never occur within 1.6 km (1 mi) of a manmade structure, but they provide evidence to support that observed avoidance distances can be much larger than the actual footprint of the structure. Thus, these structures can have significant negative impacts by contributing to further fragmentation of otherwise suitable habitats. As human-made structures continue to be developed across the landscape, other factors contributing to habitat loss and fragmentation include conversion of grasslands to agricultural uses; encroachment by invasive, woody plants; wind energy development; petroleum production; and roads. The cumulative effect of these factors is readily apparent at the regional scale, causing isolation of populations at regional, landscape, and local levels.

(34) *Comment:* Vodenhal *et al.* (2011, entire) found greater prairie-chickens to lek, nest, brood, and remain in the proximity of a Nebraska wind farm despite the presence of localized, towering structures. This study is at odds with the notion of site fidelity.

Our Response: Male lesser prairie-chickens have high site fidelity and consistently return to a particular lek site (Copelin 1963, pp. 29–30; Hoffman 1963, p. 731; Campbell 1972, pp. 698–699). Once a lek site is selected, males persistently return to that lek year after year (Wiley 1974, pp. 203–204). They often will continue to use these traditional areas even when the surrounding habitat has declined in value (for example, concerning greater sage-grouse; see Harju *et al.* 2010, entire). The Service recognizes that Vodenhal *et al.* (2011, unpaginated) observed greater prairie-chickens lekking near the Ainsworth Wind Energy Facility in Nebraska since 2006. The average distance of the observed display grounds to the nearest wind turbine tower was 1,430 m (4,689 ft) for greater prairie-chickens. The Vodenhal *et al.* (2011, unpaginated) study appears to indicate that greater prairie-chickens may be more tolerant of wind turbine towers than other species of prairie grouse because they continued to use areas near the wind facility despite presence of the towers. Occurrence near these structures may actually be due to strong site fidelity or continued use of suitable habitat remnants, though these populations may not be able to sustain themselves without immigration from surrounding populations (i.e., population sink) (Hagen 2004, p. 101). Thus, we conclude that this study supports the concept of site fidelity, as birds appear to return to the area despite the diminished habitat quality. Other recent research supports that vertical features, including wind turbines, cause general habitat avoidance and displacement in lesser prairie-chickens and other prairie grouse (Anderson 1969, entire; Robel 2002, entire; Robel *et al.* 2004, entire; Hagen *et al.* 2004, entire; Pitman *et al.* 2005, entire; Pruett *et al.* 2009a, entire; Hagen *et al.* 2011, entire; Hovick *et al.* unpublished manuscript, entire).

(35) *Comment:* The Service relies heavily on the potential for predation facilitated by tall structures like wind turbines without substantial research. Predation is hypothesized to be a reason for lesser prairie-chicken avoidance of tall structures, but this hypothesis has not been adequately studied.

Our Response: Recent research, as cited in the final rule, demonstrates that natural vertical features like trees and artificial, aboveground vertical structures (such as power poles, fence posts, oil and gas wells, towers, and similar developments) can cause general habitat avoidance and displacement in lesser prairie-chickens and other prairie grouse (Anderson 1969, entire; Fuhlendorf *et al.* 2002a, pp. 622–625; Robel 2002, entire; Robel *et al.* 2004, entire; Hagen *et al.* 2004, entire; Pitman *et al.* 2005, entire; Pruett *et al.* 2009a, entire; Hagen *et al.* 2011 entire). This avoidance behavior is presumed to be a behavioral response that serves to limit exposure to predation. We are concerned not only with an actual increase in the impact of avian predation, but also, and even more so, with the avoidance behavior of the lesser prairie-chicken causing individuals to leave fragmented areas of otherwise suitable habitats. Further discussion is provided in the *Predation* and ''Causes of Habitat Fragmentation within Lesser Prairie-Chicken Range'' sections.

(36) *Comment:* Studies including Toepfer and Vodehnal (2009) and Sandercock *et al.* (2012) require further analysis in the listing rule. These studies bring into question the Service's central premise that fragmented habitat causes the species to be in danger of extinction in the foreseeable future.

Our Response: We have added a discussion of these studies in the *Wind Power and Energy Transmission Operation and Development* section, below. The most significant impact of wind energy development on lesser prairie-chickens is caused by the avoidance of useable space due the presence of vertical structures (turbine towers and transmission lines) within suitable habitat. The noise produced by wind turbines also is anticipated to contribute to behavioral avoidance of these structures. Avoidance of these vertical structures by lesser prairie-chickens can be as much as 1.6 km (1 mi), resulting in large areas (814 hectares (ha) (2,011 acres (ac)) for a single turbine) of unsuitable habitat relative to the overall footprint of a single turbine. Where such development has occurred or is likely to occur, these areas are no longer suitable for lesser prairie-chicken even though many of the typical habitat components used by lesser prairie-chicken remain. Therefore, the significant avoidance response of the species to these developments and the scale of current and future wind development likely to occur within the range of the lesser prairie-chicken leads us to conclude that wind energy development is a threat to the species, especially when considered in combination with other habitat-fragmenting activities.

(37) *Comment:* In its assessment of risks from herbicides, the Service never acknowledges current limited use of herbicides to remove shinnery oak and also fails to acknowledge that the New Mexico and Texas CCAAs require reductions in herbicide use. The Service never addresses the Grisham (2012) 10-

year study, which ''. . . ultimately suggests that reduced rates of herbicide and short-duration grazing treatments are not detrimental to lesser prairie-chicken nesting ecology.''

Our Response: Grisham (2012, p. 115) states that the low dose of herbicide used in the study was designed to reduce, not eliminate, shrubs; most nests maintained some form of shrub component. Grisham caveats his management implications by stating that higher doses may be detrimental to nesting lesser prairie-chickens because high doses completely eliminate shinnery oak from the community (Peterson and Boyd 1998, as cited in Grisham 2012, p. 115). In their analysis of the status of the species, the Service considered the conservation measures currently implemented to reduce herbicide use.

(38) *Comment:* Although the Service seems to acknowledge that climate change is not presently harming the lesser prairie-chicken and will occur over the next 60 years, the available data do not support a conclusion that any of those potential effects are foreseeable. Alternatively, other commenters assert that the effects of climate change needs to be more thoroughly included in the future threats that are challenging this species, otherwise the disturbances to the species' habitat is under-represented.

Our Response: We used the best scientific and commercial information available to develop the analysis of climate change presented in the proposed rule. Since the publication of the proposed rule, Grisham *et al.* (2013, entire) published a new study evaluating the influence of drought and projected climate change on the reproductive ecology of the lesser prairie-chicken in the Southern High Plains. They hypothesized that average daily survival would decrease dramatically under all climatic scenarios they examined. Nest survival from onset of incubation through hatching were predicted to be less than or equal to 10 percent in this region within 40 years. Modeling results indicated that nest survival would fall well below the threshold for population persistence during that time (Grisham *et al.* 2013, p. 8). We have incorporated a discussion of Grisham *et al.* (2013, entire) in this final rule.

Although estimates of persistence of lesser prairie-chickens provided by Garton (2012, pp. 15–16) indicated that lesser prairie-chickens in the Shinnery Oak Prairie Region had a relatively high likelihood of persisting over the next 30 years, the implications of climate change were not fully considered in his analysis, as little information evaluating the effects of climate change on the species and its habitat was available at that time. Predictions provided by Grisham *et al.* (2013, p. 8) indicate that the prognosis for persistence of lesser prairie-chickens within this isolated region on the southwestern periphery of the range is considerably worse than previously predicted. This provides further evidence that climate change is likely to contribute to the current and future threats affecting the lesser prairie-chicken. This new information has been added to the rule and further supports that these impacts are likely to occur in the foreseeable future. We anticipate that climate-induced changes in ecosystems, including grassland ecosystems used by lesser prairie-chickens, coupled with ongoing habitat loss and fragmentation, will interact in ways that will amplify the individual negative effects of these and other threats identified in this final rule (Cushman *et al.* 2010, p. 8). Furthermore, ongoing and future habitat fragmentation is likely to negatively affect the species' ability to respond to climate change.

Conservation Efforts

(39) *Comment:* The effect of the Wind Energy Habitat Conservation Plan (HCP) on the need to list the species is not adequately discussed. The Service failed to analyze the expected positive impact of the HCP on lesser prairie-chicken populations.

Our Response: The Service anticipates that the conservation program of the Great Plains Wind Energy HCP could involve measures such as acquisition and setting aside of conservation or mitigation lands. A draft HCP was submitted for review by the Service and State agency partners in November of 2013, but is not expected to be completed until the fall of 2015. Thus, this conservation effort is still in the development phase, and the HCP has not yet been formalized. The future of the HCP and its potential contribution to lesser prairie-chicken conservation is unclear at this time, and we cannot conclude that these efforts will be finalized as they are in draft form at this time. The HCP is further discussed in the *Multi-State Conservation Efforts* section of this final rule.

(40) *Comment:* The proposal for listing should better recognize current and ongoing voluntary conservation efforts in addition to conservation measures that are in place to minimize potential adverse effects resulting from activities including livestock grazing, pesticide use, and oil and gas development.

Our Response: We analyzed the best scientific and commercial information available on both conservation efforts and conservation measures intended to minimize potential adverse effects to the species and its habitat. Where commenters provided additional specific information for us to consider, we have included that information in our consideration of the status of the species in the development of this final rule. In most instances, however, the commenters did not provide specific information on additional conservation efforts and measures that warrant further consideration. Without this information, we cannot specifically address these concerns.

Service Policy

(41) *Comment:* An environmental impact statement should be prepared to assess the social and economic impact of endangered or threatened listing.

Our Response: As stated in the proposed rule, we have determined that environmental assessments and environmental impact statements need not be prepared in connection with regulations adopted under section 4(a)(1) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

(42) *Comment:* The Service has not adequately defined ''foreseeable future'' as it relates to the status of the lesser prairie-chicken. The Service needs to establish the ''foreseeable future'' as a period of years. In addition, the Service's discussion of foreseeable future and the status of the lesser prairie-chicken uses vague terms (e.g., ''near term,'' ''near future'') that suggest an undefined future point in time marks the point where the species passes from not being on the brink of extinction to being on the brink of extinction.

Our Response: The Act does not define the term ''foreseeable future,'' and the Act and its implementing regulations do not require the Service to quantify the time period of foreseeable future. Further, in a 2009 memorandum (M–37021, January 16, 2009) addressed to the Acting Director of the Service, the Office of the Solicitor, Department of the Interior, concluded that ''as used in the [Act], Congress intended the term 'foreseeable future' to describe the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species.'' The memorandum (M–37021, January 16, 2009) goes on to state, ''the foreseeable future is not necessarily reducible to a particular number of years. Rather, it relates to the

predictability of the impact or outcome for the specific species in question. . . . Such definitive quantification, however, is rarely possible and not required for a 'foreseeable future' analysis.'' In assessing the status of the lesser prairie-chicken, we applied the general understanding of ''in danger of extinction'' discussed in the December 22, 2010, memo to the polar bear listing determination file, ''Supplemental Explanation for the Legal Basis of the Department's May 15, 2008, Determination of Threatened Status for the Polar Bear,'' signed by then Acting Director Dan Ashe (hereafter referred to as Polar Bear Memo). A complete discussion of how the Service has applied these terms to the lesser prairie-chicken is provided in the Determination section.

(43) *Comment:* The Service failed to evaluate whether the species is endangered within any significant portion of its range. The lesser prairie-chicken's 81-percent decline in Texas, from 236,000 sq km to 12,000 sq km (91,120 sq mi to 4,633 sq mi) and 94 percent in New Mexico (mostly in the mixed grass prairie Bird Conservation Region) clearly qualifies the species for protection as endangered based on threats within a significant portion of its range.

Our Response: Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. To determine whether or not a species is endangered or threatened, we evaluate the five listing factors, which include ''the present or threatened destruction, modification, or curtailment of its habitat or range.'' The historical decline of the species' range, while highly relevant in considering the existence or effect of threats to the species in its current range, cannot itself be the basis for listing. In the Determination section, below, we outline that the ongoing and future impacts of cumulative habitat loss and fragmentation are the primary threats to the species. These impacts are the result of conversion of grasslands to agricultural uses; encroachment by invasive, woody plants; wind energy development; petroleum production; roads; and presence of manmade vertical structures, including towers, utility lines, fences, turbines, wells, and buildings. The threats to the survival of the lesser prairie-chicken occur with equal force throughout all of the species' remaining range and are not restricted to any particular portion of its currently occupied range. In other words, there is no indication that the threat of fragmentation occurs with greater or lesser force in any portion of the species' range. Accordingly, our assessments and determinations apply to this species throughout its entire range.

(44) *Comment:* The Service should revise its listing proposal to establish several distinct population segments (DPSs) of the lesser prairie-chicken in the final rule and list each DPS as endangered, threatened, or not warranted depending on the best available science.

Our Response: Commenters generally did not provide specific information as to what populations they felt meet the definition of a DPS; thus, we cannot analyze what the commenter presumes to be a DPS. We specifically discuss this issue as it relates to the Kansas population of lesser prairie-chicken in our response to comment 3 in *Peer Reviewer Comments,* above. Please refer to the Determination section of this final listing rule for further discussion.

(45) *Comment:* Prohibiting actions on private lands as a result of listing the species as threatened or endangered will constitute an uncompensated taking under the Eminent Domain Law and would impair private property rights. The Service should include better data on the social and economic values of private enterprise and private property rights.

Our Response: Listing a species as threatened or endangered does not affect constitutionally protected property rights (see the Fifth Amendment to the U.S. Constitution). Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights) requires that we analyze the potential takings implications of designating critical habitat for a species in a takings implications assessment. However, the listing of a species does not affect property rights, and, therefore, an assessment of potential takings of land is not necessary.

(46) *Comment:* The proposed rule is devoid of a discussion of whether the lesser prairie-chicken is still warranted-but-precluded from listing due to higher priority listing actions and what changed since earlier warranted but precluded findings for this species that now led to the issuance of a proposed rule. The Service should consider and document examples of changes in the basis that would justify not continuing to make a warranted-but-precluded finding. Such examples would include scientific information that indicates increased threats to the viability of the species, a change in the Service's resources to address listing decisions since the date of the 2011 candidate notice of review (76 FR 66370, October 26, 2011), and the absence of other candidate species that have the same or a lower listing priority number.

Our Response: The lesser prairie-chicken was originally identified as a candidate for listing with a listing priority number (LPN) of 8 (63 FR 31400, June 9, 1998). In 2008, we changed the LPN for the lesser prairie-chicken from an 8 to a 2 due to a change in the magnitude of threats from moderate to high (73 FR 75176, December 10, 2008). The changes in threats was primarily due to an anticipated increase in the development of wind energy and associated placement of transmission lines throughout the estimated occupied range of the lesser prairie-chicken. Conversion of certain CRP lands from native grass cover to cropland or other less ecologically valuable habitat and observed increases in oil and gas development also were important considerations in our decision to change the LPN. Our December 10, 2008 (73 FR 75176), candidate notice of review, provides the factual or scientific basis for changing the listing priority number.

(47) *Comment:* The proposed rule summarily dismisses conservation measures without fairly addressing their breadth, effectiveness, and chance of success. The Service must evaluate the conservation measures through, among other things, PECE, and must fully consider how conservation measures will reduce or remove threats. A fair evaluation of the conservation efforts will demonstrate that they are sufficient to protect the lesser prairie-chicken.

Our Response: We recognize the numerous conservation actions within the historical range of the lesser prairie-chicken, with many focused primarily on the currently occupied portion of the range, during the last 10 to 15 years. See the Summary of Ongoing and Future Conservation Actions section of this rule. PECE applies to formalized conservation efforts that have not yet been implemented or those that have been implemented, but have not yet demonstrated whether they are effective at the time of listing. Conservation efforts that are being implemented and have demonstrated effectiveness are not within the scope of PECE. The effect of such conservation efforts on the status of a species is considered as part of the analysis of the five listing factors in section 4(a)(1) of the Act.

The PECE states that conservation efforts that have not yet been implemented or those that have been implemented, but have not yet demonstrated whether they are effective, must have reduced the threat

at the time of listing, rather than reducing the threat in the future. To consider if a formalized conservation effort contributes to forming a basis for not listing a species or for listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the analysis of the five listing factors in section 4(a)(1) of the Act. PECE states that the Service must have a high level of certainty that the conservation effort will be implemented and effective, and has resulted in reduction or elimination of one or more threats at the time of listing.

In this final rule, we considered whether formalized conservation efforts are included as part of the baseline through the analysis of the five listing factors, or are appropriate for consideration under the PECE policy.

(48) *Comment:* The Service's application of the categories of species ''in danger of extinction'' identified in the Polar Bear Memo when determining whether to list the lesser prairie-chicken is inappropriate in several respects. First, the Service's definition of categories of species ''in danger of extinction'' constitutes an improper rulemaking without adequate opportunity for notice and comment. Second, the Service's reliance on this general categorization is inconsistent with the Act, which requires individual analyses of the factors affecting each species when evaluating whether listing is warranted, and is therefore arbitrary and capricious.

Our Response: As required by section 4(a)(1) of the Act, the Service determined whether the lesser prairie-chicken is an endangered or threatened species based on the five listing factors. See the Summary of Factors Affecting the Species section of this rule for our analysis.

As outlined in our response to comment 42, above, the Polar Bear Memo provides further guidance on the statutory difference between a threatened species and an endangered species. This memo was not a rulemaking document that required the opportunity for notice and comment—its categorizations are not binding; they are merely a helpful analytical tool. As explained more fully in the rule, the Polar Bear Memo clarifies that if a species is in danger of extinction now, it is an endangered species. In contrast, if it is in danger of extinction in the foreseeable future, it is a threatened species.

Moreover, we provided the public the opportunity to comment on the use of the Polar Bear Memo as it applies to the lesser prairie-chicken through the publication of the proposed listing rule. We did not receive any substantive comments providing evidence contrary to our application of the memo to the lesser prairie-chicken. Thus, this is an appropriate use of our guidance.

(49) *Comment:* Individuals requested the Service provide land management recommendations for post-listing conservation of the species and its habitat. Specifically, the public requested details on compatible grazing management, predator control plans, relocation of birds, etc.

Our Response: Management recommendations as may be necessary to achieve conservation and survival of the species will be addressed through recovery planning efforts. Under section 4(f)(1) of the Act, we are required to develop and implement plans for the conservation and survival of endangered and threatened species, unless the Secretary of the Interior finds that such a plan will not promote the conservation of the species. We will move to accomplish these tasks as soon as feasible.

(50) *Comment:* The Service should use the same standard of review and documentation of science as outlined in the 1994 Interagency Cooperative Policy on Information Standards under the Act (59 FR 34271, July 1, 1994); in many instances in the proposed rule, the Service cites a supporting source, which cites another source as the original scientific information.

Our Response: Without specific identification of the instances in the proposed rule where the Service cites other sources than the original scientific information, we are unable to provide a specific response. However, we acknowledge that in five instances we reference information that was cited in another document. We clearly identified each of these five instances within the proposed rule, as well as the final rule. In four of the five instances, we provided at least one additional citation to support the information provided.

(51) *Comment:* The Service cites multiple masters' theses in the proposed rule, and these documents are not peer-reviewed, published literature. Therefore, they do not represent the best available science.

Our Response: Our policy on information standards under the 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. Information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge. Despite the fact that these theses were not published, they still contain credible scientific information and represent the best scientific and commercial data available.

(52) *Comment:* The science for the proposed rule should be peer-reviewed based on National Academy of Science standards for conflicts of interest, and the Service should provide specific questions to be addressed in the peer review.

Our Response: In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we sought the expert opinions of at least three appropriate and independent specialists regarding the proposed rule. The purpose of such review is to ensure that our determination of status for this species is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment, during the public comment period, on our use and interpretation of the science used in developing our proposal to list the lesser prairie-chicken. Comments from these peer reviewers have been reviewed, considered, and incorporated into this final rule, as appropriate.

Summary of Changes From the Proposed Rule

Based upon our review of the public comments, comments from other Federal and State agencies, peer review comments, issues addressed at the public hearings, and any new relevant information that may have become available since the publication of the proposal, we reevaluated our proposed rule and made changes as appropriate. Other than minor clarifications and incorporation of additional information on the species' biology, this determination differs from the proposal by:

(1) Based on comments and our analyses of the available literature, we have added a section on Taxonomy of the genus *Tympanuchus,* with particular emphasis on the lesser prairie-chicken.

(2) We have updated the Summary of Ongoing and Future Conservation Efforts section below and included an evaluation of conservation efforts pursuant to our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (68 FR 15100, March 28, 2003).

(3) We have added a section on the influence of noise associated with development activities.

(4) We have added information on wing loading in grouse and a section on conservation genetics.

(5) We have also updated the ''Rangewide Population Estimates'' section to reflect the most current State survey information.

Summary of Ongoing and Future Conservation Efforts

In this section we review current efforts that are providing some conservation benefits to the lesser prairie-chicken and describe any significant conservation efforts that appear likely to occur in the future. We also completed an analysis of the Western Association of Fish and Wildlife Agencies' Lesser Prairie-Chicken Range-wide Conservation Plan (rangewide plan), developed in association with the Interstate Working Group, pursuant to PECE.

Numerous conservation actions have been implemented within the historical range of the lesser prairie-chicken, many focused primarily on the currently occupied portion of the range, during the last 10 to 15 years. In the past, prairie grouse translocation efforts have been implemented for both conservation and recreation purposes. Releases of prairie chickens in Hawaii may have been one of the first attempts at relocation outside of the historical range in North America (Phillips 1928, p. 16; see ''Historical Range and Distribution'' section below). Most releases of lesser prairie-chickens have been in an attempt to repatriate portions of the historical range. Kansas began efforts to raise lesser prairie-chickens in captivity during the 1950s in an effort to secure sufficient numbers for limited releases (Coats 1955, p. 3). Toepfer *et al.* (1990, entire) summarized historical attempts to supplement or reestablish populations of prairie grouse; most met with poor success. Prior to 1970, there had been few attempts to supplement or reestablish populations of lesser prairie-chickens (Toepfer *et al.* 1990, p. 570). Kruse (1973, as cited in Toepfer *et al.* 1990, p. 570) reported on a release of lesser prairie-chickens in Colorado during 1962 that was unsuccessful. Snyder *et al.* (1999, entire) summarized more recent attempts to translocate prairie grouse in the United States. They reported on two separate releases of lesser prairie-chickens, one in Texas and one in Colorado, during the 1980s, both of which were unsuccessful (Snyder *et al.* 1999, p. 429). Despite the lack of success, translocations are becoming increasingly popular as a means of conserving populations of rare and declining species (Bouzat *et al.* 2009, p. 192). Although the best available information does not indicate any current efforts to propagate or translocate lesser prairie-chickens, future conservation efforts may involve such measures.

The State conservation agencies have taken a primary role in implementation of the conservation actions described below, but several Federal agencies and private conservation organizations have played an important supporting role in many of these efforts. Recently, several multi-State efforts have been initiated, and the following section discusses the known conservation efforts for the lesser prairie-chicken.

Multi-State Conservation Efforts

The Conservation Reserve Program (CRP), administered by the U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) and focused on certain agricultural landowners, has provided short-term protection and enhancement of millions of acres within the range of the lesser prairie-chicken. The CRP is a voluntary program that allows eligible landowners to receive annual rental payments and cost-share assistance to remove land from agricultural production and establish vegetative cover for the term of the contract. Contract terms are for 10 to 15 years, and the amount and dispersion of land enrolled in CRP fluctuates as contracts expire and new lands are enrolled. All five States within the range of the lesser prairie-chicken have lands enrolled in CRP. Initially, many enrolled CRP lands, except those in Kansas, were planted in nonnative grasses as the predominant cover type. In the State of Kansas, enrolled lands were planted in native species of grasses as the cover type, resulting in a considerable benefit to lesser prairie-chicken conservation. As the program has evolved since its inception in 1985, the FSA and their conservation partners have encouraged the use of native grasses as the predominant cover type in CRP lands, resulting in improved conservation benefits for lesser prairie-chickens. Use of native grasses in the CRP helps create suitable nesting, wintering, and brood rearing habitat for the lesser prairie-chicken.

In accordance with general CRP guidelines, crop producers can voluntarily enroll eligible lands in 10- to 15-year contracts in exchange for payments, incentives, and cost-share assistance to establish appropriate vegetation on enrolled lands. Program administrators may focus efforts on certain environmentally sensitive lands under a continuous signup process. The State Acres for Wildlife Enhancement program (SAFE) is a specific conservation practice utilized under CRP to benefit high-priority wildlife species including the lesser prairie-chicken. Landowners may elect to enroll in this program at any time under continuous sign-up provisions. Beginning in 2008, the SAFE program was implemented in Colorado, Kansas, New Mexico, Oklahoma, and Texas to target grassland habitat improvement measures within the range of the lesser prairie-chicken. These measures help improve suitability of existing grasslands for nesting and brood rearing by lesser prairie-chickens. Currently, there are almost 86,603 hectares (ha) (214,000 acres (ac)) allocated for the lesser prairie-chicken SAFE program (CP–38E) in Colorado, Kansas, New Mexico, Oklahoma, and Texas. Allocated acres for the SAFE program vary by State and are as follows: Colorado 8,700 ha (21,500 ac); Kansas 21,084 ha (52,100 ac); New Mexico 1,052 ha (2,600 ac); Oklahoma 6,111 ha (15,100 ac); and Texas 49,655 ha (122,700 ac). The current status of the SAFE program, organized by State, is provided in the *State-Specific Conservation Efforts* section, below.

In 2012, the FSA announced another CRP initiative addressing highly erodible lands. This nationwide initiative, the CRP Highly Erodible Land Initiative, is intended to protect certain environmentally sensitive lands by allowing landowners nationally to enroll up to 303,500 ha (750,000 ac) of lands having an erodibility index of 20 or greater. The initiative may further contribute to the short-term protection and enhancement of additional acres within the range of the lesser prairie-chicken. On average, lands with an erodibility index of 20 or greater have an erosion rate that exceeds 20 tons of soil eroded per acre per year. The term of these contracts is a 10 year period. The FSA, based on an analysis by Playa Lakes Joint Venture, estimates that there are 278,829 ha (689,000 ac) of active cropland with an erodibility index of 20 or higher remaining within the estimated occupied range of the lesser prairie-chicken (FSA 2013, p. 41). The vast majority of these lands occur in

eastern New Mexico, the west Texas panhandle, western Oklahoma, and southwestern Kansas. More detailed information on the CRP is provided in the ''Conservation Reserve Program (CRP)'' section below.

In 2010, the USDA Natural Resources Conservation Service (NRCS) began implementation of the Lesser Prairie-Chicken Initiative (LPCI). The LPCI strategically provides conservation assistance, both technical and financial, to landowners throughout the LPCI's action area, which encompasses the lesser prairie-chicken's estimated occupied range plus a 16-km (10-mi) buffer. The LPCI focuses on maintenance and enhancement of suitable habitat while benefiting agricultural producers by maintaining the farming and ranching operations throughout the region. Twenty-seven different practices, under the core conservation practice Upland Wildlife Habitat Management (645), are used in implementation of the LPCI. Examples of the various practices, which are explained in more detail in the November 22, 2013, conference opinion described below, include prescribed grazing, prescribed burning, and the management or removal of woody plants including invasive species. These practices are applied or maintained annually for the life of the practice, typically 1 to 15 years, to treat or manage habitat for lesser prairie-chickens.

The LPCI and related NRCS activities were the focus on the November 22, 2013, conference opinion that the NRCS developed in coordination with the Service. In the conference opinion, the Service states that implementation of the NRCS conservation practices and their associated conservation measures described in the conference opinion are anticipated to result in a positive population response by the species by reducing or eliminating adverse effects. Furthermore, the Service states that overwhelming conservation benefits of implementation of the proposed action within selected priority areas, maintenance of existing habitat, and enhancement of marginal habitat will outweigh short-term negative impacts to individual lesser prairie-chickens. Implementation of the LPCI is expected to result in: Management of threats that adversely affect populations, an increase in habitat under the appropriate management prescriptions, and the development and dissemination of information on the compatibility of sustainable ranching operations with the persistence of this species across the landscape. Through the conference opinion, the Service found that effective implementation of conservation practice standards and associated conservation measures for the LPCI are anticipated to result in a positive population response by the species.

The NRCS has partnered with other stakeholders to fund, through the Strategic Watershed Action Teams program, additional staff positions dedicated to providing accelerated and targeted technical assistance to landowners within the current range of the lesser prairie-chicken. Technical assistance is voluntary help provided by NRCS that is intended to assist non-federal land users in addressing opportunities, concerns, and problems related to the use of natural resources and to help land users make sound natural resource management decisions on private, tribal, and other non-federal land. This assistance may be in the form of resource assessment, practice design, resource monitoring, or follow-up of installed practices. Numerous partners are involved in the multi-state LPCI, including the State conservation agencies, the Playa Lakes Joint Venture, and the Wood Foundation. The Environmental Quality Incentives Program (EQIP) and the Wildlife Habitat Incentives Program (WHIP), through the Working Lands for Wildlife partnership, are the primary programs used to provide for conservation through the LPCI. The lesser prairie-chicken is one of seven focal species being addressed by the Working Lands for Wildlife partnership. Through the Working Lands for Wildlife Partnership, participating landowners and other cooperators who agree to adhere to the requirements of the program are provided with regulatory predictability; they are exempted from the Act's ''take'' prohibition of listed species for up to 30 years, as long as the covered conservation practices are maintained and take is incidental to the implementation of these conservation practices.

The EQIP is a voluntary program that provides financial and technical assistance to agricultural producers through contracts up to a maximum term of 10 years in length. These contracts provide financial assistance to help plan and implement conservation practices that address natural resource concerns and opportunities to improve soil, water, plant, animal, air, and related resources on agricultural land. Similarly, WHIP is a voluntary program designed for landowners who want to develop and improve wildlife habitat on agricultural land, including tribal lands. Through WHIP, NRCS may provide both technical assistance and up to 75 percent cost-share assistance to establish and improve fish and wildlife habitat. Cost-share agreements between NRCS and the landowner may extend up to 15 years from the date the agreement is signed. By entering into a contract with NRCS, the landowner agrees to implement specified conservation actions through provisions of the applicable Farm Bill conservation program, such as WHIP or EQIP. Between the LPCI's inception in 2010 and the close of 2012, NRCS has established 701 contracts on over 381,000 ha (942,572 ac), with the majority of contracts (65 percent) and area (46 percent) under contract occurring in Texas (Shaughnessy 2013, pp. 29–30). Over $24.5 million in funding has been committed to implementation of the LPCI between 2010 and the close of 2012. In 2013, an additional 67 contracts were established on about 89,272 ha (220,598 ac) (Ungerer 2013a). The majority of the 2013 contracts were established in the estimated occupied range in Kansas (37 contracts totaling 14,672 ha (36,256.1 ac)), although New Mexico had the largest acreage (11 contracts on 53,522 ha (132,255.8 ac)) placed under contract in 2013.

The NRCS also jointly administers the Grassland Reserve Program with the FSA. The Grassland Reserve Program is a voluntary conservation easement program that emphasizes, among other things, enhancement of plant and animal biodiversity and protection of grasslands under threat of conversion to other uses. Participants may choose a 10-, 15-, or 20-year contract, or they may opt to establish a permanent/perpetual conservation easement. Participants voluntarily limit future development and cropping uses of the easement land while retaining the right to conduct common grazing practices, through development of a grazing management plan, and operations related to the production of forage and seeding, subject to restrictions during nesting seasons. Within the five lesser prairie-chicken States, there were a total of two parcels totaling 494.5 ha (1,221.9 ac) under permanent easement, both in Texas (Ungerer 2013b). Only one of these parcels was within a county that included portions of the estimated occupied range. The other, located in Armstrong County, lies within the historical range in Texas. There also are several Wetland Reserve Program easements within the five lesser prairie-chicken States that may include some areas of grassland adjacent to the identified wetland resource. Several of these parcels are within or adjacent to the estimated occupied range, but most

of these parcels are small, generally less than 81 ha (200 ac) in size (Ungerer 2013b).

The North American Grouse Partnership, in cooperation with the National Fish and Wildlife Foundation and multiple State conservation agencies and private foundations, have embarked on the preparation of the prairie grouse portions of an overarching North American Grouse Management Strategy. The Prairie Grouse Conservation Plan, which was completed in 2007 (Vodehnal and Haufler 2007, entire), provides recovery actions and defines the levels of funding necessary to achieve management goals for all species of prairie grouse in North America, including the lesser prairie-chicken. The plan uses an ecosystem approach to address habitat needs of prairie grouse within the Great Plains, concentrating on grassland conservation and restoration that will provide habitat conditions for lesser prairie-chickens, among other prairie grouse (Vodehnal and Haufler 2007, p. 1). The plan also specifically states that, for the lesser prairie-chicken, grasslands should be managed to protect and maintain existing tracts of native mixed-grass, shinnery oak, and sagebrush prairies, and that conservation efforts to retain and restore grasslands acres should include reestablishing grassland and shrublands within the species' range (Vodehnal and Haufler 2008, p. 16). The plan outlines recommendations to improve CRP lands for lesser prairie-chickens, such as converting CRP lands planted in nonnative grasses to native grass mixes (Vodehnal and Haufler 2008, pp. 18–19). The prairie grouse portions of this plan encompass about 26 million ha (65 million ac) of grassland habitat in the United States and Canada. The extent to which this strategy is being implemented for the lesser prairie-chicken is not known.

The Lesser Prairie-Chicken Interstate Working Group (Working Group) was formed in 1996. This group, composed largely of State agency biologists, which is currently under the oversight of the Western Association of Fish and Wildlife Agencies' Grassland Coordinator, meets annually to share information on the status of the lesser prairie-chicken, results of new research, and ongoing threats to the species. The Working Group has played an important role in defining and implementing conservation efforts for the lesser prairie-chicken. In 1999, they published a conservation strategy for the lesser prairie-chicken (Mote *et al.* 1999, entire). Then, in 2008, the Working Group published a lesser prairie-chicken conservation initiative (Davis *et al.* 2008, entire). Most recently, the Working Group and the Western Association of Fish and Wildlife Agencies (WAFWA) expended considerable effort to develop the Lesser Prairie-Chicken Range-Wide Conservation Plan (hereafter referred to as rangewide plan) that encompassed all five States within the occupied range of the species (Van Pelt *et al.* 2013, entire). In October of 2013, we determined that the rangewide plan, when implemented, would provide a net conservation benefit for the lesser prairie-chicken, and, we, in turn, provided our endorsement of the rangewide plan (Ashe 2013).

The rangewide plan is a voluntary conservation strategy that establishes a mitigation framework administered by WAFWA for the purpose of allowing plan participants the opportunity to mitigate any unavoidable impacts of a particular development activity on the lesser prairie-chicken and providing financial incentives to landowners who voluntarily participate and manage their property for the benefit of the lesser prairie-chicken. The rangewide plan specifically allocates conservation objectives such that 25 percent of the conservation would be in long-term agreements (over 10 years) while the remaining 75 percent of the conservation would be in short-term (5- or 10-year) contracts. Compensation for unavoidable impacts would be provided, when possible, through off-site mitigation actions. Within the plan, the service areas coincide with the four ecoregions described by McDonald *et al.* (2012, p. 7): The Shinnery Oak Prairie Region (eastern New Mexico and southwest Texas panhandle), the Sand Sagebrush Prairie Region (southeastern Colorado, southwestern Kansas, and western Oklahoma panhandle), the Mixed Grass Prairie Region (northeastern Texas panhandle, western Oklahoma, and south central Kansas), and the Short Grass/CRP Mosaic region (northwestern Kansas).

Development activities that would be covered under the rangewide plan include oil and gas development (seismic and land surveying, construction, drilling, completion, workovers, operations and maintenance, and remediation and restorations activities), agricultural activities (brush management, building and maintaining fences and livestock structures, grazing, water/windmills, disturbance practices, and crop production), wind power, cell and radio towers, power line activities (construction, operations and maintenance, and decommissioning and remediation), road activities (construction, operation and maintenance, and decommissioning and remediation), and finally general activities (hunting, off-highway vehicle (OHV) activity, general construction, and other land management), all of which are further defined within the plan.

The rangewide plan identifies rangewide and ecoregional population goals for the lesser prairie-chicken and the amount and condition of habitat desired to achieve the population goals, including focal areas and connectivity zones where much of the conservation would be targeted. The rangewide population goal, based on an annual spring average over a 10-year time frame, is set at 67,000 birds. Ecoregional specific goals have been set at 8,000 birds in the Shinnery Oak Prairie Region, 10,000 birds in the Sand Sagebrush Prairie Region, 24,000 birds in the Mixed Grass Prairie Region and 25,000 birds in the Short Grass/CRP Mosaic region. These regional goals and the overall rangewide population goal may be adjusted after the first 10 years of implementation using principles of adaptive management. In addition to an adaptive management framework, the rangewide plan also identifies specific monitoring and research needs. The plan also includes a number of conservation measures designed to avoid, offset, or minimize anticipated impacts of proposed developments that likely will be implemented by those participating in the plan. The specific language for each of the identified measures is provided in more detail within the plan.

The rangewide plan incorporates a focal area strategy as a mechanism to identify and target the population and habitat goals established by the plan. This focal area strategy is intended to direct conservation efforts into high priority areas and facilitate creation of large blocks of quality habitat in contrast to untargeted conservation efforts spread across larger areas that typically result in smaller, less contiguous blocks of appropriately managed habitat. These focal areas typically would have the following characteristics: Average focal area size of at least 20,234 ha (50,000 ac); at least 70 percent of habitat within each focal area would be high quality, as defined in the plan; and enhanced connectivity, with each focal area generally located no more than 32 km (20 mi) apart and connected by delineated zones between neighboring focal areas that would provide suitable habitat and allow for movement between the focal areas. The corridors connecting the focal areas also would generally have certain characteristics: Habitat within the

identified corridors would consist of at least 40 percent good- to high-quality habitat; distances between existing habitat patches would be no more than 3.2 km (2 mi) apart; and corridor widths would be at least 8 km (5 mi), and would contain few, if any, barriers to lesser prairie-chicken movement. The lack of an identified connection between focal areas in the Shinnery Oak Prairie Region with focal areas in the remaining regions is the obvious exception to the identified guidelines. The Shinnery Oak Prairie Region is separated from the other regions by a distance of over 300 km (200 mi) of unfavorable land uses and very little suitable lesser prairie-chicken habitat.

Quality habitat used in determining appropriate focal areas and connectivity zones has been defined in the rangewide plan and will not be repeated here (Van Pelt *et al.* 2013, pp. 75–76). These habitat characteristics generally consist of specific canopy covers, grass composition and heights, and understory density that comprise quality nesting and brood rearing habitat that may be observed within the four regions delineated in the rangewide plan. Quality habitat as depicted in the rangewide plan corresponds with habitat characteristics described in the Background section of this final rule. The identified focal areas would encompass over 2.9 million ha (7.1 million ac) and represents approximately 36 percent of the estimated occupied range.

Since 2004, the Sutton Center has been working to reduce or eliminate the mortality of lesser prairie-chickens due to fence collisions on their study areas in Oklahoma and Texas. Forceful collisions with fences during flight can cause direct mortality of lesser prairie-chickens (Wolfe *et al.* 2007, pp. 96–97, 101). However, mortality risk appears to be dependent on factors such as fencing design (height, type, number of strands), length, and density, as well as landscape topography and proximity of fences to habitats used by lesser prairie-chickens. The Sutton Center has used competitive grants and other funding sources to either physically remove unnecessary fencing or to apply markers of their own design (Wolfe *et al.* 2009, entire) to the top two strands to increase visibility of existing fences. To date, the Sutton Center has removed or improved approximately 335 kilometers (km) (208 miles (mi)) of barbed-wire fence in Oklahoma and Texas. Treatments are typically concentrated within 1.6 km (1 mi) of active lesser prairie-chicken leks. Approximately 208 km (129 mi) of unneeded fences have been removed. Collectively, these conservation activities have the potential to significantly reduce the threat of collision mortality on 44,110 ha (109,000 ac) of occupied habitat.

Our Partners for Fish and Wildlife Program (PFW) initiated a similar fence marking effort in New Mexico during 2008. Although the amount of marked fences has not been quantified, the effort is an important contribution to ongoing conservation efforts. The Texas PFW program has marked 108 km (67 mi) and removed 53 km (33 mi) of fences throughout the State of Texas through the end of 2013. The Colorado PFW program, in association with its many partners, has marked approximately 16 km (10 mi) of fence. However, continued fence construction throughout the range of the lesser prairie-chicken and the localized influence of these conservation efforts likely limits the effectiveness of such measures at the population level.

In 2008, the Service and nine States, including the five States encompassing the range of the lesser prairie-chicken, began working with 17 wind energy development companies to develop a programmatic habitat conservation plan (HCP). An HCP is a planning document required as part of an application for a permit for incidental take of a Federally listed species. An HCP describes the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated, and how the HCP is to be funded. Initially, the endangered whooping crane (*Grus americana*) was the primary focus of this HCP (the Great Plains Wind Energy HCP). Since that time, the endangered interior least tern (*Sterna antillarum athalassos*) and the threatened piping plover (*Charadrius melodus*) have been included in ongoing planning efforts. As planning efforts for the Great Plains Wind Energy HCP continued to move forward, the lesser prairie-chicken was included in the list of species to be covered by the HCP. In November 2013, a draft HCP was submitted for review by the Service and State agency partners. The review is ongoing, and the Service anticipates returning our initial comments back by April 2014. The Great Plains Wind Energy HCP is intended to provide take coverage for activities such as siting, construction, operation, and decommissioning of wind facilities within the planning area, which includes the whooping crane migration corridor and wintering grounds, and the range of the lesser prairie-chicken. The length of the permit is proposed to be 45 years. The HCP is scheduled to be completed in the fall of 2015. We anticipate the conservation program of the HCP could involve measures such as acquisition and setting aside of conservation or mitigation lands.

A diverse group of stakeholders representing energy, agricultural, and conservation industries and organizations (Stakeholders) across five States within the occupied range of the lesser prairie-chicken, as well as Nebraska, have recently developed a rangewide conservation plan (Stakeholder Conservation Strategy) for the lesser prairie-chicken. The intent of this Stakeholder Conservation Strategy is to provide a framework for offsetting industry impacts to habitat while providing incentives that would encourage landowners to conserve and manage habitat to the overall benefit of the lesser prairie-chicken rangewide. The proposed permit area includes the estimated occupied range of the lesser prairie-chicken plus a 16-km (10-mi) buffer (EOR + 10; described in more detail in the ''Current Range and Distribution'' section, below), including portions of New Mexico, Colorado, Kansas, Oklahoma, and Texas. Additionally, the planning area includes areas outside of the estimated occupied range. Such areas would allow for population expansion, provided implementation of appropriate conservation initiatives that facilitate population expansion, and would extend the reach of the overall planning area to portions of Nebraska. Member Stakeholders include: Colorado Cattlemen's Association, Kansas Farm Bureau, Oklahoma Farm Bureau, Texas Farm Bureau, Texas and Southwestern Cattle Raisers Association, Plains Cotton Growers, Texas Wheat Growers Association, Texas Watershed Management Foundation, Environmental Defense Fund, The Nature Conservancy, Oklahoma State University, USDA Agricultural Research Service, British Petroleum, Chesapeake Energy Corporation, Chevron U.S.A., SandRidge Exploration and Production, and XTO Energy/ExxonMobil. Additional companies or organizations may become involved as the planning process proceeds.

The Stakeholder Conservation Strategy contains three primary components: A Habitat Exchange for the lesser prairie-chicken, a Habitat Quantification Tool (HQT) and a regional HCP for the lesser prairie-chicken. The Habitat Exchange would consist of an independent third party that facilitates transactions between a mitigation credit buyer (an entity engaging in an otherwise lawful activity that impacts lesser prairie-chicken habitat) and a mitigation credit producer (a landowner). The credit producers

(*e.g.,* cattlemen, farmers, and others) would be paid on a performance contract basis for achieving specific and measurable conservation outcomes. The credit buyers (*e.g.,* energy and other developers) would be provided a predictable, effective, and timely means to achieve the mitigation required to offset habitat impacts. The regional HCP references the HQT as the scientifically measurable means for determining debits and identifies the Habitat Exchange as the primary means of securing mitigation obligations.

The American Habitat Center has submitted an application to the Service on behalf of the above Stakeholders for a permit to support a regional HCP pursuant to section 10 of the Act. This section 10 permit would provide incidental take authorization for the covered activities stipulated in the Stakeholder Conservation Strategy. The Service currently intends to develop an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.) to solicit public comment on the Stakeholder Conservation Strategy and the Service's pending permitting decision. A decision on issuance of the permit is anticipated in the summer of 2014.

The Stakeholder Conservation Strategy and associated permit, if approved, is intended to provide incidental take authorization for covered activities, including agricultural production and energy development. Entities wishing to gain regulatory assurances and coverage under an incidental take permit could enroll in this regional HCP. The Stakeholder Conservation Strategy proposes a multifaceted approach involving avoidance, minimization using proven and defined best management practices, mitigation of impacts through permanent and temporary habitat preservation, restoration, and enhancement and other measures. Adequate funding for implementation, including biological and compliance monitoring, also would be an important component of the Stakeholder Conservation Strategy.

Several potential conservation banking proposals, in various states of development, are being considered over the range of the lesser prairie-chicken. A conservation bank consists of permanently protected lands that are conserved and permanently managed for endangered, threatened, and other imperiled species. In exchange for permanently protecting the land and managing it for these species, the Service approves a specified number of habitat or species credits that the bank owners may sell. These credits may then be used to offset adverse impacts to these species and their habitats that occurred in other locations.

A proposed programmatic conservation banking agreement has been submitted by Common Ground Capital that would consist of an independent conservation banking system intended to facilitate permanent conservation for the lesser prairie-chicken through multiple conservation banks located across the range of the lesser prairie-chicken. The Service is currently reviewing this proposed banking agreement, and, if approved, the agreement would allow the establishment of conservation banks for the lesser prairie-chicken. The estimated timeline for the Common Ground Capital banking agreement approval process is spring 2014, with implementation to follow sometime after the approval process is complete.

Other independent bankers have had informal discussions with the Service and intend to submit additional conservation banking proposals for permanent conservation banks in various areas within the lesser prairie-chicken's range. The Service anticipates we will receive these requests in the spring of 2014, with bank establishment to follow sometime in 2014, pending full review and completion of the approval process.

The five State conservation agencies developed an Internet-based mapping tool, initially a pilot project under the Western Governors' Association Wildlife Council. This tool, now known as the Southern Great Plains Crucial Habitat Assessment Tool (CHAT), was made accessible to the public in September 2011, and a second version of the CHAT was developed in 2013. The CHAT is available for use by conservation managers, industry, and the public to aid in conservation planning for the lesser prairie-chicken. The tool identifies priority habitat for the lesser prairie-chicken, including possible habitat corridors linking important conservation areas. The CHAT will be an important tool for implementation of the rangewide plan's mitigation framework by using the CHAT categories as ratio multipliers. The CHAT classifies areas on a scale of 1 to 4 by their relative value as lesser prairie-chicken habitat. According to Van Pelt *et al.* (2013, pp. 54–55), the CHAT 1 category is comprised of focal areas for lesser prairie-chicken conservation; the CHAT 2 category is comprised of corridors for lesser prairie-chicken conservation; the CHAT 3 category is comprised of available and potential habitat, as developed through modeling efforts; and the CHAT 4 category is comprised of the EOR + 10. The CHAT includes other data layers that may facilitate conservation planning, including current and historical lesser prairie-chicken range, land cover types, oil and gas well density, presence of vertical structures, and hexagonal summary polygon to provide users contextual information about the surrounding landscape. The CHAT tool will be updated annually. Use of the tool is currently voluntary but ultimately may play an important role in guiding future development and conserving important habitats.

Candidate Conservation Agreements (CCAs) and Candidate Conservation Agreements with Assurances (CCAAs) 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. These agreements are intended to reduce or remove identified threats to a species. Implementing conservation efforts before species are listed increases the likelihood that simpler, more cost-effective conservation options are available and that conservation efforts will succeed. Development of CCAs and CCAAs is guided by regulations at 50 CFR 17.22(d) and 50 CFR 17.32(d).

Under a CCA, Federal managers and other cooperators (nongovernmental organizations and lease holders) implement conservation measures that reduce threats on Federal lands and leases. Under a CCAA, non-federal landowners and lease holders voluntarily provide habitat protection or enhancement measures on their lands, thereby reducing threats to the species. A section 10(a)(1)(A) enhancement of survival permit is issued in association with a CCAA. If the species is later listed under the Act, the permit authorizes take that is incidental to otherwise lawful activities specified in the agreement, when performed in accordance with the terms of the agreement. Further, the CCAA provides assurances that if the subject species is later listed under the Act, participants who are appropriately implementing certain conservation actions under the CCAA will not be required to implement additional conservation measures.

An ''umbrella'' CCA and CCAA with the Bureau of Land Management (BLM) in New Mexico and two ''umbrella'' CCAAs, one each in Oklahoma and Texas, are being implemented for the lesser prairie-chicken. An additional CCAA was previously established with a single landowner in southwestern

Kansas; however, this CCAA expired in May of 2012. Under these agreements, the participants agree to implement certain conservation measures that are anticipated to reduce threats to lesser prairie-chicken; improve their habitat; reduce habitat fragmentation; and increase population stability, through increases in adult and juvenile survivorship, nest success, and recruitment rates and reduced mortality. Dependent upon the level of participation, expansion of the occupied range may occur. Conservation measures typically focus on maintenance, enhancement, or restoration of nesting and brood rearing habitat. Some possible conservation measures include removal of invasive, woody plants, such as *Prosopis* spp. (mesquite) and *Juniperus virginiana* (eastern red cedar); implementation of prescribed fire; marking of fences; removal of unneeded fences; improved grazing management; and similar measures that help reduce the impact of the existing threats.

On December 18, 2013, we announced receipt of an application from WAFWA for an enhancement of survival permit associated with anticipated implementation of another CCAA (78 FR 76639). This Rangewide Oil and Gas Industry CCAA for the Lesser Prairie-Chicken (78 FR 76639) incorporates measures to address impacts to the lesser prairie-chicken from oil and gas activities on non-federal lands throughout the species' range and provides coverage for a period of 30 years, offering the oil and gas industry the opportunity to voluntarily conserve the lesser prairie-chicken and its habitat while receiving assurances provided by the Service. Within New Mexico, oil and gas operators have the option to choose to enroll under the 2008 CCAA or the new rangewide oil and gas CCAA. On February 28, 2014, we announced in a press release that we had signed the CCAA, issued the enhancement of survival permit, and released the accompanying final environmental assessment and finding of no significant impact. When undertaking certain actions that impact the species or its habitat, participants will be required to pay mitigation fees; funds generated through these fees will enable implementation of conservation actions on enrolled lands elsewhere. This rangewide CCAA is one mechanism for implementing the rangewide plan previously discussed.

All of the State conservation agencies and many Federal agencies within the range of the lesser prairie-chicken conduct outreach efforts intended to inform and educate the public about the conservation status of the species. Many of these efforts specifically target landowners and other interested stakeholders involved in lesser prairie-chicken conservation. Annual festivals focused on the lesser prairie-chicken have been held in several States (Milnesand, New Mexico; Woodward, Oklahoma; and Canadian, Texas) and help inform and raise awareness of lesser prairie-chickens for the public; however, the lesser prairie-chicken festival in Milnesand, New Mexico, was cancelled in 2013 and 2014 due to low populations of lesser prairie-chickens. Often festival participants are able to visit an active lesser prairie-chicken breeding area to observe courtship displays. Festivals and similar community efforts such as these can help promote the concept that stewardship of the lesser prairie-chicken and other wildlife can facilitate economic growth and viable farming and ranching operations.

State-Specific Conservation Efforts

Colorado

The Colorado Parks and Wildlife (CPW) hosted a workshop on the conservation of the lesser prairie-chicken in late 2009. This workshop provided information to local landowners and other interested parties on conservation of the lesser prairie-chicken. Specific management actions, such as grassland restoration and enhancement, intended to benefit conservation of the lesser prairie-chicken were highlighted. Subsequently, Colorado implemented a habitat improvement program (HIP) for the lesser prairie-chicken that provides cost-sharing to private landowners, subject to prior consultation and approval from a CPW biologist, for enrolling fields or conducting habitat enhancements beneficial to the species. By mid-2012, approximately 4,537 ha (11,212 ac) in the estimated occupied range had been enrolled in this program (Van Pelt *et al.* 2013, p. 62). Additionally, in 2006, Colorado initiated a wildlife habitat protection program designed to facilitate acquisition of conservation easements and purchase of lands for the lesser prairie-chicken and other wildlife species. The lesser prairie-chicken was one of five priorities for 2012, and up to $14 million was available in the program.

Currently about 4,433 ha (10,954 ac) have been enrolled under the lesser prairie-chicken CRP SAFE continuous sign-up in Colorado. These enrolled areas are typically recently expired CRP lands and contain older grass stands in less than optimal habitat condition. In late winter 2010 or early spring 2011, one-third of these enrolled lands received a forb (broad-leaved herb other than a grass) and legume inter-seeding consisting of dryland alfalfa and other species to improve habitat quality. This effort is anticipated to result in the establishment of alfalfa and additional forbs, resulting in improved nesting and brood-rearing habitat. About 4,249 ha (10,500 ac) of the initial 8,701 ha (21,500 ac) allocated for SAFE remain to be enrolled.

Our Partners for Fish and Wildlife Program (PFW) program has contributed financial and technical assistance for restoration and enhancement activities benefitting the lesser prairie-chicken in Colorado. The PFW program has executed 14 private lands agreements facilitating habitat restoration and enhancement for the lesser prairie-chicken on about 9,307 ha (23,000 ac) of private lands in southeastern Colorado.

A cooperative project between the CPW and the U.S. Forest Service (USFS) has established several temporary grazing exclosures adjacent to active leks on the Comanche National Grassland in an attempt to improve nesting habitat. The efficacy of these treatments is unknown, and further monitoring is planned to determine the outcome of these efforts (Verquer and Smith 2011, p. 7).

In addition, more than 4,450 ha (11,000 ac) have been protected by perpetual conservation easements held by CPW, The Nature Conservancy, and the Greenlands Reserve Land Trust.

Kansas

The Kansas Department of Wildlife, Parks, and Tourism (KDWPT) has targeted lesser prairie-chicken habitat improvements through various means including the landowner incentive program (LIP), voluntary mitigation projects for energy development, and a State-level WHIP. Through the LIP, KDWPT provides direct technical and financial assistance to private landowners interested in contributing to the conservation of species in greatest conservation need, including lesser prairie-chickens. The LIP improved about 9,118 ha (22,531 ac) for lesser prairie-chickens during the period from 2007 to 2011. Some examples of LIP projects include planting native grasses, brush management efforts, and implementation of prescribed fire. Since 2008, the KDWPT has provided $64,836 in landowner cost-share through the WHIP for practices benefitting the lesser prairie-chicken on about 2,364 ha (5,844 ac). Currently more than 11,662 ha (28,819 ac) of the original allocation

have been enrolled under the lesser prairie-chicken CRP SAFE continuous sign-up in Kansas. Primary practices include tree removal, prescribed fire, grazing management (including perimeter fencing to facilitate livestock management), and native grass establishment that will improve lesser prairie-chicken nesting and brood rearing habitat.

Funds available through the State wildlife grants program also have been used to benefit the lesser prairie-chicken in Kansas. The KDWPT was awarded a 5-year State wildlife grant in 2009, focusing on lesser prairie-chicken habitat improvements. Like several of the other States within the range of the lesser prairie-chicken, the KDWPT partnered with Pheasants Forever and NRCS to fund three employee positions that provide technical assistance to private landowners participating in conservation programs with an emphasis on practices favorable to the lesser prairie-chicken. These employees primarily assist in the implementation and delivery of the NRCS's LPCI in Kansas.

Additionally, KDWPT has a walk-in hunting program that was initiated in 1995, in an effort to enhance the hunting tradition in Kansas. The program provides hunters access to private property, including many lands enrolled in CRP, and has become one of the most successful access programs in the country. By 2004, more than 404,000 ha (1 million ac) had been enrolled in the program. Landowners receive a small payment in exchange for allowing public hunting access to enrolled lands. Payments vary by the amount of acres enrolled and length of contract period. Conservation officers monitor the areas, and violators are ticketed or arrested for offenses such as vandalism, littering, or failing to comply with hunting or fishing regulations. Such incentives, although relatively small, help encourage landowners to provide habitat for resident wildlife species including the lesser prairie-chicken.

The Service's PFW program has contributed financial and technical assistance for restoration and enhancement activities that benefit the lesser prairie-chicken in Kansas. Primary activities include control of invasive, woody plant species, such as eastern red cedar and enhanced use of prescribed fire to improve habitat conditions in native grasslands. The PFW program has executed 63 private lands agreements on about 56,507 ha (139,633 ac) of private lands benefitting conservation of the lesser prairie-chicken in Kansas. An approved CCAA was developed on 1,133 ha (2,800 ac) in south-central Kansas; however, this CCAA expired in 2012.

The Comanche Pool Prairie Resource Foundation (Comanche Pool) is a landowner-driven, nonprofit resource foundation that promotes proper grassland management throughout the mixed-grass vegetative ecoregion of southern Kansas and northern Oklahoma. Ranching is one of the major land uses in this ecoregion, and ranchers have been generally receptive to lesser prairie-chicken conservation strategies that are compatible with their ongoing land use plans. The mission of the Comanche Pool is to provide demonstrations, education, and consultation to other landowners for the purpose of regenerating natural resources and promoting the economic growth of the rural community.

The Comanche Pool has secured over $850,000 in grant funding utilized to restore and enhance rangelands, which has been matched by other partners. Landowner in-kind contributions of almost one million dollars have been provided. Past rangeland improvement agreements include 43 projects affecting over 100,000 acres of improved habitat for the lesser prairie-chicken. Numerous project boundaries often are shared, resulting in larger, contiguous blocks of habitat.

The Kansas Grazing Lands Coalition (KGLC) is another landowner-driven initiative that has a mission to regenerate Kansas grazing land resources through cooperative management, economics, ecology, production, education, and technical assistance programs. The Service's PFW program in Kansas has partnered with the KGLC to provide technical guidance and financial assistance to restore and enhance native grasslands through voluntary agreements with Kansas landowners. The KGLC administers numerous outreach and education events for regional grazing groups and plays an integral role in conservation delivery. They coordinate with other conservation organizations in Kansas.

Lesser prairie-chicken habitat benefits from periodic burns that improve habitat quality and various organizations in Kansas support the use of prescribed fire. The Kansas Prescribed Burn Association (KPBA) is a not-for-profit burn association that serves to encourage the use of prescribed fire and is comprised of private landowners. The mission of KPBA is to promote better rangeland management practices through the use of prescribed fire, with emphasis on safety and training for those members and associates with less experience in prescribed fire and adherence to the use of standard prescribed burning practices. The Kansas Prescribed Fire Council (KPFC) also works to support prescribed burning in Kansas by promoting safe, legal, and responsible use of prescribed fire as a natural resource tool through information exchange and prescribed fire advocacy. The Comanche Pool, KGLC and KPFC recently were awarded a National Fish and Wildlife Foundation grant to support two prescribed fire specialist positions within the mixed grass and sand sagebrush ecoregions of Kansas to support lesser prairie-chicken habitat maintenance and restoration on private lands.

In 2013, a coalition of 29 county governments in Kansas joined in an effort to coordinate conservation for the lesser prairie-chicken. The involved counties encompass 64,954 sq km (25,079 sq mi) in western and southern Kansas, including most of the estimated occupied range of the lesser prairie-chicken in Kansas. In August of 2013, this coalition prepared a conservation, management, and study plan for the lesser prairie-chicken (Kansas Natural Resource Coalition 2013, entire). The plan summarizes some of the available information regarding lesser prairie-chickens and has the stated goal of preserving, maintaining, and increasing lesser prairie-chicken populations in balance with and respect for human, private, and industrial systems within the 29 county region under governance by the coalition members. The plan identified several conservation actions, such as prescribed fire, being undertaken by the coalition or its member organizations that fall within six major categories of conservation focus: population monitoring, habitat, nest success, predation and interspecific competition, hunting, and program funding.

New Mexico

In January 2003, a working group composed of local, State, and Federal officials, along with private and commercial stakeholders, was formed to address conservation and management activities for the lesser prairie-chicken and dunes sagebrush lizard (*Sceloporus arenicolus*) in New Mexico. This working group, formally named the New Mexico Lesser Prairie-Chicken/Sand Dune Lizard Working Group, published the Collaborative Conservation Strategies for the Lesser Prairie-Chicken and Sand Dune Lizard in New Mexico (Strategy) in August 2005. This Strategy provided guidance in the development of BLM's Special Status Species Resource Management Plan Amendment (RMPA), approved in April 2008, which

also addressed the concerns and future management of lesser prairie-chicken and dunes sagebrush lizard habitats on BLM lands, and established the Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern. Both the Strategy and the RMPA prescribe active cooperation among all stakeholders to reduce or eliminate threats to these species in New Mexico. As an outcome, the land-use prescriptions contained in the RMPA now serve as baseline mitigation (for both species) to those operating on Federal lands or non-federal lands with Federal minerals.

Following approval of the RMPA, a CCA was drafted by a team including the Service, BLM, Center of Excellence for Hazardous Materials Management, and participating cooperators. The CCA addresses the conservation needs of the lesser prairie-chicken and dunes sagebrush lizard on BLM lands in New Mexico by undertaking habitat restoration and enhancement activities and by minimizing habitat degradation. These efforts would protect and enhance existing populations and habitats, restore degraded habitat, create new habitat, augment existing populations of lesser prairie-chickens, restore populations, fund research studies, or undertake other activities on their Federal leases or allotments that improve the status of the lesser prairie-chicken. Through this CCA, Center of Excellence for Hazardous Materials Management will work with participating cooperators who voluntarily commit to implementing or funding specific conservation actions, such as burying powerlines, controlling mesquite, minimizing surface disturbances, marking fences, and improving grazing management, in an effort to reduce or eliminate threats to both species. The CCA builds upon the BLM's RMPA for southeast New Mexico. The RMPA established the foundational requirements that will be applied to all future Federal activities, regardless of whether a permittee or lessee participates in this CCA. The strength of the CCA comes from the implementation of additional conservation measures that are additive, or above and beyond those foundational requirements established in the RMPA. In addition to the CCA, a CCAA has been developed in association with the CCA to facilitate conservation actions for the lesser prairie-chicken and dunes sagebrush lizard on private and State lands in southeastern New Mexico.

Since the CCA and CCAA were finalized in December 2008, 31 oil and gas companies have enrolled a total of 354,100 ha (875,000 ac) of mineral holdings under the CCA and CCAA. In addition, 50 private landowners in New Mexico have enrolled about 704,154 ha (1,740,000 ac) under the CCAA. On March 1, 2012, the New Mexico State Land Office enrolled all State Trust lands in lesser prairie-chicken and dunes sagebrush lizard habitat (about 248,000 ac) into a certificate of inclusion under the CCAA. On these enrolled State Trust lands, the herbicide tebuthiuron will no longer be used to treat shinnery oak. Please refer to the ''Shrub Control and Eradication'' section, below, for more information on tebuthiuron. There currently are four pending ranching enrollment applications being reviewed and processed for inclusion. Recently, BLM also has closed 149,910 ha (370,435 ac) to future oil and gas leasing and closed about 342,770 ha (847,000 ac) to wind and solar development. Part of the purpose for these closures was to improve lesser prairie-chicken habitat. The BLM has reclaimed about 328 ha (810 ac) of abandoned well pads and associated roads (Watts 2014, pers. comm.). The BLM also requires burial of powerlines within 3.2 km (2 mi) of leks. Approximately 52 km (32.5 mi) of aboveground powerlines have been removed to date. Additionally, BLM has implemented control efforts for mesquite (*Prosopis glandulosa*) on 157,397 ha (388,937 ac) and has plans to do so on an additional 140,462 ha (347,091 ac). More discussion of mesquite control is addressed in the ''Shrub Control and Eradication'' section, below.

Acquisition of land for the protection of lesser prairie-chicken habitat also has occurred in New Mexico. The New Mexico Department of Game and Fish (NMDGF) currently has designated 29 areas specifically for management of the lesser prairie-chickens totaling more than 11,850 ha (29,282 ac). These areas are closed to the public during the breeding and nesting season (March 1 to July 30) each year, and restrictions are in place to minimize noise and other activities associated with oil and gas drilling. In 2007, the State Game Commission used New Mexico State Land Conservation Appropriation funding to acquire 2,137 ha (5,285 ac) of private ranchland in Roosevelt County. This property, the Sandhills Prairie Conservation Area (formerly the Lewis Ranch), is located east of Milnesand, New Mexico, and adjoins two existing Commission-owned prairie-chicken areas. The BLM, on March 3, 2010, also acquired 3,010 ha (7,440 ac) of land east of Roswell, New Mexico, to protect key habitat for the lesser prairie-chicken. The Nature Conservancy owns and manages the 11,331 ha (28,000 ac) Milnesand Prairie Preserve near Milnesand, New Mexico. Habitat management efforts on this preserve target the lesser prairie-chicken.

The Service's PFW program also has been active in lesser prairie-chicken conservation efforts in the State of New Mexico. Private lands agreements have been executed on 65 properties encompassing 28,492 ha (70,404 ac) of lesser prairie-chicken habitat in New Mexico. Additionally, the entire 1,052 ha (2,600 ac) allotted to the lesser prairie-chicken CRP SAFE continuous signup in New Mexico (Lea County only) have been enrolled under the Service's PFW program.

Oklahoma

The ODWC partnered with the Service, the Oklahoma Secretary of Environment, The Nature Conservancy, the Sutton Center, and the Playa Lakes Joint Venture to develop the Oklahoma Lesser Prairie-Chicken Spatial Planning Tool in 2009. The goal of the Oklahoma Lesser Prairie-Chicken Spatial Planning Tool is to reduce the impacts of ongoing and planned development actions within the range of the lesser prairie-chicken by guiding development away from sensitive habitats used by the species. The Oklahoma Lesser Prairie-Chicken Spatial Planning Tool assigns a relative value rank to geographic areas to indicate the value of the area to the conservation of the lesser prairie-chicken. The higher the rank (on a scale of 1 to 8), the more important the area is to the lesser prairie-chicken. The Oklahoma Lesser Prairie-Chicken Spatial Planning Tool, therefore, can be used to identify areas that provide high-quality habitat and determine where development, such as wind power, would have the least impact to the species. The Oklahoma Lesser Prairie-Chicken Spatial Planning Tool also can be used to determine a voluntary offset payment based on the cost of mitigating the impact of the anticipated development through habitat replacement. The voluntary offset payment is intended to be used to offset the impacts associated with habitat loss. Use of the Oklahoma Lesser Prairie-Chicken Spatial Planning Tool and the voluntary offset payment is voluntary.

To date, in excess of $11.1 million has been committed to the ODWC through the voluntary offset payment program. Most recently, the ODWC entered into a memorandum of agreement with Chermac Energy Corporation to partially offset potential habitat loss from a planned 88.5-km (55-mi) high-voltage transmission line. The line would run

from near the Kansas State line to the Oklahoma Gas and Electric Woodward Extra High Voltage substation and will be used to carry up to 900 megawatts of wind energy from an existing wind farm in Harper County. The memorandum of agreement facilitates voluntary offset payments for impacts to the lesser prairie-chicken and its habitat. The agreement calls for the payment of a total of $2.5 million, with the money being used to help leverage additional matching funds from private and Federal entities for preservation, enhancement, and acquisition of lesser prairie-chicken habitat. A large percentage of the voluntary offset payment funds have been used to acquire lands for the conservation of the lesser prairie-chicken and other fish and wildlife resources.

In 2008, the ODWC acquired two properties known to be used by the lesser prairie-chicken. The Cimarron Bluff Wildlife Management Area encompasses 1,388 ha (3,430 ac) in northeastern Harper County, Oklahoma. The Cimarron Hills Wildlife Management Area in northwestern Woods County, Oklahoma, encompasses 1,526 ha (3,770 ac). The ODWC also recently purchased 5,580 ha (13,789 ac) within the range of the lesser prairie-chicken to expand both the Beaver River and Packsaddle Wildlife Management Areas in Beaver and Ellis Counties, respectively.

Oklahoma State University hosts prescribed fire field days to help inform landowners about the benefits of prescribed fire for controlling invasion of woody vegetation in prairies and improving habitat conditions for wildlife in grassland ecosystems. Prescribed burning is an important tool landowners can use to improve the value of CRP fields and native prairie for wildlife, including the lesser prairie-chicken, by maintaining and improving vegetative structure, productivity, and diversity and by controlling exotic plant species. In 2009, the Environmental Defense Fund partnered with Oklahoma State University to prepare a report on the management of CRP fields for lesser prairie-chicken management. The document (Hickman and Elmore 2009, entire) was designed to provide a decision tree that would assist agencies and landowners with mid-contract management of CRP fields.

Like the other States, ODWC has partnered in the implementation of a State WHIP designed to enhance, create, and manage habitat for all wildlife species, including the lesser prairie-chicken. The State WHIP recently has targeted money for lesser prairie-chicken habitat improvements.

Several different ''Ranch Conversations'' have been held in northwestern Oklahoma over the past 10 years, most recently hosted by the Oklahoma High Plains Resource Development and Conservation Office. These meetings invited private landowners and the general public to discuss lesser prairie-chicken conservation and management, receive information, and provide input on programs and incentives that are available for managing the lesser prairie-chicken on privately owned lands.

In an effort to address ongoing development of oil and gas resources, the Oklahoma Wildlife Conservation Commission voted to approve a memorandum of understanding with the Oklahoma Independent Petroleum Association in February 2012 to establish a collaborative working relationship for lesser prairie-chicken conservation. Through this memorandum of understanding, the ODWC and Oklahoma Independent Petroleum Association will identify and develop voluntary steps (best management practices) that can be taken by the Oklahoma Independent Petroleum Association's members to avoid and minimize the impacts of their operations on the lesser prairie-chicken. These best management practices are currently under development.

The Oklahoma Association of Conservation Districts received a USDA Conservation Innovation Grant to develop the concept of a wildlife credits trading program as it applies to the lesser prairie-chicken. This pilot project entailed creating protocols for defining, quantifying and qualifying a credit; developing a credit verification system; and measuring the projects effect on Oklahoma's lesser prairie-chicken population. As a part of this grant, the Oklahoma Association of Conservation Districts currently provides financial incentives ($8 per acre) over a 5-year period to agricultural producers who enroll in the habitat credit training program and participate in the Oklahoma CCAA. The grant provided funding for enrollment of up to 4,046 ha (10,000 ac) over the 5-year period, but no acres have been enrolled in the habitat credit training program as of the end of 2013. When completed, the credit trading program staff also will develop a handbook that can be used by others when providing incentives to landowners who manage their lands for conservation of the lesser prairie-chicken and other species. The Oklahoma USDA FSA and ODWC have worked to enroll about 2,819 ha (6,965 ac) of the 6,111 ha (15,100 ac) allocated under the lesser prairie-chicken CRP SAFE continuous sign-up in Beaver, Beckham, Ellis, and Harper Counties.

The ODWC, in early 2012, entered into a contract with Ecosystem Management Research Institute to develop a conservation plan for the lesser prairie-chicken in Oklahoma. Public comments on the draft plan were solicited through August 30, 2012, and a final plan was completed in September of 2012. The primary goal of the Oklahoma Lesser Prairie Chicken Conservation Plan was to develop an overall strategy for conservation of the lesser prairie-chicken in Oklahoma. The Oklahoma Lesser Prairie Chicken Conservation Plan included a synthesis of all currently available, pertinent information and input from a variety of stakeholders. The Oklahoma Lesser Prairie Chicken Conservation Plan also identifies priority conservation areas, population goals, and conservation strategies and actions to improve lesser prairie-chicken viability through habitat improvements.

As discussed above, the ODWC applied for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Act that included a draft umbrella CCAA between the Service and ODWC for the lesser prairie-chicken in 14 Oklahoma counties (77 FR 37917, June 25, 2012). The draft CCAA and associated draft environmental assessment was made available for public review and comment from June 25, 2012 through August 24, 2012 (77 FR 37917). The CCAA was approved on January 25, 2013, and ODWC began enrollment of private lands at that time. Since being approved, 16 landowners have enrolled 7,115 ha (17,582 ac). Several applications are currently being reviewed and processed for enrollment. On December 20, 2013, we announced availability of a draft amendment to the Oklahoma agricultural CCAA (78 FR 77153). This amendment would increase acreage eligible for enrollment from 80,937 ha (200,000 ac) to 161,874 ha (400,000 ac). The comment period on this proposed amendment closed January 21, 2014. A permitting decision is anticipated in March 2014.

The Service's PFW program also has contributed financial and technical assistance for restoration and enhancement activities that benefit the lesser prairie-chicken in Oklahoma. Important measures include control of eastern red cedar and fence marking and removal to minimize collision mortality. The Oklahoma PFW program has implemented 154 private lands agreements on about 38,954 ha (96,258 ac) of private lands for the benefit of the lesser prairie-chicken in the State.

Texas

The Texas Parks and Wildlife Department (TPWD) hosted a series of landowner meetings and listening sessions in 6 (Hemphill, Wheeler, Gray, Bailey, Cochran, and Gaines) of the 13 counties confirmed to be occupied by the lesser prairie-chicken in Texas. Private landowners and the general public were invited to discuss conservation and management, receive information, and provide input on programs and incentives that are available for managing the lesser prairie-chicken on privately owned lands. In response to these meetings, TPWD worked with the Service and landowners to finalize the first Statewide umbrella CCAA for the lesser prairie-chicken in Texas. The conservation goal of the Texas CCAA is to encourage protection and improvement of suitable lesser prairie-chicken habitat on non-federal lands by offering private landowners incentives to implement voluntary conservation measures through available funding mechanisms and by providing technical assistance and regulatory assurances concerning land use restrictions that might otherwise apply should the lesser prairie-chicken become listed under the Act. The conservation measures would generally consist of prescribed grazing; prescribed burning; brush management; cropland and residue management; range seeding and enrollment in various Farm Bill programs such as the CRP, the Grassland Reserve Program, and SAFE program; and wildlife habitat treatments through the EQIP. The Texas CCAA covers 50 counties, largely encompassing the Texas panhandle region, and was finalized on May 14, 2009. This CCAA covers the lands currently occupied in Texas, plus those lands that are unoccupied and have potential habitat and those lands that could contain potential habitat should the lesser prairie-chicken population in Texas increase. Total landowner participation, by the close of December 2013, is 68 properties (totaling approximately 572,999 enrolled ac) in 15 counties (Texas Parks and Wildlife Department 2014, entire). Approximately 12 applications are currently being reviewed and processed for enrollment.

In May of 2009, the TPWD, along with other partners, held an additional five meetings in the Texas panhandle region as part of an effort to promote lesser prairie-chicken conservation. These meetings were intended to inform landowners about financial incentives and other resources available to improve habitat for the lesser prairie-chicken, including the SAFE program. The objective of the Texas SAFE program, administered by the FSA, is to restore native mixed-grassland habitat for the lesser prairie-chicken in Texas. The current allocation is 49,655 ha (122,700 ac), and 31,245 ha (77,209 ac) have been enrolled through 2012. TPWD continues efforts to promote lesser prairie-chicken conservation on private lands. In March 2010, TPWD staff conducted a 2-day upland bird workshop where lesser prairie-chicken research and management was discussed.

Since 2008, the NRCS and TPWD have partnered in the implementation of an EQIP focused on lesser prairie-chicken conservation. This program provides technical and financial assistance to landowners interested in implementing land management practices for the lesser prairie-chicken within its historical range. Twenty-two counties were targeted in this initial effort, and preliminary analysis indicated that an agricultural producer's profitability and equity could be improved by enrolling in this program (Jones *et al.* 2008, p. 3).

The Service's PFW program and the TPWD have been actively collaborating on range management programs designed to provide cost-sharing for implementation of habitat improvements for lesser prairie-chickens. The Service provided funding to TPWD to support a Landscape Conservation Coordinator position for the Panhandle and Southern High Plains region, as well as funding to support LIP projects targeting lesser prairie-chicken habitat improvements (brush control and grazing management) in this region. More than $200,000 of Service funds were committed in 2010, and an additional $100,000 was committed in 2011. Since 2008, Texas has addressed lesser prairie-chicken conservation on 5,693 ha (14,068 ac) under the LIP. Typical conservation measures include native plant restoration, control of exotic vegetation, prescribed burning, selective brush management, and prescribed grazing. Currently, the PFW program has executed 66 private lands agreements on about 53,091 ha (131,190 ac) of privately owned lands for the benefit of the lesser prairie-chicken in Texas.

The TPWD continues to establish working relationships with wind developers and provides review and comment on proposed developments whenever requested. Through this voluntary comment process, TPWD provides guidance on how to prevent, minimize, and mitigate impacts from wind and transmission development on lesser prairie-chicken habitat and populations.

A Lesser Prairie-Chicken Advisory Committee also has been established in Texas and functions to provide input and information to the State's Interagency Task Force on Economic Growth and Endangered Species. The purpose of the task force is to provide policy and technical assistance regarding compliance with endangered species laws and regulations to local and regional governmental entities and their communities engaged in economic development activities so that compliance with endangered species laws and regulations is as effective and cost-efficient as possible. According to the Task Force, input provided by the Lesser Prairie-Chicken Advisory Committee serves to help the Task Force prevent listing and minimize harm to economic sectors if listing does occur. The advisory committee also assists in outreach and education efforts on potential listing decisions and methods to minimize the impact of listing.

The TPWD has worked in conjunction with several Texas universities to fund several lesser prairie-chicken research projects. In one of those projects, TPWD evaluated the use of aerial line transects and forward-looking infrared technology to survey for lesser prairie-chickens. Other ongoing research includes evaluation of lesser prairie-chicken population response to management of shinnery oak and evaluation of relationships among the lesser prairie-chicken, avian predators, and oil and gas infrastructure.

In 2009, the U.S. Department of Energy awarded Texas Tech University and the TPWD a collaborative grant to conduct aerial surveys on approximately 75 percent of the estimated currently occupied range. This project aided in the initial development of a standardized protocol for conducting aerial surveys for the lesser prairie-chicken across the entire range. All five States are currently participating in these surveys; and a complete analysis of the results is available (MacDonald *et al.* 2013, entire). A summary of the results has been incorporated into this final rule (see ''Rangewide Population Estimates'' section, below).

In 2007, The Nature Conservancy of Texas acquired approximately 2,428 ha (6,000 ac) of private ranchland in Yoakum and Terry Counties for the purpose of protecting and restoring lesser prairie-chicken habitat. This acquisition helped secure a geographically important lesser prairie-chicken population. Since the original acquisition, additional lands have been

acquired, and the Yoakum Dunes Preserve now encompasses 4,342.7 ha (10,731 ac).

In addition to participation in annual lesser prairie-chicken festivals, the TPWD published an article on the lesser prairie-chicken and wind development in Texas in their agency magazine in October of 2009. The TPWD and the Dorothy Marcille Wood Foundation also produced a 12-page color brochure in 2009 about the lesser prairie-chicken entitled ''A Shared Future.''

Conservation Programs Summary

In summary, a variety of important conservation efforts have been undertaken across the range of the lesser prairie-chicken. These actions, as outlined above, have, at least in some instances, slowed, but not halted, alteration of lesser prairie-chicken habitat. In many instances, these efforts have helped reduce the severity of the threats to the species, particularly in localized areas. Continued implementation of these and similar future actions is crucial to lesser prairie-chicken conservation. However, our review of these conservation efforts indicates that most of the measures identified are not adequate to fully address the known threats, including the primary threat of habitat fragmentation, in a manner that effectively reduces or eliminates the threats. All of the efforts are limited in size or duration, and the measures typically are not implemented at a scale that would be necessary to effectively reduce the threats to this species across its known range. Often the measures are voluntary, with little certainty that the measures, once implemented, will be maintained over the long term. In a few instances, mitigation for existing development within the range of the lesser prairie-chicken has been secured, but the effectiveness of the mitigation is unknown. Conservation of this species will require persistent, targeted implementation of appropriate actions over the entire range of the species to sufficiently reduce or eliminate the primary threats to the lesser prairie-chicken.

Background

Species Information

The lesser prairie-chicken (*Tympanuchus pallidicinctus*) is a species of prairie grouse endemic to the southern high plains of the United States, commonly recognized for its feathered tarsi (legs), stout build, ground-dwelling habit, and lek mating behavior. The lesser prairie-chicken is closely related and generally similar in life history strategy, although not identical in every aspect of behavior and life history, to other species of North American prairie grouse (e.g., greater prairie-chicken (*T. cupido pinnatus*), Attwater's prairie-chicken (*T. cupido attwateri*), sharp-tailed grouse (*T. phasianellus*), greater sage-grouse (*Centrocercus urophasianus*), and Gunnison's sage-grouse (*C. minimus*)). Plumage of the lesser prairie-chicken is characterized by a cryptic pattern of alternating brown and buff-colored barring, and is similar in mating behavior and appearance, although somewhat lighter in color, to the greater prairie-chicken. Males have long tufts of feathers on the sides of the neck, termed pinnae, which are erected during courtship displays. Pinnae are smaller and less prominent in females. Males also display brilliant yellow supraorbital eyecombs and dull reddish esophageal air sacs during courtship displays (Copelin 1963, p. 12; Sutton 1977, entire; Johnsgard 1983, p. 318). A more detailed summary of the appearance of the lesser prairie-chicken is provided in Hagen and Giesen (2005, unpaginated).

Lesser prairie-chickens are dimorphic in size, with the females being smaller than the males (See Table 1 in Hagen and Giesen 2005, unpaginated). Adult lesser prairie-chicken body length varies from 38 to 41 centimeters (cm) (15 to 16 inches (in)) (Johnsgard 1973, p. 275; Johnsgard 1983, p. 318), and body mass varies from 618 to 897 grams (g) (1.4 to 2.0 pounds (lbs)) for males and 517 to 772 g (1.1 to 1.7 lbs) for females (Haukos *et al.* 1989, pp. 271; Giesen 1998, p. 14). Adults weigh more than yearling birds.

Taxonomy

The lesser prairie-chicken is in the Order Galliformes, Family Phasianidae, subfamily Tetraoninae, and is generally recognized as a species separate from the greater prairie-chicken (Jones 1964, pp. 65–73; American Ornithologist's Union 1998, p. 122). The lesser prairie-chicken was first described as a subspecies of the greater prairie-chicken (Ridgway 1873, p. 199) but was later named a full species in 1885 (Ridgway 1885, p. 355). As recently as the early 1980s, some species experts (Johnsgard 1983, p. 316) still regarded the extinct heath hen, the greater prairie-chicken, the lesser prairie-chicken, and the Attwater's prairie-chicken to be four separate subspecies within *Tympanuchus cupido.* Others, as outlined in Hagen and Giesen (2005, unpaginated), considered the lesser prairie-chicken to be a distinct species.

Recent molecular analyses have suggested that phylogenetic relationships in the genus *Tympanuchus* remain unresolved. Ellsworth *et al.* (1994, p. 664; 1995, p. 497) confirmed that the genus *Tympanuchus* is distinct, but their analysis did not show strong differentiation between the taxa within that genus. Ellsworth *et al.* (1994 pp. 666, 668) believed that subdivision between the prairie grouse occurred during the recent Wisconsin glacial period and that adequate time had not elapsed to allow sufficient genetic differentiation between the taxa. Subsequently, Ellsworth *et al.* (1996, entire) expanded their study in an attempt to resolve the evolutionary relationships among the grouse. Yet, they were unable to partition members of the genus *Tympanuchus* along typical taxonomic boundaries, likely due to insufficient time for genetic change to accumulate (Ellsworth *et al.* 1996, p. 814). Similarly, Lucchini *et al.* (2001 p. 159) and Drovetski (2002, p. 941) also confirmed that speciation in *Tympanuchus* has been recent and may be incomplete.

While advances in molecular genetics, in many instances, have helped clarify taxonomic relationships, some disagreement between molecular and traditional phylogenetic approaches is not entirely unexpected (Lucchini *et al.* 2001, p. 150). Several scientists have argued that strong sexual selection characteristics of grouse that exhibit lek mating behavior resolves the apparent lack of agreement between the molecular data and the observed phenotypical and behavioral differences (Ellsworth 1994, p. 669; Spaulding 2007, pp. 1083–1084; Oyler-McCance *et al.* 2010, p. 121). As explained by Oyler-McCance *et al.* (2010, p. 121) strong sexual selection often occurs in lekking grouse that have highly skewed mating systems in which relatively few males are responsible for most of the mating. In such cases, sexual selection may drive changes in morphological and behavioral traits much more rapidly than occurs in some genetic markers. The readily observed differences in appearance, morphology, behavior, social interaction, and ecological affinities facilitate reproductive isolation and speciation within the prairie grouse. Although prairie grouse do not yet exhibit complete reproductive isolation, as evidenced by the presence of hybrid individuals in areas where their ranges overlap, the incidence of hybridization appears to be low and is not significantly impacting their gene pools (Johnsgard 2002, p. 32) (see Hybridization section, below.

For purposes of this rule, we will follow the American Ornithologist's

Union taxonomic classification, which is based on observed differences in appearance, morphology, behavior, social interaction, and habitat affinities. While this more traditional taxonomic approach may not always agree with recent molecular analyses, it is widely accepted by taxonomists, and most taxonomists agree that the lesser prairie-chicken is distinct from other prairie grouse (Johnsgard 2002, p. 32; Johnson 2008, p. 168). Speciation is a continuous process and in lekking grouse, where strong sexual selection is operating, males may undergo rapid changes in morphology and behavior that can be the driving force in speciation. Additionally, much of the observed genetic diversity in prairie grouse is residual from when the species group originally diverged and likely accounts for the lack of resolution reported in previous taxonomic studies (Johnson 2008, p. 168).

Life-History Characteristics

Lesser prairie-chickens are polygynous (a mating pattern in which a male mates with more than one female in a single breeding season) and exhibit a lek mating system. The lek is a place where males traditionally gather to conduct a communal, competitive courtship display. The males use their specialized plumage and vocalizations to attract females for mating. The sequence of vocalizations and posturing of males, often described as ''booming, gobbling, yodeling, bubbling, or duetting,'' has been described by Johnsgard (1983, p. 336) and Haukos (1988, pp. 44–45) and is well summarized by Hagen and Giesen (2005, unpaginated). Male lesser prairie-chickens gather to display on leks at dawn and dusk beginning as early as late January and continuing through mid-May (Copelin 1963, p. 26; Hoffman 1963, p. 730; Crawford and Bolen 1976a, p. 97; Sell 1979, p. 10; Merchant 1982, p. 40), although fewer numbers of birds generally attend leks during the evening (Taylor and Guthery 1980a, p. 8). Male birds may remain on the lek for up to 4 hours (Copelin 1963, pp. 27–28; Sharpe 1968, p. 76; Crawford and Bolen 1975, pp. 808–810; Giesen 1998, p. 7), with females typically departing the lek following successful copulation (Sharpe 1968, pp. 154, 156). Dominant, usually older, males occupy and defend territories near the center of the lek where most of the copulations occur, while younger males occupy the periphery and compete for central access (Sharpe 1968, pp. 73–89; Wiley 1974, p. 203; Ehrlich *et al.* 1988, p. 259). A relatively small number of dominant males account for the majority of copulations at each lek (Sharpe 1968, p. 87; Wiley 1974, p. 203; Locke 1992, p. 1). Young males are rarely successful in breeding due to the dominance by older males. The spring display period may extend into June (Hoffman 1963, p. 730; Jones 1964, p. 66); however, Jones (1964, p. 66) observed some courtship activity as late as July in Oklahoma.

Leks are normally located on the tops of wind-swept ridges, exposed knolls, sparsely vegetated dunes, and similar features in areas having low vegetation height (10 cm (4 in) or less) or bare soil and enhanced visibility of the surrounding area (Copelin 1963, p. 26; Jones 1963a, p. 771; Taylor and Guthery 1980a, p. 8). The features associated with lek sites also may contribute to the transmission of sounds produced during lekking (Sparling 1983, pp. 40–41; Butler *et al.* 2010, entire) and these sounds may aid females in locating lek sites (Hagen and Giesen 2005, unpaginated). Background noises are known to increase in landscapes altered by human development and may interfere with normal behavioral activities (Francis *et al.* 2009, p. 1415). Birds may be particularly vulnerable to elevated levels of background noise, due to their reliance on acoustic communication, and elevated noise levels may negatively impact breeding in some birds particularly where acoustic cues are used during the reproductive process (Francis *et al.* 2009, pp. 1415, 1418). In sage grouse, sound levels exceeding 40 decibels (dB) were found to reduce breeding activity and increase stress, as determined by hormone levels (Blickley *et al.* 2012b, p. 4–5) (See section on *Influence of Noise* below).

Areas that have been previously disturbed by humans, such as infrequently used roads, abandoned drilling pads, abandoned farmland, recently cultivated fields, and livestock watering sites also can be used as lek sites (Crawford and Bolen 1976b, pp. 238–239; Davis *et al.* 1979, pp. 81, 83; Sell 1979, p. 14; Taylor 1979, p. 707). However, ongoing human activity, such as presence of humans or noise, may discourage lekking by causing birds to flush, and, in some instances, may cause lek sites to be abandoned (Hunt and Best 2004, pp. 2, 124). Leks often are surrounded by taller, denser cover that may be used for nesting, escape, thermal cover, and feeding cover. New leks can be formed opportunistically at any appropriate site within or adjacent to nesting habitat. Evidence of expanding lesser prairie-chicken populations tends to be demonstrated by increases in the number of active leks rather than by increases in the number of males displaying per lek (Hoffman 1963, p. 731; Snyder 1967, p. 124; Cannon and Knopf 1981, p. 777; Merchant 1982, p. 54; Locke 1992, p. 43). Temporary or satellite leks occasionally may be established during the breeding season and appear indicative of population fluctuations (e.g., an expanding population has more satellite leks than a declining population) (Hamerstrom and Hamerstrom 1973, pp. 7, 13; Schroeder and Braun 1992, p. 280; Haukos and Smith 1999, pp. 415, 417) or habitat quality (Cannon and Knopf 1979, p. 44; Merrill *et al.* 1999, pp. 193–194). Lesser prairie-chicken satellite leks have been observed to form later in the breeding season and coincide with decreased attendance at the permanent leks (Haukos and Smith 1999, p. 418). These satellite leks consisted primarily of birds that were unable to establish territories on the permanent leks (Haukos and Smith 1999, p. 418). Locations of traditional, permanent lek sites also may change in response to disturbances (Crawford and Bolen 1976b, pp. 238–240; Cannon and Knopf 1979, p. 44).

Females arrive at the lek in early spring after the males begin displaying, with peak hen attendance at leks typically occurring in early to mid-April (Copelin 1963, p. 26; Hoffman 1963, p. 730; Crawford and Bolen 1975, p. 810; Davis *et al.* 1979, p. 84; Merchant 1982, p. 41; Haukos 1988, p. 49). Sounds produced by courting males serve to advertise the presence of the lek to females in proximity to the display ground (Robb and Schroeder 2005, p. 29). Within 1 to 2 weeks of successful mating, the hen will select a nest site, normally within 1 to 4 km (0.6 to 2.4 mi) of an active lek (Copelin 1963, p. 44; Giesen 1994a, p. 97; Kukal 2010, pp. 19–20), construct a nest, and lay a clutch of 8 to 14 eggs (Bent 1932, p. 282; Copelin 1963, p. 34; Merchant 1982, p. 44; Fields 2004, pp. 88, 115–116; Hagen and Giesen 2005, unpaginated; Pitman *et al.* 2006a, p. 26). Nesting is generally initiated in mid-April and concludes in late May (Copelin 1963, p. 35; Snyder 1967, p. 124; Merchant 1982, p. 42; Haukos 1988, pp. 7–8). Hens most commonly lay one egg per day and initiate incubation once the clutch is complete (Hagen and Giesen 2005, unpaginated). Incubation lasts 24 to 27 days (Coats 1955, p. 18; Sutton 1968, p. 679; Pitman *et al.* 2006a, p. 26) with hatching generally peaking in late May through mid-June (Copelin 1963, p. 34; Merchant 1982, p. 42; Pitman *et al.* 2006a, p. 26). Hens typically leave the nest within 24 hours after the first egg hatches (Hagen and Giesen 2005,

unpaginated). Renesting may occur when the first attempt is unsuccessful (a successful nest is one in which at least one egg hatches) (Johnsgard 1973, pp. 63–64; Merchant 1982, p. 43; Pitman *et al.* 2006a, p. 25). Renesting is more likely when nest failure occurs early in the nesting season and becomes less common as the nesting season progresses (Pitman *et al.* 2006a, p. 27). Clutches associated with renesting attempts tend to be smaller than clutches at first nesting (Fields 2004, p. 88; Pitman *et al.* 2006a, p. 27).

Nests generally consist of bowl-shaped depressions in the soil (Giesen 1998, p. 9). Nests are lined with dried grasses, leaves, and feathers, and there is no evidence that nests are reused in subsequent years (Giesen 1998, p. 9). Adequate herbaceous cover, including residual cover from the previous growing season, is an important factor influencing nest success, primarily by providing concealment of the nest (Suminski 1977, p. 32; Riley 1978, p. 36; Riley *et al.* 1992, p. 386; Giesen 1998, p. 9). Young are precocial (mobile upon hatching) and nidifugous (typically leaving the nest within hours of hatching) (Coats 1955, p. 5). Chicks are usually capable of short flights by 14 days of age (Hagen and Giesen 2005, unpaginated). Broods may remain with females for up to 18 weeks (Giesen 1998, p. 9; Pitman *et al.* 2006c, p. 93), but brood breakup generally occurs by September when the chicks are approximately 70 days of age (Taylor and Guthery 1980a, p. 10). Males do not incubate the eggs, assist in chick rearing, or provide other forms of parental care (Wiley 1974, p. 203). Nest success (proportion of nests that hatch at least one egg) varies, but averages about 30 percent (range 0–67 percent) (Hagen and Giesen 2005, unpaginated).

Male lesser prairie-chickens exhibit strong site fidelity (loyalty to a particular area; philopatry) to their display grounds (Copelin 1963, pp. 29–30; Hoffman 1963, p. 731; Campbell 1972, pp. 698–699). Such behavior is typical for most species of prairie grouse (e.g., greater prairie-chicken, lesser prairie-chicken, sharp-tailed grouse, greater sage-grouse, and Gunnison's sage-grouse) in North America (Schroeder and Robb 2003, pp. 231–232). Once a lek site is selected, males persistently return to that lek year after year (Wiley 1974, pp. 203–204) and may remain faithful to that site for life. They often will continue to use these traditional areas even when the surrounding habitat has declined in value (for example, concerning greater sage-grouse; see Harju *et al.* 2010, entire). Female lesser prairie-chickens, due to their tendency to frequently nest within 2.5 km (1.5 mi) of a lek (Giesen 1994a, p. 97), also may display fidelity to nesting areas but the degree of fidelity is not clearly established (Schroeder and Robb 2003, p. 292). However, Haukos and Smith (1999, p. 418) observed that female lesser prairie-chickens are more likely to visit older, traditionally used lek sites than temporary, nontraditional lek sites (those used for no more than 2 years).

Because of this fidelity to breeding areas, prairie grouse may not immediately demonstrate a population response when faced with environmental change. Considering that landscapes and habitat suitability can change rapidly, strong site fidelity in prairie grouse can result in a lag period between when a particular landscape degradation occurs and when an associated population response is observed (Gregory *et al.* 2011, pp. 29–30). In some birds exhibiting strong philopatry, Wiens *et al.* (1986, p. 374) thought that the overall response to a particular habitat alteration might not become evident until after the most site-tenacious individuals had died. Delayed population responses have been observed in birds impacted by wind energy development (Stewart *et al.* 2007, pp. 5–6) and in greater sage-grouse impacted by oil and gas development (Doherty *et al.* 2010, p. 5). Consequently, routine lek count surveys typically used to monitor prairie grouse may be slow in revealing impacts of environmental change (Gregory *et al.* 2011, pp. 29–30).

Typically, lesser prairie-chicken home ranges (geographic area to which an organism typically confines its activity) vary both by sex and by season and may be influenced by a variety of factors. However, Toole (2005, pp. 12–18) observed that home range sizes did not differ by season, sex or age. A general lack of suitable habitats outside of Toole's study areas may have contributed to similarity in home range size and movements of birds within his study sites (Toole 2005, pp. 24–28). Lesser prairie-chickens are not territorial, except for the small area defended by males on the lek, so home ranges of individual birds likely overlap to some extent. Habitat quality presumably influences the extent to which individual home ranges overlap.

Males tend to have smaller home ranges than do females, with the males generally remaining closer to the leks than do the females (Giesen 1998, p. 11). In Colorado, Giesen (1998, p. 11) observed that spring and summer home ranges for males were 211 ha (512 ac) and for females were 596 ha (1,473 ac). In the spring, home ranges are fairly small when daily activity focuses on lekking and mating. Home ranges of nesting females in New Mexico varied, on average, from 8.5 to 92 ha (21 to 227 ac) (Merchant 1982, p. 37; Riley *et al.* 1994, p. 185). Jamison (2000, p. 109) observed that range size peaked in October as birds began feeding in recently harvested grain fields. Median range size in October was 229 to 409 ha (566 to 1,400 ac). In Texas, Taylor and Guthery (1980b, p. 522) found that winter monthly home ranges for males could be as large as 1,945 ha (4,806 ac) and that subadults tended to have larger home ranges than did adults. More typically, winter ranges are more than 300 ha (740 ac) in size, and the size declines considerably by spring. Based on observations from New Mexico and Oklahoma, lesser prairie-chicken home ranges increase during periods of drought (Giesen 1998, p. 11; Merchant 1982, p. 55), possibly because of reduced food availability and cover. Davis (2005, p. 3) states that the combined home range of all lesser prairie-chickens at a single lek is about 49 square kilometers (sq km) (19 square miles (sq mi) or 12,100 ac).

Dispersal plays an important role in maintaining healthy, robust populations by contributing to population expansion, recolonization, and gene flow (Sutherland *et al.* 2000, unpaginated). Many grouse species are known to exhibit relatively limited dispersal tendencies and juvenile dispersal is normally less than 40 km (25 mi) (Braun *et al.* 1994, pp. 432–433; Ellsworth *et al.* 1994, p. 666). Adults tend to spend much of their daily and seasonal activity within 4.8 km (3.0 mi) of a lek (Giesen 1994, p. 97; Riley *et al.* 1994, p. 185; Woodward *et al.* 2001, p. 263). Greater sage-grouse populations, for example, were shown to follow an isolation-by-distance model of localized gene flow that results primarily from a tendency for individuals to move between neighboring populations rather than through longer distance dispersal across the range (Oyler-McCance *et al.* 2005, p. 1306). Similarly a genetic analysis of greater prairie-chickens by Johnson *et al.* (2003, pp. 3341–3342) revealed that greater prairie-chickens also generally displayed isolation by distance. More recent work in Kansas concluded that isolation by distance did not explain the distribution of genetic diversity in greater prairie-chickens (Gregory 2011, p. 64). Instead isolation by resistance, where landscape characteristics, primarily habitat composition and configuration, influence the permeability of the

landscape to dispersal, best described gene flow (dispersal) in greater prairie-chickens (Gregory 2011, p. 66). Thus landscape structure and arrangement, with its corresponding resistance to dispersal, exerts a strong influence on dispersal and the resulting connectivity between, and distribution of, genetic structure in greater prairie-chicken populations (Gregory 2011, p. 68). Environmental factors also may influence dispersal patterns in lesser prairie-chickens, particularly in fragmented landscapes where predation rates may be higher and habitat suitability may be reduced in smaller sized parcels. Lesser prairie-chickens appear to be sensitive to the size of habitat fragments and may avoid using parcels below a preferred size regardless of habitat type or quality (see separate discussion under ''Effects of Habitat Fragmentation'' below). As the landscape becomes more fragmented, longer dispersal distances over areas of unsuitable habitats may be required. However, should distances between suitable habitat patches in fragmented landscapes exceed 50 km (31 mi), the maximum dispersal distance observed by Hagen *et al.* (2004, p. 71), dispersal may be significantly reduced. Under such conditions, populations will become more isolated.

In lesser prairie-chickens, most seasonal movements are less than 10 km (6.2 mi), but Jamison (2000, p. 107) thought that movements as large as 44 km (27.3 mi) might occur in fragmented landscapes. Recent studies of lesser prairie-chicken in Kansas demonstrated some birds may move as much as 50 km (31 mi) from their point of capture (Hagen *et al.* 2004, p. 71). Although recorded dispersal movements indicate that lesser prairie-chickens are obviously physically capable of longer distance dispersal movements, these longer movements appear to be infrequent. Jamison (2000, p. 107) recorded only 2 of 76 tagged male lesser prairie-chickens left the 5,760 ha (14,233 ac) primary study area over a 3-year period. He thought site fidelity rather than habitat was more important in influencing movements of male lesser prairie-chickens (Jamison 2000, p. 111). A tendency to move among neighboring populations rather than long distance dispersal over the range, as demonstrated by greater sage-grouse (Oyler-McCance *et al.* 2005, p. 1306), may partially explain why lesser prairie-chickens in Kansas recolonized areas of native grassland in CRP but past efforts to translocate individuals over long distances have largely been unsuccessful.

Physiology influences dispersal capabilities and also plays a role in dispersal and movement patterns exhibited by lesser prairie-chickens. Lesser prairie-chickens and other species of grouse are generally considered poor fliers due to their high (heavy) wing loading and low wing aspect (Drovetski 1996, pp. 805–806; Bevanger 1998, p. 69). Birds with high wing loading have relatively small wings compared to their body mass. Birds with low wing aspect are those birds having relatively short, broad wings. Fast flight and a large turning radius are characteristic of birds with heavy wing loading (Drovetski 1996, p. 806). The combination of high wing loading and low wing aspect impacts aerodynamic performance and limits flight maneuverability. These birds typically are adapted to make relatively long, fast, straight and efficient flights, spending less time in the air than is typical for other species of birds (Drovetski, 1996, pp. 809–810). Consequently, the combination of a heavy body with smaller wings, coupled with their rapid flight, restricts the ability of most prairie grouse to react swiftly to unexpected obstacles. Such birds, like the lesser prairie-chicken, have a high risk of colliding with objects, such as powerlines or fences, within their flight path (Bevanger 1998, p. 67).

Daily movements of males tend to increase in fall and winter and decrease with onset of spring, with median daily movements typically being less than 786 meters (2,578 ft) per day (Jamison 2000, pp. 106, 112). In Texas, Haukos (1988, p. 46) recorded daily movements of 0.1 km (0.06 mi) to greater than 6 km (3.7 mi) by female lesser prairie-chickens prior to onset of incubation. Taylor and Guthery (1980b, p. 522) documented a single male moving 12.8 km (8 mi) in 4 days, which they considered to be a dispersal movement. Because lesser prairie-chickens exhibit limited dispersal tendencies and do not typically disperse over long distances, they may not readily recolonize areas following localized extinctions, particularly where the distance between habitat patches exceeds their typical dispersal capabilities.

In general, there is little documentation of historical dispersal patterns, and the existence of large-scale migration movements is not known. However, both Bent (1932, pp. 284–285) and Sharpe (1968, pp. 41–42) thought that the species, at least historically, might have been migratory with separate breeding and wintering ranges. Taylor and Guthery (1980a, p. 10) also thought the species was migratory prior to widespread settlement of the High Plains, but migratory movements have not recently been documented. The lesser prairie-chicken is now thought to be nonmigratory.

Lesser prairie-chickens forage during the day, usually during the early morning and late afternoon, and roost at night (Jones 1964, p. 69). Diet of the lesser prairie-chicken is very diverse, primarily consisting of insects, seeds, leaves, and buds and varies by age, location, and season (Giesen 1998, p. 4). They forage on the ground and within the vegetation layer (Jones 1963b, p. 22) and are known to consume a variety of invertebrate and plant materials. For example, in New Mexico, Smith (1979, p. 26) documented 30 different kinds of food items consumed by lesser prairie-chickens. In Texas, Crawford and Bolen (1976c, p. 143) identified 23 different plants in the lesser prairie-chicken diet. Jones (1963a, pp. 765–766), in the *Artemesia filifolia* (sand sagebrush) dominated grasslands of Oklahoma, recorded 16 different plant species eaten by lesser prairie-chickens.

Lesser prairie-chicken energy demands are almost entirely derived from daily foraging activities rather than stored fat reserves (Giesen 1998, p. 4). Olawsky (1987, p. 59) found that, on average, lesser prairie-chicken body fat reserves were less than 4.5 percent of body weight. Consequently, quality and quantity of food consumed can have a profound effect on the condition of individual birds. Inadequate food supplies and reduced nutritional condition can affect survival, particularly during harsh winters, and reproductive potential. Poor condition can lead to poor performance on display grounds, impact nesting success, and reduce overwinter survival. Sufficient nutrients and energy levels are important for reproduction and overwintering. Males expend energy defending territories and mating while females have demands of nesting, incubation, and any renesting. Reduced condition can lead to smaller clutch sizes. Because lesser prairie-chicken diets vary considerably by age, season, and habitat type and quality, habitat alteration can influence availability of certain foods. While not as critical for adults, presence of forbs and associated insect populations can be very important for proper growth and development of chicks and poults (juvenile birds).

Generally, chicks and young juveniles tend to forage almost exclusively on insects, such as grasshoppers and beetles, and other animal matter while adults tend to consume a higher percentage of vegetative material

(Giesen 1998, p. 4). The majority of the published diet studies have been conducted in the southwestern portions of the historical range where the *Quercus havardii* (shinnery oak) dominated grasslands are prevalent. Throughout their range, when available, lesser prairie-chickens will use cultivated grains, such as *Sorghum vulgare* (grain sorghum) and *Zea mays* (corn), during the fall and winter months (Snyder 1967, p. 123; Campbell 1972, p. 698; Crawford and Bolen 1976c, pp. 143–144; Ahlborn 1980, p. 53; Salter *et al.* 2005, pp. 4–6). However, lesser prairie-chickens tend to predominantly rely on cultivated grains when production of natural foods, such as acorns and grass and forb seeds are deficient, particularly during drought and severe winters (Copelin 1963, p. 47; Ahlborn 1980, p. 57). Cultivated grains may be temporarily important during prolonged periods of adverse winter weather but are not necessary for survival during most years and in most regions. Use of cultivated grain fields is dependent upon the availability of waste grains on the soil surface during the fall and winter period. More efficient harvesting methods in use today likely reduce the availability of waste grain.

Food availability for young is most critical during the first 20 days (3 weeks) post-hatching when rapid growth is occurring (Dobson *et al.* 1988, p. 59). Food shortages during critical periods will negatively impact development and survival. Diet of lesser prairie-chicken chicks less than 5 weeks of age is entirely composed of insects and similar animal matter. Specifically, diet of chicks in New Mexico that were less than 2 weeks of age was 80 percent treehoppers (Mebracidae) (Davis *et al.* 1979, p. 71; Davis *et al.* 1980 p. 78). Overall, chicks less than 5 weeks of age consumed predominantly (87.7 percent) short-horned grasshoppers (Acrididae), treehoppers, and long-horned grasshoppers (Tettigonidae) (Davis *et al.* 1980, p. 78). Ants (Formicidae), mantids (Mantidae), snout beetles (Curculionidae), darkling beetles (Tenebrionidae), robber flies (Asilidae), and cockroaches (Blattidea) collectively provided the remaining 12.3 percent of the chicks' diet (Davis *et al.* 1980, p. 78). Similarly Suminski (1977, pp. 59–60) examined diet of chicks 2 to 4 weeks of age in New Mexico and found that diet was entirely composed of insects. Treehoppers, short-horned grasshoppers, and ants were the most significant (95 percent) items consumed, by volume. Insects and similar animal matter are a particularly prevalent component in the diet of young prairie-chickens (Drake 1994, pp. 31, 34, 36). Insects are high in protein (Riley *et al.* 1998, p. 42), and a high-protein diet was essential in pheasants for normal growth and feather development (Woodward *et al.* 1977. p. 1500). Insects and other arthropods also have been shown to be extremely important in the diet of young sage grouse and Attwater's prairie-chicken (Service 2010, pp. 30–31).

Older chicks between 5 and 10 weeks of age ate almost entirely short-horned grasshoppers (80.4 percent) (Davis *et al.* 1980, p. 78). They also began to consume plant material during this period. Shinnery oak acorns, seeds of *Lithospermum incisum* (narrowleaf stoneseed), and foliage and flowers of *Commelina erecta* (erect dayflower) comprised less than 1 percent of the diet (Davis *et al.* 1980, p. 78). Correspondingly, Suminski (1977, pp. 59, 61) observed that chicks between 6 and 10 weeks of age had begun to consume very small quantities (1.3 percent by volume) of plant material. The remainder of the diet was still almost entirely composed of insects. By far the most prevalent insect was short-horned grasshoppers (Acrididae), accounting for 73.9 percent of the diet (Davis *et al.* 1980, p. 78). As the birds grew, the sizes of insects eaten increased. Analysis of food habits of juvenile birds from 20 weeks of age and older, based on samples collected between August and December, revealed that 82.6 percent of diet was plant material by volume and 17.4 percent was invertebrates (Suminski 1977, p. 62). Shinnery oak acorns contributed 67 percent of the overall diet, by volume. Key insects included crickets (Gryllidae), short-horned grasshoppers, mantids, and butterfly (Lepidoptera) larvae.

Plant materials are a principal component of the diet for adult lesser prairie-chickens; however, the composition of the diet tends to vary by season and habitat type. The majority of the diet studies examined foods contained in the crop (an expanded, muscular pouch within the digestive tract of most birds that aids in breakdown and digestion of foods) and were conducted in habitats supporting shinnery oak. However, Jones (1963b, p. 20) reported on lesser prairie-chicken diets from sand sagebrush habitats.

In the spring (March, April, and May), lesser prairie-chickens fed heavily on green vegetation (60 to 79 percent) and mast and seeds (15 to 28 percent) (Davis *et al.* (1980, p. 76; Suminski 1977, p. 57). Insects comprised less than 13 percent of the diet primarily due to their relative scarcity in the spring months. Treehoppers and beetles were the most common types of insects found in the spring diet. The proportion of vegetative material provided by shinnery oak leaves, catkins, and acorns was high. Similarly, Doerr (1980, p. 8) also examined the spring diet of lesser prairie-chickens. However, he compared diets between areas treated with the herbicide tebuthiuron and untreated areas, and it is unclear whether the birds he examined came from treated or untreated areas. Birds collected from treated areas likely would have limited access to shinnery oak, possibly altering the observed occurrence of shinnery oak in the diet. He reported that animal matter was the dominant component of the spring diet and largely consisted of short-horned grasshoppers and darkling beetles (Doerr 1980, pp. 30–31). Ants, ground beetles (Carabidae), and stinkbugs (Pentatomidae) were slightly less prevalent in the diet. Shinnery oak acorns and plant seeds were the least common component, by volume, in the diet in the Doerr (1980) studies.

In the summer, insects become a more common component of the adult diet. In New Mexico, insects comprised over half (55.3 percent) of the overall summer (June, July, and August) diet with almost half (49 percent) of the insects being short- and long-horned grasshoppers and treehoppers (Davis *et al.* 1980, p. 77). Plant material consumed was almost equally divided between foliage (leaves and flowers; 23.3 percent) and mast and seeds (21.4 percent). Shinnery oak parts comprised 22.5 percent of the overall diet. Olawsky (1987, pp. 24, 30) also examined lesser prairie-chicken diets during the summer season (May, June, and July); however, he also compared diets between areas treated with tebuthiuron and untreated pastures in Texas and New Mexico. While the diets in treated and untreated areas were different, the diet from the untreated area should be representative of a typical summer diet. Total plant matter from birds collected from the untreated areas comprised 68 to 81 percent, by volume (Olawsky 1987, pp. 30–32). Foliage comprised 21 to 25 percent, and seeds and mast, 36 to 60 percent, of the diet from birds collected in the untreated area. Shinnery oak acorns were the primary form of seeds and mast consumed. Animal matter comprised 19 to 32 percent of the overall diet, and almost all of the animal matter consisted of treehoppers and short-horned grasshoppers (Olawsky 1987, pp. 30–32).

Several studies have reported on the fall and winter diets of lesser prairie-chickens. Davis *et al.* (1979, pp. 70–80), Smith (1979, pp. 24–32), and Riley *et al.*

(1993, pp. 186–189) all reported on lesser prairie-chicken food habits from southeastern New Mexico (Chaves County), where the birds had no access to grain fields (Smith 1979, p. 31). They generally found that fall (October to early December) and winter (January and February) diets generally consist of a mixture of seeds, vegetative material, and insects.

The fall diet differed between years primarily due to reduced availability of shinnery oak acorns (Smith 1979, p. 25). Reduced precipitation in the fall of 1976 was thought to have influenced acorn production in 1977 (Riley *et al.* 1993, pp. 188). When acorns were available, shinnery oak acorns comprised almost 62 percent, by volume, of the diet but less than 17 percent during a year when the acorn crop failed (Smith 1979, p. 26). On average, total mast and seeds consumed was 43 percent, vegetative material was 39 percent, and animal matter was 18 percent by volume of the fall diet (Davis *et al.* 1979, p. 76). Over 81 percent of the animal matter consumed was short-horned grasshoppers (Davis *et al.* 1979, p. 76).

Crawford (1974, pp. 19–20, 35–36) and Crawford and Bolen (1976c, pp. 142–144) reported on the fall (mid-October) diet of lesser prairie-chickens in west Texas over a 3-year period. Twenty-three species of plants were identified from the crops over the course of the study. Plant matter accounted for 90 percent of the food present by weight and 81 percent by volume. Grain sorghum also was prevalent, comprising 63 percent by weight and 43 percent by volume of total diet. Alhborn (1980, pp. 53–58) also documented use of grain sorghum during the fall and winter in eastern New Mexico. The remainder of the diet (10 percent by weight and 19 percent by volume) was animal matter (insects only). Over 62 percent, by volume, of the animal matter was composed of short-horned grasshoppers. Other insects that were important in the diet included darkling beetles, walking sticks (Phasmidae), and wingless long-horned grasshoppers (Gryllacrididae). During the fall and winter in eastern New Mexico, Alhborn (1980, pp. 53–58) reported that vegetative material from shinnery oak constituted 21 percent of the total diet.

Similarly, Doerr (1980, p. 32) reported on the lesser prairie-chickens from west Texas in the fall (October). The diet largely comprised animal matter (86 percent by volume) with short-horned grasshoppers contributing 81 percent by volume of the total diet. Stinkbugs also were prevalent in the diet. Foliage was the least important component, consisting of only 2.5 percent by volume. Seeds and acorns comprised 11 percent of the diet and consisted entirely of shinnery oak acorns and seeds of *Linum rigidum* (stiffstem flax).

Shinnery oak acorns (69 percent) and annual buckwheat (14 percent) were the primary components of the winter (January and February) diet of lesser prairie-chickens in southeastern New Mexico (Riley *et al.* 1993, p. 188). Heavy selection for acorns in winter was attributed to need for a high energy source to help sustain body temperature in cold weather (Smith 1979, p. 28). Vegetative matter was about 26 percent of overall diet, by volume, with 5 percent of the diet consisting of animal matter, almost entirely comprising ground beetles (Carabidae) (Davis *et al.* 1979, p. 78).

In contrast to the above studies, Jones (1963b, p. 20) and Doerr (1980, p. 8) examined food items present in the droppings rather than from the crops. Although this approach is valid, differential digestion of the food items likely overemphasizes the importance of indigestible items and underrepresents occurrence of foods that are highly digestible (Jones 1963b, p. 21; Doerr 1980, pp. 27, 33). Jones' study site was located in the sand sagebrush dominated grasslands in the more northern portion of the historical range where shinnery oak was unavailable. However, Doerr's study site was located in the shinnery oak dominated grasslands of the southwest Texas panhandle.

In the winter (December through February), where *Rhus trilobata* (skunkbush sumac) was present, Jones (1963b, pp. 30, 34) found lesser prairie-chickens primarily used sumac buds and foliage of sumac, sand sagebrush, and *Gutierrezia sarothrae* (broom snakeweed), particularly when snow was on the ground. Small annual plants present in the diet were *Vulpia* (*Festuca*) *octoflora* (sixweeks fescue), annual buckwheat, and *Evax prolifera* (big-headed evax; bigheaded pygmycudweed) (Jones 1963b, p. 30). Grain sorghum wasn't used to any appreciable extent, particularly when skunkbush sumac was present, but was eaten when available. Relatively few insects were available during the winter period. However, beetles were consumed throughout the winter season and grasshoppers were important in December. Doerr (1980, p. 28) found grasshoppers, crickets, ants, and wasps were the most commonly observed insects in the winter diet. Foliage from sand sagebrush and *Cryptantha cinerea* (James' cryptantha) was prevalent, but shinnery oak acorns were by far the most significant plant component detected in the winter diet.

In the spring (March through May), lesser prairie-chickens used seeds and foliage of early spring annuals such as *Viola bicolor* (johnny jumpup) and *Silene antirrhina* (sleepy catchfly) (Jones 1963b, p. 49). Skunkbush sumac continued to be an important component of the diet. Insect use increased as the spring season progressed. Doerr (1980, p. 29) also observed that grasshoppers and crickets were prevalent in the spring diet. However, foliage and acorns of shinnery oak were more abundant in the diet than any other food item.

In the summer (June through August), lesser prairie-chickens continued to use sumac and other plant material, but insects dominated the diet (Jones 1963b. pp. 64–65). Grasshoppers were the principal item found in the diet, but beetles were particularly favored in shrubby habitats. Similarly, Doerr (1980, p. 25) found grasshoppers and crickets were the most important component of the summer diet followed in importance by beetles. Jones (1963b, pp. 64–65) reported fruits from skunkbush sumac to be the most favored plant material in the diet. Doerr (1980, p. 25) found James cryptantha and erect dayflower were the two most important plants in the diet in his study. Insects remained a principal food item in the fall (September through November), at least until November when plant foods, such as *Cyperus schweinitzii* (flatsedge) and *Ambrosia psilostachya* (western ragweed) became more prevalent in the diet (Jones 1963b, pp. 80–81).

Little is known regarding the specific water requirements of the lesser prairie-chicken, but their distribution does not appear to be strongly influenced by the presence of surface water. Total annual precipitation across the range of the lesser prairie-chicken varies, on average, from roughly 63 cm (25 in) in the eastern portions of the historical range to as little as 25 cm (10 in) in the western portions of the range. Consequently, fewer sources of free-standing surface water existed in lesser prairie-chicken historical range prior to settlement than currently exist. Lesser prairie-chickens likely rely on food sources and consumption of dew to satisfy their metabolic moisture requirement (Snyder 1967, p. 123; Hagen and Giesen 2005, unpaginated; Bidwell *et al.* 2002, p. 6) but will use surface water when it is available. Boal and Pirius (2012, p. 6) observed that 99.9 percent of lesser prairie-chicken locations they recorded in west Texas were within 3.2 km (2.0 mi) of an available water source and may be

indicative of the importance of surface water sources. Grisham *et al.* (2013, p. 7) believed that use of available standing water may be particularly important for egg development during drought conditions and its importance may be overlooked. Because much of the historically occupied range is now used for domestic livestock production, numerous artificial sources of surface water, such as stock ponds and stock tanks, have been developed throughout the region. Several studies have documented use of these water sources by lesser prairie-chickens during the spring, late summer, and fall seasons (Copelin 1963, p. 20; Jones 1964, p. 70; Crawford and Bolen 1973, pp. 471–472; Crawford 1974, p. 41; Sell 1979, p. 31), and they may be particularly important during periods of drought (Crawford and Bolen 1973, p. 472; Crawford 1974, p. 41). Hoffman (1963, p. 732) supported development of supplemental water sources (i.e., guzzlers) as a potential habitat improvement tool. Others, such as Davis *et al.* (1979, pp. 127–128) and Applegate and Riley (1998, p. 15) cautioned that creating additional surface water sources will influence grazing pressure and possibly contribute to degradation of habitat conditions for lesser prairie-chickens. Rosenstock *et al.* (1999, p. 306) reported that some predators, particularly raptors, benefit from the presence of surface water sources developed for wildlife in arid environments. Additionally, some livestock watering facilities may create other hazardous conditions (e.g., drowning; Sell 1979, p. 30), but the frequency of these incidents is unknown.

Lesser prairie-chickens have a relatively short lifespan and high annual mortality. Campbell (1972, p. 694) estimated a 5-year maximum lifespan, although an individual nearly 7 years old has been documented in the wild by the Sutton Avian Research Center (Sutton Center) (Wolfe 2010, pers. comm.). Average natural lifespan or generation time was calculated, based on work by Farner (1955, entire), to be 1.95 years (Van Pelt *et al.* 2013, p. 130). Pruett *et al.* (2011, p. 1209) also estimated generation time in lesser prairie-chickens and found generation times were slightly lower in Oklahoma (1.92 years) than in New Mexico (2.66 years). Lesser prairie-chickens and other galliform birds appear to have particularly short lifespans for their size (Lindstedt and Calder 1976, p. 91).

Differences in survival may be associated with sex, weather, harvest (where allowed), age, and habitat quality. Campbell (1972, p. 689), using 9 years of band recovery data from New Mexico, estimated annual mortality for males to be 65 percent. Hagen *et al.* (2005, p. 82) specifically examined survival in male lesser prairie-chickens in Kansas and found apparent survival varied by year and declined with age. Annual mortality was estimated to be 55 percent (Hagen *et al.* 2005, p. 83). Survival rates for lesser prairie-chickens in northeastern Texas were lower for both sexes during the breeding season than during the non-breeding season (Jones 2009, p. 16). Estimated survival was 52 percent. Lesser prairie-chickens in New Mexico and Oklahoma also had higher mortality during the breeding season than at other times of the year (Patten *et al.* 2005b, p. 240; Wolfe *et al.* 2007). Male survival may be lower during the breeding season due to increased predation or costs associated with territorial defense while lekking (Hagen *et al.* 2005, p. 83). In female lesser prairie-chickens, Hagen *et al.* (2007, p. 522) estimated that annual mortality in two remnant patches of native sand sagebrush prairie near Garden City, Finney County, Kansas was about 50 percent at a study site southwest of Garden City and about 65 percent at a study site southeast of Garden City. Female survival may be lower during the breeding season due to the costs associated with reproduction (see both Hagen *et al.* 2005 and 2007.). Grisham (2012, pp. 19–20) found that female survival (at least 71 percent) was higher than male survival (57 percent). Observed female survival rates were much higher than those reported elsewhere in the literature (see Campbell 1972, Merchant 1982, and Hagen *et al.* 2007) but may have been a function of the statistical test used in the analysis (Grisham 2012, pp. 21–22). Principally, the study by Grisham (2012, entire) demonstrated lesser prairie-chickens may have high survival during the breeding season in shinnery oak habitats.

Adult annual survival in Texas apparently varied by habitat type. In sand sagebrush habitat, survival was estimated to be 0.52, whereas survival was only 0.31 in shinnery oak habitat (Lyons *et al.* 2009, p. 93). For both areas, survival was about 4 percent lower during the breeding season than during the nonbreeding period (Lyons *et al.* 2009, p. 93). Hagen *et al.* (2007, p. 522) also reported lower survival during the reproductive season (31 percent mortality) compared to the nonbreeding season (23 percent mortality) in Kansas. In contrast with Lyons *et al.* (2009), survival times did not differ between sand sagebrush habitats in Oklahoma and shinnery oak habitats in New Mexico (Patten *et al.* 2005a, p. 1274). Birds occupying sand shinnery sites with greater than 20 percent shrub cover survived longer than those in areas with less dense shrub cover (Patten *et al.* 2005a, p. 1275). Areas with greater than 20 percent shrub cover likely provided a more suitable microclimate through enhanced thermal protection than areas with less shrub cover.

Availability of food and cover are key factors that affect chick and juvenile survival. Habitats used by lesser prairie-chicken broods had greater biomass of invertebrates and forbs than areas not frequented by broods in Kansas (Hagen *et al.* 2005, p. 1087); Jamison *et al.* 2002, p. 524). Chick survival averaged only about 25 percent during the first 35 days following hatching (Hagen 2003, p. 135). Survival for chicks between 35 days of age and the following spring was estimated to be 53.9 percent in southwestern Kansas (Hagen *et al.* 2009, p. 1326). Jamison (2000, p. 57) estimated survival of chicks from hatching to early autumn (60 days post-hatching), using late summer brood sizes provided in several early studies, to be 27 percent in Kansas and 43–65 percent in Oklahoma. These values were considerably higher than the 19 percent Jamison observed in his study and may reflect an inability in the earlier studies to account for the complete loss of broods and inclusion of mixed broods (combined broods from several females) when estimating brood size (Jamison 2000, p. 57). Pitman *et al.* (2006b, p. 677) estimated survival of chicks from hatching to 60-days post-hatching to be 17.7 percent. Recruitment was characterized as low with survival of juvenile birds from hatching to the start of the first breeding season the following year estimated to be only 12 percent (Pitman *et al.* 2006b, pp. 678–680), which may be a significant limiting factor in southwestern Kansas. However, the authors cautioned that these estimates might not be indicative of survival estimates in other areas due to low habitat quality, specifically poor distribution of nesting and brood-rearing habitats within the study area (Pitman *et al.* 2006b, p. 680).

Conservation Genetics

Persistence of wild populations is usually influenced more by ecological rather than by genetic effects; however, as population size declines, genetic factors often become increasingly important (Lande 1995, p. 318). Considering that lesser prairie-chickens have one of the smallest population sizes and most restricted geographic distributions of any native North American grouse (Hagen and Giesen 2005, unpaginated), an understanding of

relevant genetic factors can be valuable when implementing conservation efforts, particularly where translocation and other forms of reintroduction may be considered. Van Den Bussche *et al.* (2003, entire) examined genetic variation within the lesser prairie-chicken using mitochondrial deoxyribonucleic acid (DNA) (mtDNA, maternally-inherited DNA located in cellular organelles called mitochondria) and nuclear microsatellite (short, tandem repeating sequences of DNA nucleotide base pairs) data from 20 lek sites in Oklahoma and New Mexico. They found that these lesser prairie-chicken populations maintain high levels of genetic variation and genetic diversity did not differ between leks in Oklahoma and New Mexico (Van Den Bussche *et al.* 2003, p. 680). Historical gene flow between birds in Oklahoma and New Mexico was considered to be low, leading to some genetic differentiation between the two populations (Van Den Bussche *et al.* 2003, p. 681). These findings are not unexpected, considering these populations are fragmented and separated by at least 300 km (200 mi). Bouzat and Johnson (2004, entire) examined genetic structure between four closely spaced leks within a lesser prairie-chicken population in New Mexico. They detected increased inbreeding within these closely spaced leks, leading to an increase in homozygosity (having the same inherited alleles (gene form), rather than different alleles at a particular gene location on both homologous chromosomes (threadlike linear strands of DNA and associated proteins in the cell nucleus that carries the genes and functions in the transmission of hereditary information)) within these leks (Bouzat and Johnson 2004, p. 503). Although no deleterious effects to demographic rates have yet been documented in New Mexico populations, a loss of genetic diversity and inbreeding can lead to a reduction in reproductive fitness in prairie grouse (Bouzat *et al.* 1998a, p. 841; Bouzat *et al.* 1998b, p. 4).

Hagen *et al.* (2010, entire) examined variability in mtDNA of lesser prairie-chickens across their range, with the exception of Texas. They observed low levels of population differentiation (p. 33) with relatively high levels of genetic diversity in most populations (pp. 33–34). Their data suggest that gene flow continues to occur over most of the occupied range, with significant differences between New Mexico populations and the rest of the studied range. As previously indicated the New Mexico population is separated by considerable distance from the remainder of the studied range. The population in New Mexico was significantly different from the others examined and lacked gene flow with the remainder of the populations in Colorado, Kansas and Oklahoma (Hagen *et al.* 2010, p. 34). This suggests that lesser prairie-chickens in New Mexico are isolated from populations in Colorado, Kansas and Oklahoma.

Complementary work by Corman (2011, entire) examined genetic diversity in lesser prairie-chicken populations in Texas. In examining population differentiation, the population in Deaf Smith County was not significantly different from the remainder of the populations in the southwestern panhandle and eastern New Mexico nor was this population significantly different from the population in Lipscomb, Hemphill, and Wheeler counties (Corman 2011, p. 47). The Gray and Donley County population and the Lipscomb, Hemphill, Wheeler population of northeast Texas panhandle had the lowest differentiation of the four geographical regions studied. The Deaf Smith County and the Gray and Donley County populations had the greatest differentiation even though they were intermediate by distance between the regions. The southwest Texas panhandle population revealed little differentiation with the New Mexico population (Corman 2011, p. 48). Genetic clustering efforts without regard to region indicated the northeast Texas populations and the southwest Texas panhandle-New Mexico populations were the two primary geographic clusters of lesser prairie-chickens in Texas. Genetic clustering within these two primary geographic clusters indicated that additional clusters were present. Within the southwest Texas panhandle-New Mexico cluster, the population in Deaf Smith County clustered separately from the remainder of the population in the southwest Texas and New Mexico cluster. In the northeastern Texas cluster, the Gray and Donley County population clustered separately from the remainder of the populations in Lipscomb, Hemphill, and Wheeler counties (Corman 2011, p. 49). The two primary population clusters are separated by a geographical distance of about 160 to 250 km (99 to 155 mi). Overall genetic diversity in Texas has remained relatively high despite observed population declines since 1900 (Corman 2011, p. 112). Genetic diversity tends to be higher in northeastern Texas Panhandle relative to the rest of Texas and New Mexico (Corman 2011, p. 112). This population likely maintains gene flow with populations in adjacent portions of Oklahoma. The population cluster that persists in the Deaf Smith County region had much lower diversity than other locations in Texas. Diversity estimates obtained by Corman (2011, p. 113) were comparable with those provided by Hagen *et al.* (2010, entire). Genetic diversity is particularly important to maintaining reproductive fitness. Gregory (2011, p. 18) observed that for greater prairie-chickens, the most genetically diverse males were more likely to live longer than less diverse males and were more likely to be the most successful male on the lek.

Corman (2011, p. 142) estimates that the lesser prairie-chicken effective population size is about 560 to 610 individuals are required for the southwestern Texas Panhandle and New Mexico populations and about 120 to 260 individuals for the northeast Texas Panhandle region. Consistent with previous studies, the southwest Texas/eastern New Mexico lesser prairie-chicken population is isolated from the remainder of the range (a condition which has been in place for perhaps at least 6–7 decades) and exhibits effects from genetic drift as indicated by lower genetic variability (Corman 2011, p. 116). Based on estimates of the effective population size, the southwest Texas/eastern New Mexico population may be large enough to maintain evolutionary potential (ability to adapt to changing conditions over time) if there were no further population declines or changes in habitat conditions (Corman 2011, p. 120). However, the lesser prairie-chicken populations in the northeast Texas panhandle do not appear to be large enough to maintain evolutionary potential without stabilizing populations and continued connectivity to populations in Oklahoma (Corman 2011, p. 120).

Pruett *et al.* (2011, entire) examined effective population size in lesser prairie-chickens from New Mexico and Oklahoma. Effective population size is useful for determining extinction risk in small populations and is a measure of the actual number of breeding individuals in a population. The effective size of a population is often much less than the actual number of individuals within the same population. 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. As the effective population size decreases, the rate of loss of allelic diversity via genetic drift increases, reducing adaptive potential and increasing the risk of inbreeding depression.

Estimates of effective population size, based on the parameters for the demographic variables they modeled, was estimated to be between 341 and 1,023 individuals in Oklahoma and between 944 and 2,375 individuals in New Mexico (Pruett *et al.* (2011, p. 1209). Using genetic information, which generally yields smaller effective population sizes, Pruett *et al.* (2011, p. 1211) estimated current effective population size in Oklahoma to be about 115 individuals and about 55 individuals in New Mexico. This value for New Mexico is considerably smaller than the value determined for New Mexico by Corman (560 to 610 individuals) (2011, p. 142). However, Corman included birds from southwest Texas in his estimates of the Texas Panhandle and New Mexico populations, which likely contributed to the higher estimate of effective population size. Despite these low numbers resulting from genetic analysis, based on estimates of the effective population size, we conclude that the southwest Texas/eastern New Mexico population may be able to maintain evolutionary potential (ability to adapt to changing conditions over time) if there are no further population declines or changes in habitat conditions.

Garton (2012, entire) conducted a reconstruction analysis of lesser prairie-chicken population abundance through time to model the likely future of lesser prairie-chicken populations. His analysis evaluated both rangewide populations and each of the four ecoregions where the lesser prairie-chicken occurs. To do so, Garton (2012, p. 5) used the effective population size values of 50 individuals for short-term (30 year) persistence and 500 for long-term (100 year) persistence and adjusted these for count composition of sexes resulting in an estimated effective population size of 85 birds for short-term persistence and 852 birds for long-term persistence. Using these estimated effective population sizes, Garton (2012, p. 16–17) projected that in 30 years the estimated rangewide carrying capacity of lesser prairie-chickens would be about 10,000 birds and less than 1,000 birds in 100 years, provided existing conditions did not change. Based on these numbers, Garton (2012, p. 18, 32) concludes from the most recent data, two of the eco-regions (sand sagebrush prairie and mixed grass/CRP) and the rangewide species population have high to very high probabilities of falling below quasi-extinction thresholds within 30 years. Garton (2012, p. 18) also concludes that analysis across the long-term data paint a more optimistic picture of the rangewide species carrying capacity, but the fundamental pattern is still one of declining trends that must be reversed in the long term to conserve the species.

Habitat

The preferred habitat of the lesser prairie-chicken is native prairies composed of short- and mixed-grasses with a shrub component dominated by *Artemesia filifolia* (sand sagebrush) or *Quercus havardii* (shinnery oak) (hereafter described as native rangeland) (Donaldson 1969, pp. 56, 62; Taylor and Guthery 1980a, p. 6; Giesen 1998, pp. 3–4). In more moist, less sandy soils, other small shrubs, such as plums and sumac, become more prevalent; however, the habitat remains suitable for lesser prairie-chickens. Small shrubs, along with tall grasses, provide cover/concealment for nesting hens and broods and are important for summer shade (Copelin 1963, p. 37; Donaldson 1969, pp. 44–45, 62), winter protection, and as supplemental foods (Johnsgard 1979, p. 112). Typically the height and structure of short-grass prairie alone does not provide suitable cover when shrubs or taller grasses are absent. Historically, trees and other tall, woody vegetation were largely absent from these grassland ecosystems, except in canyons and along water courses. Prairie landscapes supporting less than 63 percent native rangeland appear incapable of supporting self-sustaining lesser prairie-chicken populations (Crawford and Bolen 1976a, p. 102).

Outside of the CRP dominated grasslands in Kansas, lesser prairie-chickens are primarily found in the sand sagebrush dominated native rangelands of Colorado, Kansas, Oklahoma, and Texas, and in the shinnery oak-bluestem grasslands of New Mexico, Oklahoma, and Texas. Sand sagebrush is a 0.6- to 1.8-m (2- to 6-ft) tall shrub that occurs in 11 States of the central and western United States (Shultz 2006, p. 508). Within the central and southern Great Plains, sand sagebrush is often a dominant species on sandy soils and may exhibit a foliar cover of 20 to 50 percent (Collins *et al.* 1987, p. 94; Vermeire 2002, p. 1). Sand-sage shrublands have been estimated to occupy 4.8 million ha (11.8 million ac) in the central and southern Great Plains (Berg 1994, p. 99).

The shinnery oak vegetation type is endemic to the southern great plains and is estimated to have historically covered an area of 2.3 million ha (over 5.6 million ac), although its current range has been considerably reduced through eradication (Mayes *et al.* 1998, p. 1609). The distribution of shinnery oak overlaps much of the historical lesser prairie-chicken range in New Mexico, Oklahoma, and Texas (Peterson and Boyd 1998, p. 2). Shinnery oak is a rhizomatous (a horizontal, usually underground stem that often sends out roots and shoots from its nodes) shrub that reproduces slowly and does not invade previously unoccupied areas (Dhillion *et al.* 1994, p. 52). Mayes *et al.* (1998, p. 1611) documented that a single rhizomatous shinnery oak can occupy an area exceeding 7,000 square meters (sq m) (75,300 square feet (sq ft)). Shinnery oak in some areas multiplies by slow rhizomatous spread and eventual fracturing of underground stems from the original plant. In this way, single clones have been documented to occupy up to 81 ha (200 ac) over an estimated timeframe of 13,000 years (Cook 1985, p. 264; Anonymous 1997, p. 483), making shinnery oak possibly the largest and longest-lived plant species in the world.

Within the historical range of the species, the USDA's CRP, administered by the FSA, has promoted the establishment and conservation of certain grassland habitats. Originally funded as a mechanism to reduce erosion from highly erodible soils, the program has since become a means to at least temporarily retire any environmentally sensitive cropland from production and establish vegetative cover on that land. Initially, many types of grasses were approved for use as permanent vegetative cover, including several that are nonnative. The use of native grasses has become more prevalent over time. In Kansas in particular, much of the vegetative cover established through the CRP within the historical range of the lesser prairie-chicken was a mix of native warm-season grasses such as *Schizachyrium scoparium* (little bluestem), *Bouteloua curtipendula* (sideoats grama), and *Panicum virgatum* (switchgrass) (Rodgers and Hoffman 2005, p. 120). These grasses are important components of lesser prairie-chicken habitat and have led to reoccupation of large areas of the historical range in western Kansas

by lesser prairie-chickens, particularly north of the Arkansas River.

In other areas, nonnative grasses were used that displaced the native, warm season grasses, providing little, if any, habitat value for the lesser prairie-chicken. Exotic old world bluestems and *Eragrostis curvula* (weeping lovegrass) were extensively seeded in CRP tracts in Texas, New Mexico, and Oklahoma (Haufler *et al.* 2012, p. 17; Hickman and Elmore 2009, p. 54). For example, about 70 to 80 percent of the original CRP seedings in eastern New Mexico consisted of dense, single-species stands of weeping lovegrass, *Bothriochloa bladhii* (Caucasian bluestem), or *B. ischaemum* (yellow bluestem) (Rodgers and Hoffman 2005, p. 122). Monocultures of old world bluestem and other exotic grasses contribute very little to lesser prairie-chicken conservation as they provide poor-quality nesting and brood rearing habitat. Toole (2005, p. 21) reported that the abundance of invertebrates, which are used as food for both adults and young, was over 32 times lower in weeping lovegrass CRP fields than in pastures containing native warm season grasses. However, as these nonnative CRP grasslands have matured over the last two decades, some species of native grasses and shrubs are beginning to reestablish within these fields. The lesser prairie-chicken will occasionally use these older stands of exotic grasses for roosting and nesting (Rodgers and Hoffman 2005, p. 122), but such fields often continue to provide limited habitat value for lesser prairie-chickens. In contrast, where CRP lands support native, warm season grasses having the suitable vegetative structure and species composition required by lesser prairie-chickens, these fields can provide high quality habitat. See section on ''Conservation Reserve Program (CRP)'' for more information on CRP.

Leks are characterized by areas of sparse or low vegetation (10 cm (4 in) or less) cite for height see Plan) and are generally located on elevated features, such as ridges or grassy knolls (Giesen 1998, p. 4). Vegetative cover characteristics, primarily height and density, may have a greater influence on lek establishment than elevation (Giesen 1998, p. 4). Copelin (1963, p. 26) observed display grounds within short grass meadows of valleys where sand sagebrush was tall and dense on the adjacent ridges. Early spring fires also encouraged lek establishment when vegetation likely was too high (0.6 to 1.0 m (2.0 to 3.3 ft)) to facilitate displays (Cannon and Knopf 1979, pp. 44–45). Several authors, as discussed in Giesen (1998, p. 4), observed that roads, oil and gas pads, and similar forms of human disturbance can create habitat conditions that may encourage the establishment of artificial lek sites (as opposed to those in native grasslands). Site fidelity also may play a role in continued use of certain areas as lek sites, despite some forms of human disturbance. However, Taylor (1979, p. 707) emphasized that human disturbance, which is often associated with these artificial lek sites, is detrimental during the breeding season and did not encourage construction of potential lek sites in or near areas subject to human disturbance. Leks are typically located near areas that provide good nesting habitat. Giesen (1998, p. 9) reported that hens usually nest and rear broods within 3.4 km (2.1 mi) of leks and may return to nest in areas of previously successful nests (Riley 1978, p. 36). Giesen (1994a, pp. 97–98) and Hagen and Giesen (2005, unpaginated) also reported that hens often nest closer to a lek other than the one on which they mated. Adequate nesting and brood rearing habitats are crucial to population growth as they influence nest success and brood survival.

Typical nesting habitat can be generally described as native rangeland, although vegetation structure, such as the height and density of forbs and residual grasses, is frequently greater at nesting locations than on adjacent rangeland (Giesen 1998, p. 9). Adequate herbaceous cover, including residual cover from the previous growing season, is an important factor influencing nest success, primarily by providing concealment of the nest (Suminski 1977, p. 32; Riley 1978, p. 36; Riley *et al.* 1992, p. 386; Giesen 1998, p. 9). Concealment of the nest is important as successful nests are often associated with greater heights and cover of shrubs and perennial grasses than are unsuccessful nests. Nests are often located on north and northeast facing slopes as protection from direct sunlight and the prevailing southwest winds (Giesen 1998, p. 9).

Giesen (1998, p. 9) reports that habitat used by young is similar to that of adults, but good brood rearing habitat will have less grass cover and higher amounts of forb cover than nesting habitat (Hagen *et al.* 2013, p. 4). Dense grass cover impedes movements of the chicks (Pitman et al. 2009, p. 680). Forbs are important for the insects they produce which in turn influences body mass of the chicks (Pitman *et al.* 2006b, p. 680). Considering the limited mobility of broods—daily movement of the broods is usually 300 m (984 ft) or less (Candelaria 1979, p. 25)—optimum brood rearing habitat is typically found close to nesting areas. In Kansas, habitats used by broods had greater total biomass of invertebrates and forb cover than areas not frequented by broods, emphasizing the importance of forbs in providing the invertebrate populations used by young lesser prairie-chickens (Jamison *et al.* 2002, pp. 520, 524). Grisham (2012, p. 153) observed that brood survival through 14 days post-hatching was the primary factor limiting population growth of lesser prairie-chickens and that a lack of forbs necessary to support abundant insects was implicated as a primary factor influencing brood survival. After the broods break up, the juveniles form mixed flocks with adult birds (Giesen 1998, p. 9), and juvenile habitat use is similar to that of adult birds.

The rangewide plan provides a detailed characterization of lesser prairie-chicken preferred nesting and brood rearing habitat in native rangelands with a shinnery oak or sand sagebrush shrub component and in areas dominated by CRP fields where native shrubs are often absent (Van Pelt *et al.* 2013, pp 75–76). Additionally, Hagen *et al.* (2013, entire) conducted a meta-analysis (analysis of information from multiple studies) of lesser prairie chicken nesting and brood rearing habitat within both sand sagebrush and shinnery oak dominated vegetative communities and the mixed grass community. They reported average values for 10 different parameters and used these summarized values derived from 14 different studies (Hagen *et al.* 2013, p. 755). In general, they reported that lesser prairie-chicken nesting habitat in sand sagebrush regions have at least 60 percent canopy cover of forbs, and shrubs and grasses that are at least 25 cm (9.8 in) tall in western portions of the range to over 40 cm (15.7 in) tall in the eastern portion of the range.

Habitat use at finer scales indicates that lesser prairie-chickens throughout the year consistently occupied sites with greater cover than what was available across the landscape (Larrson *et al.* 2013, pp. 138, 140). Microhabitats selected were based on presence of specific species of grasses and forbs and specific vegetative structure (Larrson *et al.* 2013, p. 138–139). The researchers inferred that predation and temperature influenced habitat selection by lesser prairie-chickens, with birds using more open areas during periods with cooler temperatures and more dense vegetation during periods with hotter temperatures (Larrson *et al.* 2013, p. 141). However, there may be a tradeoff between sites that are thermally favorable and sites that minimize the risk of predation.

Maintaining a diverse native plant community with a suite of structural composition (e.g., height and density) that meets all of the lesser prairie-chicken cover requirements for breeding, nesting and brood rearing may help compensate for tradeoffs between microclimate preferences and predator avoidance.

Giesen (1998, p. 4) reports that fall and winter habitat requirements are similar to those used during the nesting and brood rearing seasons, with the exception that cultivated grain fields are used more heavily during these periods than during the breeding season. Considering lesser prairie-chickens tend to spend most of their daily and seasonal activity near (within 4.8 km (3.0 mi)) the display grounds even during the non-breeding season (Giesen 1994, p. 97; Riley *et al.* 1994, p. 185; Woodward *et al.* 2001, p. 263), similarity in habitat use across seasons is not surprising. Boal and Pirius (2012, p. 6) observed that slightly more than 97 percent of the radio-marked birds they followed were relocated within 3.2 km (2 mi) of the breeding ground on which they were captured and just under 97 percent of the marked birds were located within 3.2 km (2 mi) of a known lek. Similarly Kukal (2010, p. 19) reported almost 98 percent of male lesser prairie-chickens were located within 5 km (3 mi) of the lek on which they were captured and 98 percent were within 2.3 km (1.4 mi) of a known lek. Observations for females were very similar. Almost 98 percent of females were located within 3.8 km (2.4 mi) of the lek on which they were captured and roughly 98 percent were within 2.4 km (1.5 mi) from a known lek (Kukal 2010, pp. 19–20).

There is considerable overlap in lesser prairie-chicken habitat requirements, with the lek being the common focal point for most activities. A mixture of lekking, nesting, brood rearing, and wintering habitat, all in close proximity to the other, provides optimum habitat conditions needed to support lesser prairie-chickens. Considering that nest success and brood survival are the most critical factors influencing population viability (Pitman *et al.* 2006b, p. 679; Hagen *et al.* 2009, pp. 1329–1330; Grisham 2012, p. 153), Hagen *et al.* (2013, p. 750), a habitat mosaic consisting of approximately one-third brood rearing habitat and two-thirds nesting habitat are key to conservation and management of the lesser prairie-chicken (Hagen *et al.* 2013, p. 756).

Reported home ranges, seasonal movement patterns, and dispersal distances of lesser prairie-chickens, as previously discussed, are indicative of their requirement for large blocks of interconnected, ecologically diverse native grassland. Taylor and Guthery (1980a, p. 11) used lesser prairie-chicken movements in west Texas to estimate the area needed to meet the minimum requirements of a lek population. A contiguous area of suitable habitat encompassing at least 32 sq km (12 sq mi or 7,900 ac) would support about 90 percent of the annual activity associated with a given lek and an area of 72 sq km (28 sq mi or 17,791 ac) would include all of the annual activity associated with a lek except for some movements of juveniles (Taylor and Guthery (1980a, p. 11). Bidwell *et al.* (2002, p. 3) speculated that at least 101.2 sq km (39 sq mi or 25,000 ac) of contiguous high-quality habitat may be needed to maintain a sustainable population of lesser prairie-chickens. Because lesser prairie-chickens typically nest and rear their broods in proximity to a lek other than the one used for mating (Giesen 1998, p. 9), a complex of two or more leks is likely the very minimum required to sustain a viable lesser prairie-chicken population. Hagen *et al.* (2004, p. 76) recommended that lesser prairie-chicken management areas be at least 4,096 sq km (1,581 sq mi or 1,012,140 ac) in size. Management areas of this size would incorporate the longest-known movements of individual birds and be large enough to maintain healthy lesser prairie-chicken populations despite the presence of potentially large areas of unsuitable habitat.

Historical Range and Distribution

Prior to description by Ridgeway in 1885, most observers did not differentiate between the lesser and greater prairie-chicken. Consequently, estimating historical abundance and occupied range is difficult. Historically, the lesser prairie-chicken is known to have occupied native rangeland in portions of southeastern Colorado (Giesen 1994b, pp. 175–182), southwestern Kansas (Baker 1953, p. 9; Schwilling 1955, p. 10), western Oklahoma (Duck and Fletcher 1944, p. 68), the Texas panhandle (Henika 1940, p. 15; Oberholser 1974, p. 268), and eastern New Mexico (Ligon 1927, pp. 123–127).

Lesser prairie-chickens also have been documented from Nebraska, based on at least four specimens known to have been collected near Danbury in Red Willow County during the 1920s (Sharpe 1968, p. 50). Sharpe (1968, pp. 51, 174) considered the occurrence of lesser prairie-chickens in Nebraska to be the result of a short-lived range expansion facilitated by settlement and cultivation of grain crops. Lesser prairie-chickens are not currently believed to occur in Nebraska. Sharpe did not report any confirmed observations since the 1920s (Sharpe 1968, entire), and no sightings have been documented despite searches over the last 5 years in southwestern Nebraska (Walker 2011). Therefore, Nebraska is generally considered outside the historical range of the species.

Based on a single source, Crawford (1974, p. 4) reported that the lesser prairie-chicken was successfully introduced to the island of Niihau in the State of Hawaii. Prairie-chickens were known to have been released on Niihau, a privately owned island, in 1934 (Fisher 1951, p. 37), but the taxonomic identity of those birds has not ever been confirmed. Schwartz and Schwartz (1949, p. 120) believed that these birds were indeed lesser prairie-chickens. Fisher and members of his expedition did observe at least eight individual prairie-chickens during a visit to Niihau in 1947, but no specimens were collected due to their scarcity and the landowner's requests (Fisher 1951, pp. 33–34, 37). Consequently, the specific identity of these birds could not be confirmed, and their current status on the island remains unknown (Pratt *et al.* 1987, p. 324; Pyle and Pyle 2009, p. 5). Similarly, Jeschke and Strayer (2008, p. 127) indicate that both lesser and greater prairie-chickens were introduced to parts of Europe, but both species failed to become established there. We do not believe that either greater or lesser prairie-chickens still persist in Hawaii or Europe, and we did not receive any comments during the comment periods that confirmed their continued existence in either location.

Johnsgard (2002, p. 32) estimated the maximum historical range of the lesser prairie-chicken to have encompassed between 260,000 and 388,500 sq km (100,000 to 150,000 sq mi), with about two-thirds of the historical range occurring in Texas. Taylor and Guthery (1980a, p. 1, based on Aldrich 1963, p. 537) estimated that, by the 1880s, the area occupied by lesser prairie-chicken was about 358,000 sq km (138,225 sq mi), and, by 1969, they estimated the occupied range had declined to roughly 125,000 sq km (48,263 sq mi) due to widespread conversion of native prairie to cultivated cropland. Taylor and Guthery (1980a, p. 4) estimated that, by 1980, the occupied range encompassed only 27,300 sq km (10,541 sq mi), representing a 90 to 93 percent reduction in occupied range since pre-European settlement and a 92 percent reduction in the occupied range since the 1880s.

In 2007, cooperative mapping efforts by species experts from the Colorado Parks and Wildlife (CPW) (formerly Colorado Division of Wildlife), Kansas Department of Wildlife, Parks and Tourism (KDWPT) (formerly Kansas Department of Wildlife and Parks), New Mexico Department of Game and Fish (NMDGF), Oklahoma Department of Wildlife Conservation (ODWC), and Texas Parks and Wildlife Department (TPWD), in cooperation with the Playa Lakes Joint Venture, reestimated the maximum historical and occupied ranges. They determined the maximum occupied range, prior to European settlement, to have been approximately 456,087 sq km (176,096 sq mi) (Playa Lakes Joint Venture 2007, p. 1). The approximate historical range, by State, based on this cooperative mapping effort is the following: 21,911 sq km (8,460 sq mi) in Colorado; 76,757 sq km (29,636 sq mi) in Kansas; 52,571 sq km (20,298 sq mi) in New Mexico; 68,452 sq km (26,430 sq mi) in Oklahoma; and 236,396 sq km (91,273 sq mi) in Texas. Since 2007, the CPW slightly expanded the historical range in Colorado, based on new information. The total maximum historically occupied range, based on this adjustment, is now estimated to be about 466,998 sq km (180,309 sq mi) (Table 1.).

TABLE 1—ESTIMATED HISTORICAL AND CURRENT OCCUPIED LESSER PRAIRIE-CHICKEN RANGE BY STATE

State	Historical range	Current range	Extent	
			Historical	Current
Colorado	6 counties	4 counties	32,821.1 sq km (12,672.3 sq mi)	4,456.4 sq km (1,720.6 sq mi).
Kansas	38 counties	35 counties	76,757.4 sq km (29,636.2 sq mi)	34,479.6 sq km (13,312.6 sq mi).
New Mexico	12 counties	7 counties	52,571.2 sq km (20,297.9 sq mi)	8,570.1 sq km (3,308.9 sq mi).
Oklahoma	22 counties	9 counties	68,452.1 sq km (26,429.5 sq mi)	10,969.1 sq km (4,235.2 sq mi).
Texas	34 counties (1940s–50s).	21 counties*	236,396.2 sq km (91,273.1 sq mi)	12,126.5 sq km (4,682.1 sq mi).
TOTAL	107 counties	76 counties	466,998.0 sq km (180,308.9 sq mi)	70,601.7 sq km (27,259.5 sq mi).

* Timmer (2012, p. 36) observed lesser prairie-chickens in only 12 counties.

Current Range and Distribution

The lesser prairie-chicken still occurs within the States of Colorado, Kansas, New Mexico, Oklahoma, and Texas (Giesen 1998, p. 3). During the 2007 mapping effort (Playa Lakes Joint Venture 2007, p. 1; Davis *et al.* 2008, p 19), the State conservation agencies estimated the current occupied range encompassed 65,012 sq km (25,101 sq mi). The approximate occupied range, by State, based on this cooperative mapping effort was 4,216 sq km (1,628 sq mi) in Colorado; 29,130 sq km (11,247 sq mi) in Kansas; 8,570 sq km (3,309 sq mi) in New Mexico; 10,969 sq km (4,235 sq mi) in Oklahoma; and 12,126 sq km (4,682 sq mi) in Texas. About 95 percent of the currently estimated occupied range occurs on privately owned land, as determined using the Protected Areas Database of the United States hosted by the U.S. Geological Survey Gap Analysis Program. This database represents public land ownership and conservation lands, including voluntarily provided privately protected areas, and the extent of private ownership can be determined by subtracting the amount of public lands from the total land base encompassed by the occupied range.

Since 2007, the occupied and historical range in Colorado and the occupied range in Kansas have been adjusted to reflect new information. The currently occupied range in Colorado is now estimated to be 4,456 sq km (1,721 sq mi), and, in Kansas, the lesser prairie-chicken is now thought to occupy about 34,480 sq km (13,313 sq mi). In Colorado, this adjustment is the result of survey efforts that recommended the addition of 240 sq km (93 sq mi) of suitable habitat in the occupied range. In Kansas, the adjustment was due to expansion of lesser prairie-chicken populations in Ellis, Graham, Sheridan, and Trego Counties. The total estimated occupied range is now believed to encompass 70,602 sq km (27,259 sq mi) (Table 1). The currently occupied range now represents roughly 16 percent of the revised historical range. This value is a close approximation because a small portion of the expanded range in Kansas lies outside the estimated maximum historical range and was not included in this analysis. Considering there are historical records from Nebraska, the maximum historical range currently in use is likely smaller than the maximum that would exist if the temporarily occupied range in Nebraska was included in the analysis.

Many of the ongoing conservation efforts, including the rangewide plan and the LPCI, established a 16-km (10-mi) buffer around the estimated occupied range for planning and implementation purposes. This approach, EOR + 10, was used for a variety of reasons. Most importantly, this approach recognizes that the boundaries delineating the occupied range are not static and may vary from year to year depending on size of lesser prairie-chicken populations within the respective polygon. Considering population size may vary annually, the precise extent of the occupied range also may vary annually. This approach helps ensure that all of the occupied range is captured during planning efforts and is consistent with the action area used by the LPCI. This approach also is consistent with the action area used by the FSA for their section 7 consultation purposes. The area encompassed by the EOR + 10 varies slightly by planning effort depending on how the area was mapped and derived from geographical mapping software used in geographical information systems. The rangewide plan estimates that the EOR + 10 encompasses 162,478 sq km (62,733 sq mi) or 16,247,912 ha (40,149,404 ac) (Van Pelt *et al.* 2013, p. 129). When the CHAT tool is used to derive the EOR + 10, however, the extent is 16,653,390 ha (41,151,360 ac) (Van Pelt *et al.* 2013, p. 137). During the development of the final rangewide plan in the fall of 2013, the CHAT tool was revised to account for additional information obtained by the States, resulting in the difference of the EOR + 10 compared to the rangewide plan. However, the CHAT decision support tool is a work in process and is expected to continue to change as geospatial modeling techniques are refined and additional datasets are obtained. Therefore, we used the area presented in the rangewide plan as the EOR + 10 throughout this final rule.

Although the mapped polygons used to determine the estimated occupied range appear contiguous and may leave the impression that the entire polygon is uniformly occupied by lesser prairie-chickens, such is not the case. Over much of the area within each occupied polygon, the habitat has been fragmented and provides suitable habitat in patches of various sizes. Consequently, within each polygon designated as occupied range, there will be areas that do not provide suitable habitat and are unlikely to be occupied by lesser prairie-chickens. The estimates of occupied range, in acres or hectares, are therefore not accurate in the sense that they include areas that are not occupied but were included in the larger mapping unit for calculation purposes. The actual amount of occupied habitat is likely less than the areas, in acres or hectares, presented in this discussion.

As derived from the estimated historical and occupied ranges described above, the overall distribution of lesser prairie-chicken within all States except Kansas has declined sharply since pre-European settlement, and the species is generally restricted to variously sized, often highly fragmented parcels of untilled native rangeland (Taylor and Guthery 1980a, pp. 2–5) or areas with significant CRP enrollments that were initially seeded with native grasses (Rodgers and Hoffman 2005, pp. 122–123). The estimated current occupied range, based on cooperative mapping efforts described above, and as derived from calculations of the area of each mapped polygon using geographical information software, represents about an 84 percent reduction in overall occupied range since pre-European settlement.

Rangewide Population Estimates

Very little information is available regarding the size of lesser prairie-chicken populations prior to 1900. Once the five States supporting lesser prairie-chickens were officially opened for settlement beginning in the late 1800s, settlement occurred quickly and the landscape began to change rapidly. Numbers of lesser prairie-chickens likely changed rapidly as well. Despite the lack of conclusive information on population size, the lesser prairie-chicken was reportedly quite common throughout its range in Colorado, Kansas, New Mexico, Oklahoma, and Texas in the early 20th century (Bent 1932, pp. 280–281, 283; Baker 1953, p. 8; Bailey and Niedrach 1965, p. 51; Sands 1968, p. 454; Fleharty 1995, pp. 38–44; Robb and Schroeder 2005, p. 13). Litton (1978, p. 1) suggested that as many as two million birds may have occurred in Texas alone prior to 1900. By the 1930s, the species had begun to disappear from areas where it had been considered abundant, and the decline was attributed to extensive cultivation, overgrazing by livestock, and drought (Bent 1932, p. 280). Populations were nearly extirpated from Colorado, Kansas, and New Mexico, and were markedly reduced in Oklahoma and Texas (Baker 1953, p. 8; Crawford 1980, p. 2).

Rangewide estimates of population size were almost nonexistent until the 1960s and likely corresponded with more frequent and consistent efforts by the States to monitor lesser prairie-chicken populations. Although lesser prairie-chicken populations can fluctuate considerably from year to year in response to variable weather and habitat conditions, generally the overall population size has continued to decline from the estimates of population size available in the early 1900s (Robb and Schroeder 2005, p. 13). By the mid-1960s, Johnsgard (1973, p. 281) estimated the total rangewide population to be between 36,000 and 43,000 individuals. In 1980, the estimated rangewide fall population size was thought to be between 44,400 and 52,900 birds (Crawford 1980, p. 3). Population size in the fall is likely to be larger than population estimates derived from spring counts due to recruitment that occurs following the nesting season. By 2003, the estimated total rangewide population was 32,000 birds, based on information provided by the Lesser Prairie-Chicken Working Group (Rich *et al.* 2004, unpaginated). Prior to the implementation of the rangewide survey effort in 2012, the best available population estimates indicate that the lesser prairie-chicken population likely would be approximately 45,000 birds or fewer (see Table 2). This estimate is a rough approximation of the maximum population size and should not be considered as the actual current population size. Although the estimate uses the most current information available, population estimates for some States have not been determined in several years and reported values may not represent actual population sizes. For example, the values reported for Colorado and Oklahoma were published in 2000, and recent estimates of total population size for these States have not been determined. The aerial surveys conducted in 2012, as explained below, provide the best estimate of current population size.

TABLE 2—RECENT POPULATION ESTIMATES PRIOR TO 2012 BY STATE

[Modified from Hagen *et al.* 2010, p. 30]

State	Recent population estimates prior to 2012
Colorado	< 1,500 (in 2000).
Kansas	19,700–31,100 (in 2006).
New Mexico	6,130 (in 2011).
Oklahoma	< 3,000 (in 2000).
Texas	1,254–2,649 (in 2010–11).
TOTAL	< 45,000.

In the spring (March 30 to May 3) of 2012, the States, in conjunction with the Western Association of Fish and Wildlife Agencies, implemented a rangewide sampling framework and survey methodology using small aircraft. This aerial survey protocol was developed to provide a more consistent approach for detecting rangewide trends in lesser prairie-chicken population abundance across the occupied range. The goal of this survey was to estimate the abundance of active leks and provide information that could be used to detect trends in lek abundance over time. The sampling framework used 15-by-15-km (9-by-9-mi) grid cells overlapping the estimated occupied range, as existed in 2011, plus a 7.5-km (4.6-mi) buffer. Additional information on the survey approach is provided in McDonald *et al.* 2011, entire.

The aerial survey study area was divided into four regions that encompassed the estimated occupied range of the lesser prairie-chicken. These regions were delineated largely based on habitat type and results were not grouped by individual State. The four regional groupings were the Shinnery Oak Prairie Region of eastern New Mexico and southwest Texas; the Sand Sagebrush Prairie Region located in southeastern Colorado, southwestern Kansas, and western Oklahoma Panhandle; the Mixed Grass Prairie Region located in the northeastern Texas panhandle, northwestern Oklahoma, and south-central Kansas; and the Short Grass/CRP Mosaic in northwestern Kansas and eastern Colorado. During surveys of the 264 blocks selected, 40 lesser prairie-chicken leks, 6 mixed leks comprised of both lesser and greater prairie-chickens, and 100 non-lek aggregations of lesser prairie-chickens were observed (McDonald *et al.* 2012, p. 15). For this particular study, an active lek was defined as having five or more birds per lek. If fewer than five individual birds were observed, ground surveys were conducted of those bird groups to determine if lekking birds were present.

If not, those areas were classified as ''non-leks.'' After the survey observations were adjusted to account for probability of detection (standard method used to adjust counts to account for individuals present but not detected), 3,174 lesser prairie-chicken leks were estimated to occur over the entire occupied range (McDonald *et al.* 2012, p. 18). Another 441 mixed leks, consisting of both lesser and greater prairie-chickens, were estimated to occur within the occupied range. These mixed leks were limited to the Short Grass/CRP Mosaic region where the range of the two species overlaps. Using the respective average group size, by each identified region, an estimate of the total number of lesser prairie-chickens and lesser/greater prairie-chicken hybrids could be derived (McDonald *et al.* 2012, p. 20). The total estimated abundance of lesser prairie-chickens was 37,170 individuals, with the number of hybrids estimated to be 309 birds (McDonald *et al.* 2012, p. 21). The estimated total number of lesser prairie-chicken leks and population size, by habitat region, are as follows: Shinnery Oak Prairie Region—428 leks and 3,699 birds; Sand Sagebrush Prairie Region—105 leks and 1,299 birds; Mixed Grass Prairie Region—877 leks and 8,444 birds; and the Short Grass/CRP Mosaic Region—1,764 leks and 23,728 birds (McDonald *et al.* 2012, pp. 20, 23).

In 2013, the States and the Western Association of Fish and Wildlife Agencies repeated the aerial survey and reanalyzed the 2012 survey results based on ecoregion specific estimated population parameters and a pooled analysis of the data for both years (McDonald *et al.* 2013, entire). The revised total estimated abundance of lesser prairie-chickens in 2012 was 34,440 individuals (90 percent upper and lower confidence intervals of 52,076 and 21,718 individuals, respectively; McDonald *et al.* 2013, p. 24). The total estimated abundance of lesser prairie-chickens in 2013 dropped to 17,616 individuals (90 percent upper and lower confidence intervals of 20,978 and 8,442 individuals, respectively). The number of hybrids in 2012 was estimated to be 350 birds (McDonald *et al.* 2013, p. 25). In 2013, the number of hybrid birds was estimated to be 342. The estimated total number of lesser prairie-chicken leks and population size, by ecoregion, for 2012 are as follows: Shinnery Oak Prairie Region—366 leks and 2,946 birds; Sand Sagebrush Prairie Region—327 leks and 3,005 birds; Mixed Grass Prairie Region—794 leks and 8,076 birds; and the Short Grass/CRP Mosaic Region—1,443 leks and 20,413 birds (McDonald *et al.* 2012, pp. 24, 25). In 2013, the estimated total number of lesser prairie-chicken leks and population size, by ecoregion, are as follows: Shinnery Oak Prairie Region—118 leks and 1,967 birds; Sand Sagebrush Prairie Region—323 leks and 1,802 birds; Mixed Grass Prairie Region—356 leks and 3,567 birds; and the Short Grass/CRP Mosaic Region—1,240 leks and 10,279 birds (McDonald *et al.* 2012, pp. 24, 25).

Garton (2012, entire) used estimates of the minimum population size derived from the 2012 aerial survey (McDonald *et al.* 2012, entire), based on estimated rates of change and thetas (index of the relative size of the previous year's population) as described in Garton *et al.* (2011, p. 301) and past lek counts by the States to reconstruct historical population levels over time. However, ground surveys within the sand sage regions yielded higher estimated minimum population size than did the aerial survey data, and Garton used the higher ground survey results rather than that obtained from the aerial surveys in the analysis for this particular ecoregion. Based on Garton's analysis, lesser prairie-chicken populations generally increased during the mid-1960s to early 1970s (Garton 2012, pp. 6, 11). Since the early 1970s to the mid-1990s, the population experienced a long-term decline. The reconstructed population estimate for 1970 was almost 300,000 birds but had declined to less than 50,000 birds by the mid-1990s. Following the mid-1990s, populations appear to have stabilized somewhat but at levels considerably below those from the 1970s through the early 1990s (Garton 2012, pp. 6–11).

In June 2012, we were provided with an interim assessment of lesser prairie-chicken population trends since 1997 (Hagen 2012, entire). The objective of this analysis was to provide an evaluation of recent lesser prairie-chicken population trends both rangewide and within the four primary habitat types (CRP-shortgrass prairie dominated landscape, mixed grass prairie landscape, sand sagebrush prairie landscape, and shinnery oak landscape) that encompass the occupied range of the species. The analysis employed modeling techniques intended to provide a more unified assessment of population trends, considering that each State uses slightly different methods to monitor lesser prairie-chickens and that sampling effort has varied over time, with sampling efforts typically increasing in recent years. The results of this analysis suggest that lesser prairie-chicken population trends have increased since 1997.

However, we are reluctant to place considerable weight on this interim assessment for several reasons. First, and perhaps most important, is that the analysis we were provided is a preliminary product. We anticipated that a more complete, and perhaps peer-reviewed, product would be submitted during the comment period on the proposed rule; however, we did not receive an updated assessment. Second, we have concerns with the differences in how lek counts are conducted and how those differences were addressed. For example, when the States conduct flush counts at the leks, all of the States, except Oklahoma, count the number of males flushed from the lek. However, since 1999, Oklahoma has counted all birds flushed from the lek and did not differentiate between males and females. Additionally, some of the States use numbers derived from lek counts conducted over large areas rather than road side surveys. We are unsure how these differences in sampling methodology would influence the pooled trend information presented, particularly for large geographical areas where two different sampling methods are used in the analysis. Third, the trend information presents only information gathered since 1997 or more recently, without considering historical survey information. The trends evident from sampling efforts since 1997 likely reflect increased sampling effort following publication of the Service's 12-month finding (63 FR 31400, June 9, 1998), and increased sampling effort could lead to biased results. Furthermore, trend analyses in general are dependent upon the timeframe chosen. The population reconstruction information used in Garton (2012, entire) shows that the lowest modeled abundance occurred in 1997, the starting point of Hagen's analysis. Thus, it is likely that a trend analysis for a different timeframe, dating either further back or more recently than 1997, would result in a different outcome. Further, Hagen's analysis does not consider the most recent rangewide aerial survey results, which were used to derive a population estimate of 17,616 individuals (90 percent upper and lower confidence intervals of 20,978 and 8,442 individuals, respectively) in 2013 (McDonald *et al.* 2013, p. 24). This represents a substantial decrease in population estimates compared to recent years and inclusion of the 2013 rangewide population estimates would likely change Hagen's analysis.

In some instances, sampling methodology by agency likely varied between years during the analyzed time period as access to some study areas was restricted and new areas were established in their place. For example, in southwest Texas, two study areas were used until 1999, when an additional sampling area in Yoakum County was added. Then in 2007, the original Gaines County study area was dropped and a new, smaller Gaines County study area was established to replace the original study area. Similar changes occurred in the northeastern panhandle of Texas where a new study area in Gray County was added in 1998. These changes in sampling location can confound efforts to make comparisons between years. The interim assessment does not include an explanation regarding how these changes were addressed.

We also recognize the limitations of using lek counts to derive population trends over large areas. The deficiencies and limitations of lek counts include that not all leks are known, making it difficult to draw a random or representative sample from which to make inferences; not all known leks are counted and those that are may not represent the full set of known leks; leks may not be well-defined with sharply or spatially defined boundaries; not all birds are present at a lek at any given time, as influenced by the date, time of day, weather conditions, the presence of predators, and other influences; the age composition of birds at a lek varies seasonally; not all birds at a lek are counted; and the number of times a lek is counted each year varies (Johnson and Rowland 2007, pp. 17–20). Consequently, we caution against using available data from lek counts to derive rangewide population trends as these analyses can be misleading. However, information on historical and recent lesser prairie-chicken population trends over large geographical areas would improve our analysis of the status of the species, and we support efforts to provide a reliable, accurate analysis of rangewide population trends, particularly if those analytical methods are repeatable over time and peer-reviewed.

State-by-State Information on Population Status

Each of the State conservation agencies within the occupied range of the lesser prairie-chicken provided us with information regarding the current population estimates of the lesser prairie-chicken within their respective States, and most of the following information was taken directly from agency reports, memos, and other status documents. Population survey data are collected from spring lek surveys in the form of one or both of the following indices: Average lek size (i.e., number of males or total birds per lek); or density of birds or leks within a given area. Most typically, the data are collected along fixed survey routes where the number of displaying males counted is assumed to be proportional to the population size, or the number of leks documented is assumed to be an index of population size or occupied range. These techniques are useful in evaluating long-term trends and determining occupancy and distribution but are very limited in their usefulness for reliably estimating population size (Johnson and Rowland 2007, pp. 17–20). However, given existing constraints, such as available staff and funding, they provide the best opportunity to assess lesser prairie-chicken populations.

Although each State annually conducts lesser prairie-chicken surveys according to standardized protocols, those protocols vary by State. Thus, each State can provide information relative to lesser prairie-chicken numbers and trends by State, but obtaining consistent information across the entire range is difficult given the current approach to population monitoring. However, in the absence of more reliable estimators of bird density, total counts of active leks over large areas were recommended as the most reliable trend index for prairie grouse populations such as lesser prairie-chickens (Cannon and Knopf 1981, p. 777; Hagen *et al.* 2004, p. 79).

Colorado—Lesser prairie-chickens were likely resident in six counties (Baca, Bent, Cheyenne, Kiowa, Kit Carson, and Prowers Counties) in Colorado prior to European settlement (Giesen 2000, p. 140). At present, lesser prairie-chickens are known to occupy portions of Baca, Cheyenne, Prowers, and Kiowa Counties, but are not known to persist in Bent or Kit Carson Counties. Present delineated range includes portions of eastern Lincoln County where suitable habitat persists, although breeding birds have not been documented from this county. Populations in Kiowa and Cheyenne Counties number fewer than 100 individuals and appear to be isolated from other populations in Colorado and adjacent States (Giesen 2000, p. 144). The lesser prairie-chicken has been State-listed as threatened in Colorado since 1973. Colorado Department of Wildlife (now CPW) estimated 800 to 1,000 lesser prairie-chicken in the State in 1997. Giesen (2000, p. 137) estimated the population size, as of 2000, to be fewer than 1,500 breeding individuals (see Table 2, above).

CPW has been monitoring leks annually since 1959, primarily by using standard survey routes (Hoffman 1963, p. 729). A new survey method was initiated in 2004, designed to cover a much broader range of habitat types and a larger geographic area, particularly to include lands enrolled in the CRP. The new methodology resulted in the discovery of more leks and the documented use of CRP fields by lesser prairie-chickens in Colorado. In 2011, CPW used aerial surveys in addition to the more traditional ground surveys in an attempt to identify new leks in Cheyenne County (Remington 2011).

Lesser prairie-chicken populations in Colorado have declined steadily since 2011, likely the result of deteriorating habitat conditions due to prolonged drought (Smith 2013, pp. 1–3). In 2013, the total number of birds counted was 84, down from 105 birds in 2012, and 161 birds in 2011 (Smith 2013, pp. 2–3). The number of active leks detected in 2013 was 10, down from 14 in 2012, and 17 in 2011. For this study, a lek is considered active when at least three males are observed displaying on the lek. There were three active leks in Baca County, four active leks in Prowers County, and three active leks in Cheyenne County. One of the leks detected in Cheyenne County was considered a new lek. The number of leks declined in all counties except Cheyenne since 2011. In 2011, there were six active leks in Baca County, nine active leks in Prowers County, and two active leks in Cheyenne County (Verquer and Smith 2011, pp. 1–2). No active leks have been detected in Kiowa County since 2008 (Verquer 2008, p. 1). Habitat provided by CRP is likely to be important to persistence of lesser prairie-chickens in Colorado.

The annual survey report provides information on the total count of lesser prairie-chickens from 1977 to the present. Since 1977, the total number of birds observed during routine survey efforts has varied from a high of 448 birds in 1990, to a low of 74 birds in 2007. The general population trajectory, based on number of birds observed on active leks during the breeding season is declining, excluding information from 1992, when limited survey data were collected. The number of active leks remained fairly stable between 1999 and 2006. During this period, the highest number of active leks recorded, 34, occurred in 2004 and again in 2006. The fewest number of active leks observed occurred in 2002, when 24 leks were observed. The average number of active

leks observed between 1999 and 2006 was 30.1.

Beginning in 2007 and continuing to present, the number of active leks observed has remained fairly stable. Since 2007, the highest recorded number of active leks was 18, which occurred in 2007. The fewest number of active leks observed was 10 recorded in 2013. The average number of active leks over this period was 16.4, roughly half of the average number of active leks (30) observed during the period between 1999 and 2006. Drought conditions observed in 2006, followed by severe winter weather, probably account for the decline in the number of lesser prairie-chickens observed in 2007 (Verquer 2007, pp. 2–3). In the winter of 2006–2007, heavy snowfall severely reduced food and cover in Prowers, southern Kiowa, and most of Baca Counties for over 60 days. Then, in the spring of 2008, nesting and brood rearing conditions were unfavorable due to drought conditions in southeastern Colorado (Verquer 2009, p. 5).

As a complement to, and included within, CPW surveys, counts are completed on the USFS Comanche National Grassland in Baca County. On the Comanche National Grassland, the estimated area occupied by the lesser prairie-chicken over the past 20 years was approximately 27,373 ha (65,168 ac) (Augustine 2005, p. 2). Surveys conducted during 1984 to 2005 identified 53 different leks on or immediately adjacent to USFS lands. Under this survey methodology, leks were identified based on the presence of at least three birds on the lek. Lek censuses conducted from 1980 to 2005 showed the number of males counted per lek since 1989 has steadily declined (Augustine 2006, p. 4). The corresponding population estimate, based on number of males observed at leks, on the Comanche National Grassland was highest in 1988, with 348 birds, and was lowest in 2005, with approximately 64 birds and only 8 active leks (Augustine 2006, p. 4). The estimate of males per lek in 2005 declined more than 80 percent from that of 1988, from 174 males per lek to 32 males per lek, respectively. In 2009, each historical lek was surveyed 2 to 3 times, and 4 active leks were observed (Shively 2009b, p. 1). A high count of 25 males was observed using these four leks. In the spring of 2008, five active leks and 34 birds were observed (Shively 2009a, p. 3).

Kansas—In the early part of the last century, the lesser prairie-chicken's historical range included all or part of 38 counties, but by 1977, the species was known to exist in only 17 counties, all located south of the Arkansas River (Waddell and Hanzlick 1978, pp. 22–23). Since 1999, biologists have documented lesser prairie-chicken expansion and reoccupation of 17 counties north of the Arkansas River, primarily attributable to favorable habitat conditions (e.g., native grasslands) created by implementation of the CRP in those counties. Currently, lesser prairie-chickens occupy approximately 34,479 sq km (13,312 sq mi) within all or portions of 35 counties in western Kansas. Greater prairie-chickens in Kansas also have expanded their range, and, as a result, mixed leks of both lesser prairie-chickens and greater prairie-chickens occur within an overlap zone covering portions of 7 counties (2,500 sq km (965 sq mi)) in western Kansas (Bain and Farley 2002, p. 684). Within this zone, apparent hybridization between lesser prairie-chickens and greater prairie-chickens is now evident (Bain and Farley 2002, p. 684). Three survey routes (162.65 sq km, 62.8 sq mi) used by KDWPT are located within this overlap zone. Although hybrid individuals are included in the counts, the number of hybrids observed is typically less than 5 percent of the total number of individual birds observed on the surveyed areas annually. In 2013, seven hybrid individuals, representing 3 percent of the birds observed, were detected (Pitman 2013, p.10). These hybrids were detected on survey routes in Gove, Ness, and Logan counties.

Since inception of standard lesser prairie-chicken survey routes in 1967, the number of standard survey routes has gradually increased. The number of standard routes currently surveyed in Kansas for lesser prairie-chickens is 14, and encompasses an area of 679.3 sq km (262.3 sq mi). Flush counts are taken twice at each lek located during the standard survey routes. An estimated population density is calculated for each route by taking the higher of the two flush counts, doubling that count primarily to account for females, and then dividing the estimated number of birds by the total area surveyed per route. The current Statewide trend in lesser prairie-chicken abundance between 2004 and 2013 indicates a declining population (Pitman 2013, p. 15). The KDWPT reported that recent declines are largely due to severe drought, which negatively impacted habitat quality, and not to significant habitat loss (Pitman 2013, p. 15).

In 2006, KDWPT estimated the breeding population of lesser prairie-chickens in the State to be between 19,700 and 31,100 individuals (Rodgers 2007a, p. 1). The total breeding population estimates were derived using the National Gap Analysis Program, where the population indices from each habitat type along 15 survey routes were extrapolated for similar habitat types throughout total occupied lesser prairie-chicken range Statewide.

New Mexico—In the 1920s and 1930s, the former range of the lesser prairie-chicken in New Mexico was described as all of the sand hill rangeland of eastern New Mexico, from Texas to Colorado, and as far west as Buchanan in DeBaca County. Ligon (1927, pp. 123–127) mapped the breeding range at that time as encompassing portions of seven counties, a small subset of what he described as former range. Ligon (1927, pp. 123–127) depicted the historical range in New Mexico as encompassing all or portions of 12 counties. In the 1950s and 1960s, occupied range was more extensive than the known occupied range in 1927 (Davis 2005, p. 6), indicating reoccupation of some areas since the late 1920s. Presently, the NMDGF reports that lesser prairie-chickens are known from six counties (Chaves, Curry, DeBaca, Lea, Roosevelt, and Quay Counties) and suspected from one additional county (Eddy County). The occupied range of the lesser prairie-chicken in New Mexico is conservatively estimated to encompass approximately 5,698 sq km (2,200 sq mi) (Davis 2006, p. 7) compared with its historical range of 22,390 sq km (8,645 sq mi). Based on the cooperative mapping efforts conducted by the Playa Lakes Joint Venture and the Lesser Prairie-Chicken Interstate Working Group, occupied range in New Mexico was estimated to be 8,570 sq km (3,309 sq mi), considerably larger than the conservative estimate used by Davis (2006, p. 7). One possible reason for the difference in occupied range is that Davis (2006, p. 7) did not consider the known distribution to encompass any portion of Eddy County or southern Lea County. Approximately 59 percent of the historical lesser prairie-chicken range in New Mexico is privately held, with the remaining historical and occupied range occurring on lands managed by the BLM, USFS, and New Mexico State Land Office (Davis 2005, p. 12).

In the 1950s, the lesser prairie-chicken population in New Mexico was estimated at 40,000 to 50,000 individuals, but, by 1968, the population had declined to an estimated 8,000 to 10,000 individuals (Sands 1968, p. 456). Johnsgard (2002, p. 51) estimated the number of lesser prairie-chickens in New Mexico at fewer than 1,000 individuals by 2001. Similarly,

the Sutton Center estimated the New Mexico lesser prairie-chicken population to number between 1,500 and 3,000 individuals, based on observations made over a 7-year period from the late 1990s to mid-2000s (Wolfe 2007, pers. comm.). Using lek survey data, NMDGF currently estimates the Statewide lesser prairie-chicken population in 2013 to be about 1,705 birds (Beauprez 2013, p. 6). This is the lowest estimated spring breeding population observed since 2001 and represents a 72 percent decline in estimated population size since 2011 (Beauprez 2013, pp. 16–17). The total number of leks detected in 2013 also was the lowest on record (Beauprez 2013, p. 16). Longer term trends are not available as roadside listening routes did not become established until 1998. Prior to that date, counts were conducted on some of the NMDGF Prairie Chicken Areas or on lands under the jurisdiction of the BLM. The current roadside survey uses 29 standard routes established since 1999, 10 additional routes established in 2003 within the northeastern part of lesser prairie-chicken historical range, and 41 routes randomly selected from within the 382 townships located within the survey boundary. The NMGF reported that population declines observed since 2011 are believed to be at least partially attributed to poor nesting and brood rearing habitat due to the persistent drought (Beauprez 2013, p. 17).

Since initiating the 10 additional northeastern routes in 2003, NMDGF reports that no leks have been detected in northeastern New Mexico. Results provide strong evidence that lesser prairie-chickens no longer occupy their historical range within Union, Harding, and portions of northern Quay Counties (Beauprez 2009, p. 8). However, a solitary male lesser prairie-chicken was observed and photographed in northeastern New Mexico by a local wildlife law enforcement agent in December 2007. Habitat in northeastern New Mexico appears capable of supporting lesser prairie-chickens, but the lack of any known leks in this region since 2003 suggests that lesser prairie-chicken populations in northeastern New Mexico, if still present, are very small.

The core of occupied lesser prairie-chicken range in this State lies in east-central New Mexico (Chaves, Curry, DeBaca, Lea, and Roosevelt Counties). Populations in southeastern New Mexico, defined as the area south of U.S. Highway 380, remain low and continue to decline. The majority of historically occupied lesser prairie-chicken habitat in southeastern New Mexico occurs primarily on BLM land. Snyder (1967, p. 121) suggested that this region is only marginally populated except during favorable climatic periods. Best *et al.* (2003, pp. 225, 232) concluded anthropogenic factors including, but not limited to, incompatible livestock grazing, habitat conversion, and shrub control have, in part, rendered lesser prairie-chicken habitat south of U.S. Highway 380 inhospitable for long-term survival of lesser prairie-chickens in southeastern New Mexico. Similarly, NMDGF suggests that habitat quality likely limits recovery of populations in southeastern New Mexico (Beauprez 2009, p. 13).

The New Mexico State Game Commission owns and manages 30 Prairie Chicken Areas ranging in size from 10.5 to 3,171 ha (29 to 7,800 ac) within the core of occupied range in east central New Mexico. These Prairie Chicken Areas total approximately 109 sq km (42 sq mi), or roughly 1.6 percent of the total occupied lesser prairie-chicken range in New Mexico. Instead of the typical roadside counts, the NMDGF conducts ''saturation'' surveys on each individual Prairie Chicken Area to determine the presence of lesser prairie-chicken leks and individual birds over the entire Prairie Chicken Area (Beauprez 2013, p. 8). Lands adjacent to the Prairie Chicken Areas are included within these surveys, including other State Trust Lands, some adjacent BLM lands, and adjacent private lands. The results of these saturation counts are included in their estimate of the spring breeding population size. The Prairie Chicken Areas are important to persistence of the lesser prairie-chicken in New Mexico. However, considering the overall extent of the Prairie Chicken Areas and that many Prairie Chicken Areas are small and isolated, continued management of the surrounding private, Federal and trust lands is integral to viability of the lesser prairie-chicken in New Mexico.

Oklahoma—Lesser prairie-chickens historically occurred in 22 Oklahoma counties. By 1961, Copelin (1963, p. 53) reported lesser prairie-chickens from only 12 counties. By 1979, lesser prairie-chickens were verified in eight counties, and the remaining population fragments encompassed an estimated area totaling 2,792 sq km (1,078 sq mi), a decrease of approximately 72 percent since 1944. At present, the ODWC reports lesser prairie-chickens continue to persist in eight counties with an estimated occupied range of approximately 950 sq km (367 sq mi). Horton (2000, p. 189) estimated the entire Oklahoma lesser prairie-chicken population numbered fewer than 3,000 birds in 2000. A more recent estimate has not been conducted.

The ODWC is aware of 96 known historical and currently active leks in Oklahoma. During the mid-1990s, all of these leks were active. Systematic survey efforts to document the current number of active leks over the occupied range were completed in 2011. About 220 survey routes were conducted over 11 counties in northwestern Oklahoma (Larsson *et al.* 2012, p. 1). In total, 72 active leks were detected. No leks were detected in either Cimarron or Beckham Counties.

The number of roadside listening routes currently surveyed annually in Oklahoma has varied from five to seven over the last 20 years, and counts of the number of males per lek have been conducted since 1968. Beginning with the 2002 survey, male counts at leks were replaced with flush counts, which did not differentiate between the sexes of birds flushed from the surveyed lek (ODWC 2007, pp. 2, 6). Comparing the total number of males observed during survey efforts between the years 1977 through 2001 reveals a declining trend. However, the overall density of leks (number per sq mi), another means of evaluating population status of lesser prairie-chickens, for five of the standard routes since 1985 is stable to slightly declining. Information on lek density prior to 1985 was unavailable. The standard route in Roger Mills County was not included in this analysis because the lek was rarely active and has not been surveyed since 1994. A survey route in Woods County was included in the analysis even though surveys on this route did not begin until 2001. However, excluding the Woods County route did not alter the apparent trend. The average lek density since 2001 is 0.068 leks per sq mi (Schoeling 2010, p. 3). Between 1985 and 2000, the average lek density was 0.185 leks per sq mi, when the route in Roger Mills County is excluded from the analysis. Over the last 10 years, the density of active leks has varied from a low of 0.02 leks per sq km (0.05 leks per sq mi) in 2004, 2006, and 2009, to a high of 0.03 leks per sq km (0.09 leks per sq mi) in 2005 and 2007 (Schoeling 2010, p. 3).

Texas—Systematic surveys to identify Texas counties inhabited by lesser prairie-chickens began in 1940 (Henika 1940, p. 4). From the early 1940s (Henika 1940, p. 15; Sullivan *et al.* 2000) to mid-1940s (Litton 1978, pp. 11–12), to the early 1950s (Seyffert 2001, pp. 108–112), the range of the lesser prairie-chicken in Texas was estimated to encompass all or portions of 34 counties. Species experts considered the occupied range at that

time to be a reduction from the presettlement range. By 1989, TPWD estimated occupied range encompassed all or portions of only 12 counties (Sullivan *et al.* 2000, p. 179). In 2005, TPWD reported that the number of occupied counties likely has not changed since the 1989 estimate. In March 2007, TPWD reported that lesser prairie-chickens were confirmed from portions of 13 counties (Ochiltree, Lipscomb, Roberts, Hemphill, Gray, Wheeler, Donley, Bailey, Lamb, Cochran, Hockley, Yoakum, and Terry Counties) and suspected in portions of another 8 counties (Moore, Carson, Oldham, Deaf Smith, Randall, Swisher, Gaines, and Andrews Counties).

Based on aerial and road surveys conducted in 2010 and 2011, new leks were detected in Bailey, Cochran, Ochiltree, Roberts, and Yoakum Counties, expanding the estimated occupied ranges in those counties (TPWD 2011). However, no lesser prairie-chickens were detected in Andrews, Carson, Deaf Smith, Oldham, or Randall Counties. Active leks were reported from the same 13 counties identified in 2007. However, in 2012, Timmer (2012, pp. 36, 125–131) observed lesser prairie-chickens in only 12 counties: Bailey, Cochran, Deaf Smith, Donley, Gray, Hemphill, Lipscomb, Ochiltree, Roberts, Terry, Wheeler, and Yoakum. Lesser prairie-chicken populations in Texas primarily persist in two disjunctive regions—the Permian Basin/Western Panhandle region and the Northeastern Panhandle region.

Maximum occupied range in Texas, as of September 2007, was estimated to be 12,787 sq km (4,937.1 sq mi), based on habitat conditions in 20 panhandle counties (Davis *et al.* 2008, p. 23). Conservatively, based on those portions of the 13 counties where lesser prairie-chickens are known to persist, the area occupied by lesser prairie-chickens in Texas is 7,234.2 sq km (2,793.1 sq mi). Using an estimated mean density of 0.0088 lesser prairie-chickens per ac (range 0.0034–0.0135 lesser prairie-chickens per ac), the Texas population was estimated at a mean of 15,730 individuals in the 13 counties where lesser prairie-chickens are known to occur (Davis *et al.* 2008, p. 24).

Since 2007, Texas has been evaluating the usefulness of aerial surveys as a means of detecting leks and counting the number of birds attending the identified lek (McRoberts 2009, pp. 9–10). Initial efforts focused on measuring lek detectability and assessing the response of lekking birds to disturbance from survey aircraft. More recently, scientists at Texas Tech University used aerial surveys to estimate the density of lesser prairie-chicken leks and Statewide abundance of lesser prairie-chickens in Texas. This study conducted an inventory of 208 survey blocks measuring 7.2 by 7.2 km (4.5 by 4.5 mi), encompassing some 87 percent of the occupied range in Texas during the spring of 2010 and 2011 (Timmer 2012, pp. 26–27, 33). Timmer (2012, p. 34) estimated 2.0 leks per 100 sq km (0.02 leks per sq km). Previously reported estimates of rangewide average lek density varied from 0.10 to 0.43 leks per sq km (Davison 1940; Sell 1979; Giesen 1991; Locke 1992 as cited in Hagen and Giesen 2005, unpaginated). The total estimate of the number of leks was 293.6 and, based on the estimated number of birds observed using leks, the statewide population was determined to be 1,822.4 lesser prairie-chickens (Timmer 2012, p. 34).

Lesser prairie-chicken population trends in Texas, based on annual monitoring efforts, have been declining over the last 15 years (1997–2012), with the exception of the Bailey County Study Area (Martin 2013, p. 9). However the Bailey County Study Area has not been surveyed since 2007, so recent trend information from this area is unavailable. Since 2010, the overall average number of males per lek have declined, but the density of leks (number per square mile) has remained fairly constant (Martin 2013, p. 11).

Summary of Population Status Information

Lesser prairie-chicken populations are distributed over a relatively large area, and these populations can fluctuate considerably from year to year, a natural response to variable weather and habitat conditions. Changes in lesser prairie-chicken breeding populations may be indicated by a change in the number of birds attending a lek (lek size), the number of active leks, or both. Although each State conducts standard surveys for lesser prairie-chickens, the application of survey methods and effort varies by State. Such factors complicate interpretation of population indices for the lesser prairie-chicken and may not reliably represent actual populations. Caution should be used in evaluating population trajectories, particularly short-term trends. In some instances, short-term analyses could reveal statistically significant changes from one year to the next but actually represent a stable population when evaluated over longer periods of time. For example, increased attendance of males at leks may be evident while the number of active leks actually declined.

An examination of anecdotal information on historical numbers of lesser prairie-chickens indicates that numbers likely have declined from possibly millions of birds to current estimates of thousands of birds. Examination of the trends in the five lesser prairie-chicken States for most indicator variables, such as males per lek and lek density, over the last 3 years shows the trends are indicative of declining populations. Much of these recent declines are due, at least in part, to habitat degradation resulting from incidence of severe drought over much of the occupied range. Habitat conditions may improve with the return of more normal precipitation patterns in the near future. However, the numbers of lesser prairie-chickens reported per lek are considerably fewer than the numbers reported during the 1970s. While habitat conditions may improve in the future, the low lek attendance observed at many leks is likely due to longer term reductions in population size. It is unlikely that populations will recover to historical levels observed just 40 years ago, particularly when considered in light of the loss and alteration, including fragmentation, of lesser prairie-chicken habitat throughout its historical range over the past several decades. Information regarding habitat loss and fragmentation, as well as other factors, impacting the lesser prairie-chicken is provided in the sections that follow.

Summary of Factors Affecting the Species

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' Thus, a species may be listed as a threatened species if it is likely to qualify for endangered status in the foreseeable future, or in other words, likely to become ''in danger of extinction'' within the foreseeable future. The Act does not define the term ''foreseeable future.'' However, in a January 16, 2009, memorandum addressed to the Acting Director of the Service, the Office of the Solicitor, Department of the Interior, concluded, ''. . . as used in the [Act], Congress intended the term 'foreseeable future' to describe the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species'' (M–37021, January 16, 2009).

In considering the foreseeable future as it relates to the status of the lesser prairie-chicken, we considered the factors acting on the species and looked to see if reliable predictions about the status of the species in response to those factors could be drawn. We considered the historical data to identify any relevant existing trends that might allow for reliable prediction of the future (in the form of extrapolating the trends). We also considered whether we could reliably predict any future events that might affect the status of the species, recognizing that our ability to make reliable predictions into the future is limited by the variable quantity and quality of available data.

Under section 4(a)(1) of the Act, we determine whether a species is an endangered or threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; 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.

After a review of the best available scientific information as it relates to the status of the species and the five listing factors described above, we have determined that the lesser prairie-chicken meets the definition of a threatened species (i.e., is likely to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range). Following, we present a very brief explanation of the rationale leading to this conclusion followed by an in-depth discussion of the best available scientific information.

The range of the lesser prairie-chicken has been reduced by an estimated 84 percent (see discussion above in ''Current Range and Distribution''). The primary factor responsible for the range reduction is habitat fragmentation due to a variety of mechanisms that contribute to habitat loss and alteration. This habitat loss significantly increases the extinction risk for the lesser prairie-chicken because the species requires large parcels of intact native grassland and shrubland, often in excess of 8,100 ha (20,000 ac) to maintain self-sustaining populations (Woodward *et al.* 2001, p. 261; Flock 2002, p. 130; Fuhlendorf *et al.* 2002a, p. 618; Davis 2005, p. 3). Further, the life history of the species, primarily its lek breeding system and behavioral avoidance of vertical structures that increase predation risk, make it especially vulnerable to ongoing impacts on the landscape, especially at its currently reduced numbers. The total estimated population abundance in 2013 dropped to 17,616 individuals (90 percent upper and lower confidence intervals of 20,978 and 8,442 individuals, respectively) from 34,440 individuals (90 percent upper and lower confidence intervals of 52,076 and 21,718 individuals, respectively) in 2012 (McDonald *et al.* 2013, p. 24). Finally, the species has a reduced population size and faces ongoing habitat loss and degradation. The species will lack sufficient redundancy and resiliency to ensure its viability from present and future threats. While the current status of the lesser prairie-chicken has been substantially compromised by historical and current threats, there appear to be sufficient stable populations to ensure the persistence of the species over the near term. That is, the Service does not believe the species is currently at risk of extinction. However, as a result of continued population declines predicted into the future, the species is likely to become in danger of extinction in the foreseeable future.

Following, we present our analysis of the best available scientific and commercial data that has led to this conclusion.

Habitat Fragmentation

Spatial habitat fragmentation occurs when some form of disturbance, usually habitat alteration or loss, results in the separation or splitting apart of larger, previously contiguous, functional components of habitat into smaller, often less valuable, noncontiguous parcels (Wilcove *et al.* 1986, p. 237; Johnson and Igl 2001, p. 25; Franklin *et al.* 2002, entire). Fragmentation influences habitat availability and quality in three primary ways: Total area of available habitat; size of habitat patches, including edge effects; and patch isolation (Johnson and Igl 2001, p. 25; Stephens *et al.* 2003, p. 101). Initially, reduction in the total area of available habitat (i.e., habitat loss) may be more significant than fragmentation and can exert a much greater effect of extinction (Fahrig (1997, pp. 607, 609). However, as habitat loss continues, the effects of fragmentation often compound effects of habitat loss and produce even greater population declines than habitat loss alone (Bender *et al.* 1998, pp. 517–518, 525). At the point where some or all of the remaining habitat fragments or patches are below some minimum required size, the impact of additional habitat loss, when it consists of inadequately sized parcels, is minimal (Herkert 1994, p. 467). In essence, once a block of suitable habitat becomes so fragmented that the size of the remaining patches become biologically unsuitable, the continued loss of these smaller, suitable patches, is of little further consequence to the species (Bender *et al.* 1998, p. 525).

Both habitat loss and fragmentation correlate with an ecological concept known as carrying capacity. Within any given block or patch of habitat, carrying capacity is the maximum number of organisms that can be supported indefinitely within that area, provided sufficient food, space, water, and other necessities are available, without causing degradation of the habitat within that patch. Theoretically, as habitat loss increases and the size of an area shrinks, the maximum number of individuals that could inhabit that particular habitat patch also would decline. Consequently, a reduction in the total area of available habitat can negatively influence biologically important characteristics such as the amount of space available for establishing territories and nest sites (Fahrig 1997, p. 603). Over time, the continued conversion and loss of habitat to other land uses will reduce the ability of the land to support historical population levels, causing a decline in population sizes. Where the ability to effect restoration of these habitats is lost, the observed reduction in fish or wildlife populations is likely to be permanent.

Fragmentation not only contributes to overall habitat loss but also causes a reduction in the size of individual habitat patches and influences the proximity of these patches to other patches of similar habitat (Stephens *et al.* 2003, p. 101; Fletcher 2005, p. 342). Habitat quality for many species is a function of fragment size and declines as the size of the fragment decreases (Franklin *et al.* 2002, p. 23). Fahrig and Merriam (1994, p. 53) reported that both the size and shape of the fragment have been shown to influence population persistence in many species. The size of the fragment can influence reproductive success, survival, and movements. As the distance between habitat fragments increases, dispersal between the habitat patches may become increasingly limited and ultimately cease, impacting population persistence and potentially leading to both localized and regional extinctions (Harrison and Bruna 1999, p. 226; With *et al.* 2008, p. 3153).

The proportion of habitat edge to interior habitat increases as the size of a fragment declines. The edge is the transition zone between the original

habitat type and the adjacent altered habitat. In contrast, the core is the area within a fragment that remains intact and is largely or completely uninfluenced by the margin or edge of the fragment. Edge habitat proliferates with increasing fragmentation (Sisk and Battin 2002, p. 31). The response of individual species to the presence of edges varies markedly depending on their tolerance to the edge and the nature of its effects (Sisk and Battin 2002, p. 38). The effects often depend on the degree of contrast between the habitat edge and the adjacent land use matrix. The transition can be abrupt or something more gradual and less harsh. Most typically, edges to influence movements and survival, particularly for species that use interior or core habitats, serve as points of entry for parasites and predators (such as presence of fences adjacent to grasslands which provide hunting perches for avian predators), alter microclimates, subsidize feeding opportunities (such as providing access to waste grains in cropland areas), and influence species interactions, particularly with cosmopolitan species that tend to be habitat generalists (Sisk and Battin 2002, p. 38).

Fragmentation also can influence the heterogeneity or variation within the resulting fragment. Heterogeneity, in turn, influences the quality of the habitat within the fragment, with more homogeneous fragments generally being less valuable. Grasslands tend to be structurally simple and have little vertical layering. Instead, habitat heterogeneity tends to be largely expressed horizontally rather than vertically (Wiens 1974b, pp. 195–196). Prior to European settlement, the interaction of grazing by wild ungulates, drought and fire created a shifting mosaic of vegetative patches having various composition and structure (Derner *et al.* 2009, p. 112; Pillsbury *et al.* 2011, p. 2). Under these conditions, many grassland birds distribute their behavioral activities unevenly throughout their territories by nesting in one area, displaying in another, and foraging in still others (Wiens 1974b, p. 208). Lesser prairie-chickens exhibit this pattern and cue on specific vegetation structure and microenvironment features depending on the specific phase of their life cycle. Consequently, blocks of habitat that collectively or individually encompass multiple successional states that comprise tall grasses and shrubs needed for nesting, and are in proximity to more open grasslands supporting forbs for brood rearing, and are combined with smaller areas of short grass and bare ground used for breeding, support all of the habitat types used by lesser prairie-chickens throughout the year. Considering habitat diversity tends to be greater in larger patches, finding the appropriate mosaic of these features is more likely in larger fragments rather than smaller fragments (Helzer and Jelinski 1999, p. 1456).

Such habitat heterogeneity is very different from habitat fragmentation. Habitat fragmentation occurs when the matrix separating the resulting fragments is converted to a use that is not considered habitat whereas habitat heterogeneity implies that patches each having different vegetative structure exist within the same contiguous block of habitat. Habitat heterogeneity may influence habitat quality, but it does not represent fragmentation (Franklin *et al.* 2002, p. 23).

Isolation is another factor that influences suitability of habitat fragments. As habitat loss continues to progress over time, the remnants not only become smaller and more fragmented, they become more isolated from each other. When habitat patches become more isolated and the amount of unusable, unsuitable land use surrounding the islands of habitat increases, even patches of suitable quality and size may no longer be occupied. As fragmentation progresses, the ability of available dispersers to locate suitable fragments will decline. At some point, the amount of intervening unusable and unsuitable land comprising the matrix between the patches grows so wide that it exceeds the organism's dispersal capabilities, rendering the matrix impermeable to dispersal. In such instances, colonizers are unavailable to occupy the otherwise suitable habitat and reestablish connectivity. While extinctions at the local level, and subsequent recolonization of the vacant patch, are common phenomena, recolonization depends on the availability of dispersing individuals and their ability to disperse within the broader landscape (Fahrig and Merriam 1994, p. 52). Without available dispersing individuals with the ability to disperse, these isolated patches may remain vacant indefinitely. When the number of individuals at the landscape or regional level that are available to disperse declines, the overall population begins to decline and will, in turn, affect the number of individuals available to disperse. Connectivity between habitat patches is one means of facilitating dispersal, but the appropriate size or configuration of the dispersal corridors needed to facilitate connectivity for many species is unknown. The rangewide plan (Van Pelt *et al.* 2013, p. 77), delineates connectivity zones based on criteria that provide a foundation upon which to base suitable dispersal corridors for the lesser prairie-chicken. Suitable dispersal corridors should contain at least 40 percent good to high quality habitat, be at least 8 km (5 mi) wide and contain few, if any, features, such as roads or transmission lines, that function as barriers to movement. Additionally, suitable habitat patches within a corridor should be separated by no more than 3.2 km (2 mi). In the absence of specific studies that define suitable dispersal corridors, the criteria provided in the rangewide plan (Van Pelt *et al.* 2013, p. 77) provide suitable guidelines that can be used to facilitate development of appropriate dispersal corridors.

Causes of Habitat Fragmentation Within Lesser Prairie-Chicken Range

A number of factors can cause or contribute to habitat fragmentation. Generally, fragmentation can result from the direct loss or alteration of habitat due to conversion to other land uses or from habitat alteration which indirectly leaves the habitat in such a condition that the remaining habitat no longer functionally provides the preferred life-history requisites needed to support breeding or feeding or to provide shelter. Functional habitat impacts can include disturbances that alter the existing successional state of a given area, create a physical barrier that precludes use of otherwise suitable areas, or triggers a behavioral response by the organism such that otherwise suitable habitats are abandoned or no longer used. Fragmentation tends to be most significant when human developments are dispersed across the landscape rather than being concentrated in fewer areas. Anthropogenic causes of fragmentation tend to be more significant than natural causes because the organism has likely evolved in concert with the natural causes.

Initially, settlement and associated land use changes had the greatest influence on fragmentation in the Great Plains. Knopf (1994, p. 249) identified four universal changes that occurred in Great Plains grasslands postsettlement, based on an evaluation of observations made by early explorers. These changes were identified as a change in the native grazing community, cultivation, wetland conversion, and encroachment of woody vegetation.

EuroAmerican settlement of much of the Great Plains began in earnest with passage of the Homestead Act of 1862.

Samson *et al.* (2004, p. 7) estimated that about 1.5 million people acquired over 800,000 sq km (309,000 sq mi) of land through the Homestead Act, mostly within the Great Plains region. Continued settlement and agricultural development of the Great Plains during the late 1800s and early 1900s, facilitated by railroad routes and cattle and wagon trails, contributed to conversion and fragmentation of once open native prairies into an assortment of varied land uses and habitat types such as cultivated cropland, expanding cedar woodlands, and remnants of grassland (NRCS 1999, p. 1; Coppedge *et al.* 2001, p. 47; Brennan and Kuvlesky 2005, pp. 2–3). This initial settlement altered the physical characteristics of the Great Plains and the biodiversity found in the prairies (Samson *et al.* 2004, p. 7). Changes in agricultural practices and advancement of modern machinery combined with an increasing demand for agricultural products continued to spur conversion of native prairies well into the mid-1900s (NRCS 1999a, p. 2). Increasing human population densities in rural areas of the Great Plains led to construction of housing developments as growing cities began to expand into the surrounding suburban landscapes. Development and intensification of unsuitable land uses in these urbanizing landscapes also contributed to conversion and fragmentation of grasslands, further reducing richness and abundance of avian populations (Perlut *et al.* 2008, p. 3149; Hansen *et al.* 2011, p. 826). See additional discussions related to population growth and settlement below.

Oil and gas development began during the mid to late 1800s. Eventually, invention of the automobile in the early twentieth century and its rise to prominence as the primary mode of personal transportation stimulated increased exploration and development of oil and gas (Hymel and Wolfsong 2006, p. 4). Habitat loss and fragmentation associated with access roads, drill pads, pipelines, waste pits, and other components typically connected with exploration and extraction of oil and gas are considered to be among the most significant ecological impacts from oil and gas development and the impacts often extend beyond the actual physical structures (Weller *et al.* 2002, p. 2). See the section on energy development below for related discussion.

Information on human population size and growth in the five lesser prairie-chicken States is collected by the U.S. Census Bureau, and recent trends have been reported by the USDA Economic Research Service (2013). Population size in each of the five States has grown since 1980. The percent population growth since 2010 varies from a low of 1.1 percent in Kansas to a high of 3.6 percent in Texas. Examination of growth in human populations within rural areas reveals that rural populations also have grown in every State except Kansas since 1980. In Kansas, rural population size during this period peaked in 1980.

Human population trends within the counties that encompass the estimated occupied range of the lesser prairie-chicken were inconsistent and varied considerably across the range. For example, in Colorado since 2010, human populations declined by about 1 percent in both Baca and Prowers counties but populations in both Cheyenne and Kiowa counties grew by at least 2.1 percent. However, since 1990, populations in all four counties have declined. Similar trends were observed in Oklahoma with five counties having a declining population and four showing increasing human populations since 2010. But unlike Colorado, three counties within the estimated occupied range in Oklahoma have increased in population size since 1990. In New Mexico, most, but not all, of the counties within the estimated occupied range of the lesser prairie-chicken have increased since 1990.

We used projections of human population growth, based on U.S. Census Bureau data, developed by the U.S. Forest Service for their Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) Assessment to forecast how human populations within the estimated historical and occupied ranges of the lesser prairie-chicken would change into the future. The USFS used a medium population growth scenario, taking the implications of climate change into consideration, to predict how human populations nationwide would change between 2010 and 2060 (U.S. Forest Service 2012, entire). Using the counties encompassed within the historical and estimated occupied range, we were able to determine, by range within the respective States, how human populations would be projected to change by 2060.

In Colorado within the historical range, two of the six counties were projected to experience a decline in human population while the remaining four counties were expected to see an increase in human population growth rate. The overall net gain in population size over the 50 year period was 3,490 individuals. Within the four counties located within the estimated occupied range, projected population size was predicted to decline in two counties and increase in two counties. The overall net gain in human population size within the estimated occupied range in Colorado by 2060 was 280 individuals.

In the Kansas historical range, 29 counties were projected to experience a decline in human population while the remaining 13 counties were expected to see an increase in population. The overall net gain in population size over the 50 year period in the 29 counties within the Kansas historical range was 22,376 individuals. Within just the counties located within the estimated occupied range, projected population size was predicted to decline in 24 counties and increase in 11 counties. The overall net gain in human population size within the Kansas portion of the estimated occupied range by 2060 was 39,190 individuals.

In Oklahoma, similar trends for both the historical and estimated occupied ranges were predicted. Nineteen counties within the historical range were projected to experience a decline in human population. The overall net gain in population size over the 50 year period within the estimated historical range was 85,310 individuals. Within the nine counties that comprise the estimated occupied range, projected population size was predicted to decline in seven counties and increase in two counties. The overall net gain in human population size within the Oklahoma estimated occupied range by 2060 was 5,830 individuals.

In Texas, where the largest extent of historical range occurs, human population growth was projected to be larger than those projected in the previous three States. Within the historical range, 43 counties were projected to experience a decline in human population while the remaining 51 counties were projected to see an increase in population. The overall net gain in population size over the 50 year period in the counties within the estimated historical range was 368,770 individuals. Within the estimated occupied range of Texas, human populations were projected to decline in 12 counties and increase in eight counties. The overall net gain in human population size within the estimated occupied range by 2060 was 61,780 individuals.

Population growth in New Mexico is expected to be more substantial than in the other States. Within the historical range, only two counties were projected to experience a decline in human population while the remaining nine counties were projected see an increase in population. The overall net gain in

human population size over the 50 year period in the counties within the estimated historical range was estimated to be 89,380 individuals. Within the counties located within the estimated occupied range, projected population size was predicted to decline in one county and increase in six counties. The projected overall net gain in human population size within the New Mexico portion of the estimated occupied range by 2060 was 81,690 individuals.

Overall, within the historical range human population growth is projected to experience a net increase in human population by 2060 of about 569,326 individuals or 1.2 individuals per sq km (3.2 per sq mi). The estimated occupied range is projected to experience a net increase in human population by 2060 of about 188,770 individuals or 2.3 individuals per sq km (6.04 per sq mi). Human population density, based on the projected population growth, within the estimated occupied range is projected to increase by almost double that of the entire historical range.

As human populations continue to expand, as projected, the growth is expected to alter the landscape by modifying land use patterns much like the changes that occurred during settlement of the Great Plains. Forecasts of human population growth through the year 2060 revealed that nationwide the land area encompassed by urbanization will increase by 24 million ha (59 million ac) to 35 million ha (86 million ac), depending on whether a slower or more rapid growth scenario is used in the analysis (Wear 2011, p. 14). Increases in land area under urban development are expected to result in reductions in the area that is in cropland, pastureland and rangeland. Forecasts of cropland loss vary between 7.6 million ha (19 million ac) and 11 million ha (28 million ac), depending on which growth scenario is selected. Under the scenario of intermediate levels of human population growth and strong growth in personal income, about 85 percent (9.7 million ha; 24 million ac) of the cropland losses would occur in regions along and east of the Mississippi River and in coastal areas (Wear 2011, pp. 15, 22, 24). Forecasts of rangeland loss vary between 3.2 million ha (8 million ac) and 4.4 million ha (12 million ac), depending on which growth scenario is selected. Colorado and Texas are projected to experience some of the greatest losses of rangeland (Wear 2011, p. 23). In general, human populations in the Great Plains are expected to remain unchanged or decline slightly by 2060, particularly in the Oklahoma and Texas panhandles and portions of western and central Kansas (Wear 2011, p. 13).

As human populations, as projected, continue to expand, particularly into rural regions outside of existing urban and suburban areas, an increasing array of human features such as powerlines, highways, secondary roads, communication towers, and other types of infrastructure necessary to support these human populations are expected to appear on the landscape (Leu *et al.* 2008, p. 1119). We believe this infrastructure tends to remain in place even if human populations decline after initial expansion. Often these developments can degrade ecosystem functions and lead to fragmentation even when the overall development footprint is relatively small.

Natural vertical features, such as trees and man-made, above ground vertical structures such as power poles, fence posts, oil and gas wells, towers, and similar developments can cause general habitat avoidance and displacement in lesser prairie-chickens and other prairie grouse (Anderson 1969, entire; Robel 2002, entire; Robel *et al.* 2004, entire; Hagen *et al.* 2004, entire; Pitman *et al.* 2005, entire; Pruett *et al.* 2009a, entire; Hagen *et al.* 2011, entire; Hovick *et al.* unpublished manuscript, entire). This avoidance behavior is presumably a behavioral response that serves to limit exposure to predation. The observed avoidance distances can be much larger than the actual footprint of the structure and appear to vary depending upon the type of structure. These structures can have significant negative impacts by contributing to further fragmentation of otherwise suitable habitats. Hovick *et al.* (unpublished manuscript under review, entire) examined the influence of several anthropogenic structures, including oil and gas infrastructure, powerlines and wind turbines on displacement behavior and survival in grouse. They conducted a meta-analysis that examined 23 different structures and found that all structure types examined resulted in displacement but oil structures and roads had the greatest impact on grouse avoidance behavior (Hovick *et al.* unpublished manuscript under review, p. 11). They also examined the effect of 17 of these structures on survival and found all of the structures examined also decreased survival in grouse, with lek attendance declining at a greater magnitude than other survival parameters measured (Hovick *et al.* unpublished manuscript under review, p. 12).

Prairie grouse, such as the lesser prairie-chicken, did not evolve with tall, vertical structures present on the landscape and, in general, have low tolerance for tall structures. As discussed in ''Altered Fire Regimes and Encroachment by Invasive, Woody Plants'' below, encroachment of trees into native grasslands preferred by lesser prairie-chickens ultimately renders otherwise suitable habitat unsuitable unless steps are taken to remove these trees. Even placement of cut trees in a pattern that resembled a wind break were observed to cause an avoidance response. Anderson (1969, pp. 640–641) observed that greater prairie-chickens abandoned lek territories when a 4-m (13-ft) tall coniferous wind break was artificially erected 52 m (170 ft) from an active lek.

Increasingly, man-made vertical structures are appearing in landscapes used by lesser prairie-chickens. The placement of these vertical structures in open grasslands represents a significant change in the species' environment and is a relatively new phenomenon over the evolutionary history of this species. The effects of these structures on the life history of prairie grouse are only beginning to be evaluated, with similar avoidance behaviors also having been observed in sage grouse (75 FR 13910, March 23, 2010).

Robel (2002, p. 23) reported that a single commercial-scale wind turbine creates a habitat avoidance zone for the greater prairie-chicken that extends as far as 1.6 km (1 mi) from the structure. Lesser prairie-chickens likely exhibit a similar response to tall structures, such as wind turbines (Pitman *et al.* 2005, pp. 1267–1268). The Lesser Prairie-Chicken Interstate Working Group (Mote *et al.* 1999, p. 27) identified the need for a contiguous block of 52 sq km (20 sq mi) of high-quality rangeland habitat to successfully maintain a local population of lesser prairie-chicken. Based on this need and the fact that the majority of remaining populations are fragmented and isolated into islands of unfragmented, open prairie habitat, the Service recommended that an 8-km (5-mi) voluntary no-construction buffer be established around prairie grouse leks to account for behavioral avoidance and to protect lesser prairie-chicken populations and habitat corridors needed for future recovery (Manville 2004, pp. 3–4). In Kansas, no lesser prairie-chickens were observed nesting or lekking within 0.8 km (0.5 mi) of a gas line compressor station, and otherwise suitable habitat was avoided within a 1.6-km (1-mi) radius of a coal-fired power plant (Pitman *et al.* 2005, pp. 1267–1268). Pitman *et al.* (2005, pp. 1267–1268) also observed that female lesser prairie-chickens selected nest sites that were significantly further from powerlines, roads, buildings, and oil and gas wellheads than would be expected at random. Specifically, they

observed that lesser prairie-chickens seldom nested or reared broods within approximately 177 m (580 ft) of oil or gas wellheads, 400 m (1,312 ft) of electrical transmission lines, 792 m (2,600 ft) of improved roads, and 1,219 m (4,000 ft) of buildings; and, the observed avoidance was likely influenced, at least in part, by disturbances such as noise and visual obstruction associated with these features. Similarly, Hagen *et al* (2004, p. 75) indicated that areas used by lesser prairie-chickens were significantly further from these same types of features than areas that were not used by lesser prairie-chickens. They concluded that the observed avoidance was likely due to potential for increased predation by raptors or due to presence of visual obstructions on the landscape (Hagen *et al.* 2004, pp. 74–75).

Robel *et al.* (2004, pp. 256–262) determined that habitat displacement associated with avoidance of certain structures by lesser prairie-chickens can be substantial, collectively exceeding 21,000 ha (53,000 ac) in a three-county area of southwestern Kansas. Using information on existing oil and gas wells, major powerlines (115 kV and larger), and existing wind turbines and proposed wind energy development in northwestern Oklahoma, Dusang (2011, p. 61) modeled the effect of these anthropogenic structures on lesser prairie-chicken habitat in Oklahoma. He estimated that existing and proposed development of these structures potentially would eliminate approximately 960,917 ha (2,374,468 ac) of nesting habitat for lesser prairie-chickens, based on what is currently known about their avoidance of these structures.

Avoidance of vertical features such as trees and transmission lines likely is due to frequent use of these structures as hunting perches by birds of prey (Hagen *et al.* 2011, p. 72). Raptors actively seek out and use power poles and similar aboveground structures in expansive grassland areas where natural perches are limited. In typical lesser prairie-chicken habitat where vegetation is low and the terrain is relatively flat, power lines and power poles provide attractive hunting, loafing, and roosting perches for many species of raptors (Steenhof *et al.* 1993, p. 27). The elevated advantage of transmission lines and power poles serve to increase a raptor's range of vision, allow for greater speed during attacks on prey, and serve as territorial markers. While the effect of avian predation on lesser prairie-chickens depends on raptor densities, as the number of hunting perches or structures to support nesting by raptors increase, the impact of avian predation will increase accordingly (see separate discussion under ''*Predation*'' below). The perception that these vertical structures are associated with predation may cause lesser prairie-chickens to avoid areas near these structures even when raptor densities are low. Sensitivity to electromagnetic fields generated by the transmission lines may be another reason lesser prairie-chickens might be avoiding these areas (Fernie and Reynolds 2005, p. 135) (see separate discussion under ''*Wind Power and Energy Transmission Operation and Development*'' below).

Where grassland patches remained, overgrazing, drought, lack of fire, woody plant and exotic grass invasions, and construction of various forms of infrastructure impacted the integrity of the remaining fragments (Brennan and Kuvlesky 2005, pp. 4–5). Domestic livestock management following settlement tended to promote more uniform grazing patterns, facilitated by construction of fences, which led to reduced heterogeneity in remaining grassland fragments (Fuhlendorf and Engle 2001, p. 626; Pillsbury *et al.* 2011, p. 2). See related discussions in the relevant sections below.

This ever-escalating fragmentation and homogenization of grasslands contributed to reductions in the overall diversity and abundance of grassland-endemic birds and caused populations of many species of grassland-obligate birds, such as the lesser prairie-chicken to decline (Coppedge *et al.* 2001, p. 48; Fuhlendorf and Engle, 2001, p. 626). Fragmentation and homogenization of grasslands is particularly detrimental for lesser prairie-chickens that typically prefer areas where individual habitat needs are in close proximity to each other. For example, in suitable habitats, desired vegetation for nesting and brood rearing typically occurs within relatively short distances of the breeding area.

Effects of Habitat Fragmentation

While much of the conversion of native grasslands to agriculture in the Great Plains was largely completed by the 1940s and has slowed in more recent decades, grassland bird populations continue to decline (With *et al.* 2008, p. 3153). Bird populations may initially appear resistant to landscape change only to decline inexorably over time because remaining grassland fragments may not be sufficient to prevent longer term decline in their populations (With *et al.* 2008, p. 3165). The decrease in patch size and increase in edges associated with fragmentation are known to have caused reduced abundance, reduced nest success, and reduced nest density in many species of grassland birds (Pillsbury *et al.* 2011, p. 2).

Habitat fragmentation has been shown to negatively impact population persistence and influence the species extinction process through several mechanisms (Wilcove *et al.* 1986, p. 246). Once fragmented, the remaining habitat fragments may be inadequate to support crucial life-history requirements (Samson 1980b, p. 297). The land-use matrix surrounding remaining suitable habitat fragments may support high densities of predators or brood parasites (organisms that rely on the nesting organism to raise their young), and the probability of recolonization of unoccupied fragments decreases as distance from the nearest suitable habitat patch increases (Wilcove *et al.* 1986, p. 248; Sisk and Battin 2002, p. 35). Invasion by undesirable plants and animals is often facilitated around the perimeter or edge of the patch, particularly where roads are present (Weller *et al.* 2002, p. 2). Additionally, as animal populations become smaller and more isolated, they are more susceptible to random (stochastic) events and reduced genetic diversity via drift and inbreeding (Keller and Waller 2002, p. 230). Population viability depends on the size and spacing of remaining fragments (Harrison and Bruna 1999, p. 226; With *et al.* 2008, p. 3153). O'Connor *et al.* (1999, p. 56) concluded that grassland birds, as a group, are particularly sensitive to habitat fragmentation, primarily due to sensitivity to fragment size. Consequently, the effects of fragmentation are the most severe on area-sensitive species (Herkert 1994, p. 468).

Area-sensitive species are those species that respond negatively to decreasing habitat patch size (Robbins 1979, p. 198; Finch 1991, p. 1. An increasing number of studies are showing that many grassland birds also are area-sensitive and have different levels of tolerance to fragmentation of their habitat (e.g., see Herkert 1994, entire; Winter and Faaborg 1999, entire). For species that are area-sensitive, once a particular fragment or patch of suitable habitat falls below the optimum size, populations decline or disappear entirely even though suitable habitat may continue to exist within the larger landscape. When the overall amount of suitable habitat within the landscape increases, the patch size an individual area-sensitive bird may utilize generally tends to be smaller (Horn and Koford 2006, p. 115), but they appear to maintain some minimum threshold

(Fahrig 1997, p. 608; NRCS 1999a, p. 4). Winter and Faaborg (1999, pp. 1429, 1436) reported that the greater prairie-chicken was the most area-sensitive species observed during their study, and this species was not documented from any fragment of native prairie less than 130 ha (320 ac) in size. Sensitivity of lesser prairie-chickens likely is very similar to that of greater prairie-chickens; a more detailed discussion is provided below.

Franklin *et al.* (2002, p. 23) described fragmentation in a biological context. According to Franklin *et al.* (2002, p. 23) habitat fragmentation occurs when occupancy, reproduction, or survival of the organism has been affected. The effects of fragmentation can be influenced by the extent, pattern, scale, and mechanism of fragmentation (Franklin *et al.* 2002, p. 27). Habitat fragmentation also can have positive, negative, or neutral effects, depending on the species (Franklin *et al.* 2002, p. 27). As a group, grouse are considered to be particularly intolerant of extensive habitat fragmentation due to their short dispersal distances, specialized food habits, generalized antipredator strategies, and other life-history characteristics (Braun *et al.* 1994, p. 432). Lesser prairie-chickens in particular have a low adaptability to habitat alteration, particularly activities that fragment suitable habitat into smaller, less valuable pieces. Lesser prairie-chickens use habitat patches with different vegetative structure dependent upon a particular phase in their life cycle, and the loss of even one of these structural components can significantly reduce the overall value of that habitat to lesser prairie-chickens. Fragmentation not only reduces the size of a given patch but also can reduce the interspersion or variation within a larger habitat patch, possibly eliminating important structural features crucial to lesser prairie-chickens.

Lesser prairie-chickens and other species of prairie grouse require large expanses (i.e., 1,024 to 10,000 ha (2,530 to 24,710 ac)) of interconnected, ecologically diverse native rangelands to complete their life cycles (Woodward *et al.* 2001, p. 261; Flock 2002, p. 130; Fuhlendorf *et al.* 2002a, p. 618; Davis 2005, p. 3), more so than almost any other grassland bird (Johnsgard 2002, p. 124). Davis (2005, p. 3) states that the combined home range of all lesser prairie-chickens at a single lek is about 49 sq km (19 sq mi or 12,100 ac). According to Applegate and Riley (1998, p. 14), a viable lek will have at least six males accompanied by an almost equal number of females. Because leks need to be clustered so that interchange among different leks can occur in order to reduce interbreeding problems on any individual lek, they considered a healthy population to consist of a complex of six to ten viable leks (Applegate and Riley 1998, p. 14). Consequently, most grouse experts consider the lesser prairie-chicken to be an area-sensitive species, and large areas of intact, unfragmented landscapes of suitable mixed-grass, short-grass, and shrubland habitats are considered essential to sustain functional, self-sustaining populations (Giesen 1998, pp. 3–4; Bidwell *et al.* 2002, pp. 1–3; Hagen *et al.* 2004, pp. 71, 76–77). Therefore, areas of otherwise suitable habitat can readily become functionally unusable due to the effects of fragmentation.

The lesser prairie-chicken has several life-history traits common to most species of grouse that influence its vulnerability to the impacts of fragmentation, including short lifespan, low nest success, strong site fidelity, low mobility, and a relatively small home range. This vulnerability is heightened by the considerable extent of habitat loss that has already occurred over the range of the species. The resiliency and redundancy of these populations have been reduced as the number of populations that formerly occupied the known historical range were lost or became more isolated by fragmentation of that range. Isolation of remaining populations will continue to the extent these populations remain or grow more separated by areas of unsuitable habitat, particularly considering their limited dispersal capabilities (Robb and Schroeder 2005, p. 36).

Fragmentation is becoming a particularly significant ecological driver in lesser prairie-chicken habitats, and several factors are known to be contributing to the observed destruction, modification, or curtailment of the lesser prairie-chicken's habitat or range. Extensive grassland and untilled rangeland habitats historically used by lesser prairie-chickens have become increasingly scarce, and remaining areas of these habitat types continue to be degraded or fragmented by changing land uses. The loss and fragmentation of the mixed-grass, short-grass, and shrubland habitats preferred by lesser prairie-chickens has contributed to a significant reduction in the extent of the estimated occupied range that is inhabited by lesser prairie-chickens. Based on the cooperative mapping efforts led by the Playa Lakes Joint Venture and Lesser Prairie-Chicken Interstate Working Group, lesser prairie-chickens are estimated to now occupy only about 16 percent of their estimated historical range. What habitat remains is now highly fragmented (Hagen *et al.* 2011, p. 64). See previous discussion above in ''Current Range and Distribution'' for additional detail.

Several pervasive factors, such as conversion of native grasslands to cultivated agriculture; change in the historical grazing and fire regime; tree invasion and brush encroachment; oil, gas, and wind energy development; and road and highway expansion have been implicated in not only permanently altering the Great Plains landscape but in specifically causing much of the observed loss, alteration, and fragmentation of lesser prairie-chicken habitat (Hagen and Giesen 2005, np.; Elmore *et al.* 2009, pp. 2, 10–11; Hagen *et al.* 2011, p. 64). Additionally, lesser prairie-chickens actively avoid areas of human activity and noise or areas that contain certain vertical features, such as buildings, oil or gas wellheads and transmission lines (Robel *et al.* 2004, pp. 260–262; Pitman *et al.* 2005, pp. 1267–1268; Hagen *et al.* 2011, p. 70–71). Avoidance of vertical features such as trees and transmission lines likely is due to frequent use of these structures as hunting perches by birds of prey (Hagen *et al.* 2011, p. 72). .

Oil and gas development activities, particularly drilling and road and highway construction, also contribute to surface fragmentation of lesser prairie-chicken habitat for many of the same reasons observed with other artificial structures (Hunt and Best 2004, p. 92). The incidence of oil and gas exploration has been rapidly expanding within the range of the lesser prairie-chicken. A more thorough discussion of oil and gas activities within the range of the lesser prairie-chicken is discussed below.

Many of the remaining habitat fragments and adjoining land use types subsequently fail to meet important habitat requirements for lesser prairie-chickens. Other human-induced developments, such as buildings, fences, and many types of vertical structures, which may have an overall smaller physical development footprint per unit area, serve to functionally fragment otherwise seemingly suitable habitat; this causes lesser prairie-chickens to cease or considerably reduce their use of habitat patches impacted by these developments (Hagen *et al.* 2011 pp. 70–71). As the intervening matrix between the remaining fragments of suitable habitat becomes less suitable for the lesser prairie-chicken, dispersal patterns can be disrupted, effectively isolating remaining islands of habitat. These

isolated fragments then become less resilient to the effects of change in the overall landscape and likely will be more prone to localized extinctions. The collective influence of habitat loss, fragmentation, and disturbance effectively reduces the size and suitability of the remaining habitat patches. Pitman *et al.* (2005, p. 1267) calculated that nesting avoidance at the distances they observed would effectively eliminate some 53 percent (7,114 ha; 17,579 ac) of otherwise suitable nesting habitat within their study area in southwestern Kansas. Once the remaining habitat patches fall below the minimum size required by individual lesser prairie-chickens, these patches become uninhabitable even though they may otherwise provide optimum habitat characteristics. Although a minimum patch size per individual has not been established, and will vary with the quality of the habitat, studies and expert opinion, including those regarding greater prairie-chickens, suggest that the minimum patch size is likely to exceed 100 ha (250 acres) per individual (Samson 1980b, p. 295; Winter and Faaborg 1999, pp. 1429, 1436; Davis 2005, p. 3). Specifically for lesser prairie-chickens, Giesen (1998, p. 11) and Taylor and Guthery (1980b, p. 522) reported home ranges of individual birds varied from 211 ha (512 ac) to 1,945 ha (4,806 ac) in size.

Fragmentation poses a threat to the persistence of local lesser prairie-chicken populations through many of the same mechanisms identified for other species of grassland birds. Factors such as habitat dispersion and the extent of habitat change, including patch size, edge density, and total rate of landscape change influence juxtaposition and size of remaining patches of rangeland such that they may no longer be large enough to support populations (Samson 1980b, p. 297; Woodward *et al.* 2001, pp. 269–272; Fuhlendorf *et al.* 2002a, pp. 623–626). Additionally, necessary habitat heterogeneity may be lost, and habitat patches may accommodate high densities of predators. Ultimately, lesser prairie-chicken interchange among suitable patches of habitat may decrease, possibly affecting population and genetic viability (Wilcove *et al.* 1986, pp. 251–252; Knopf 1996, p. 144). Predation can have a major impact on lesser prairie-chicken demography, particularly during the nesting and brood-rearing seasons (Hagen et al. 2007, p. 524). Patten *et al.* (2005b, p. 247) concluded that habitat fragmentation, at least in Oklahoma, markedly decreases the probability of long-term population persistence in lesser prairie-chickens.

Many of the biological factors affecting the persistence of lesser prairie-chickens are exacerbated by the effects of habitat fragmentation. For example, human population growth and the resultant accumulation of infrastructure such as roads, buildings, communication towers, and powerlines contribute to fragmentation. We expect that construction of vertical infrastructure such as transmission lines will continue to increase into the future, particularly given the increasing development of energy resources and urban areas (see ''*Wind Power and Energy Transmission Operation and Development*'' below). Where this infrastructure is placed in occupied lesser prairie-chicken habitats, the lesser prairie-chicken likely will be negatively affected. As the density and distribution of human development continues in the future, direct and functional fragmentation of the landscape will continue. The resultant fragmentation is detrimental to lesser prairie-chickens because they rely on large, expansive areas of contiguous native grassland to complete their life cycle. Given the large areas of contiguous grassland needed by lesser prairie-chickens, we expect that many of these types of developments anticipated in the future will further fragment remaining blocks of suitable habitat and reduce the likelihood of persistence of lesser prairie-chickens over the long term. Long-term persistence is reduced when the suitability of the remaining habitat patches decline, further contributing to the scarcity of suitable contiguous blocks of habitat and resulting in increased human disturbance as parcel size declines. Human populations are increasing throughout the range of the lesser prairie-chicken, and we expect this trend to continue. Given the demographic and economic trends observed over the past several decades, residential development will continue.

The cumulative influence of habitat loss and fragmentation on lesser prairie-chicken distribution is readily apparent at the regional scale. Lesser prairie-chicken populations in eastern New Mexico and the western Texas Panhandle are isolated from the remaining populations in Colorado, Kansas, and Oklahoma. On a smaller, landscape scale, core populations of lesser prairie-chickens within the individual States are isolated from other nearby populations by areas of unsuitable land uses (Robb and Schroeder 2005, p. 16). Then, at the local level within a particular core area of occupied habitat, patches of suitable habitat have been isolated from other suitable habitats by varying degrees of unsuitable land uses. Very few large, intact patches of suitable habitat remain within the historically occupied landscape.

We conducted two analyses of fragmentation. The first analysis was conducted in 2012 prior to publication of the proposed rule; this was a spatial analysis of the extent of fragmentation within the estimated occupied range of the lesser prairie-chicken. Infrastructure features such as roads, transmission lines, airports, cities and similar populated areas, oil and gas wells, and other vertical features such as communication towers and wind turbines were delineated. These features were buffered by known avoidance distances and compared with likely lesser prairie-chicken habitat such as that derived from the Southern Great Plains Crucial Habitat Tool and 2008 LandFire vegetation cover types. Based on this analysis, 99.8 percent of the suitable habitat patches were less than 2,023 ha (5,000 ac) in size. Our analysis revealed only 71 patches that were equal to, or larger than, 10,117 ha (25,000 ac) exist within the entire five-state estimated occupied range. Of the patches over 10,117 ha (25,000 ac), all were impacted by fragmenting features, just not to the extent that the patch was fragmented into a smaller sized patch. For example, oil and gas wells or vertical features like wind turbines may occur within these large patches but don't create a hard edge or barrier completely separating one patch from another; rather, these types of fragmenting features may create a mosaic of unsuitable lesser prairie-chicken habitat within the large patch, thereby affecting the habitat quality of the area.

The Service's 2012 spatial analysis was a conservative estimate of the extent of fragmentation within the estimated occupied range. We only used readily available datasets. Some datasets were unavailable, such as the extent of fences, and other infrastructural features were not fully captured because our datasets were incomplete for those features. Unfortunately, a more precise quantification of the impact of habitat loss and alteration on persistence of the lesser prairie-chicken is complicated by a variety of factors including time lags in response to habitat changes and a lack of detailed historical information on habitat conditions.

To better quantify the extent of fragmentation within the estimated occupied range using the most recent data sets we could obtain and the buffer distances reported in the rangewide

plan (Van Pelt *et al.* 2013, p. 95), we conducted a second spatial analysis of fragmentation during preparation of the final rule. We used existing data sources to identify natural grass and shrubland landcover types within the estimated occupied range. This data was used in the analysis to depict potential suitable vegetation where lesser prairie-chickens may occur but does not necessarily identify existing lesser prairie-chicken habitat or correlate with known lek locations. We took this approach because the more refined data sets do not yet exist to our knowledge. We then added the buffered existing data sets on threats, which included roads, developed areas, oil and gas wells, vertical structures, and transmission lines. This analysis served to quantify spatial information on the scope and scale of fragmentation and intactness of the potential suitable vegetation landcover types within the estimated occupied range. Based on this analysis, we found that 128,525 patches encompassing 3,562,168 ha (8,802,290.4 ac) of potential suitable vegetation exists within the estimated occupied range. Table 3, below, displays the breakdown in size and area of those patches. The patch size ranges we analyzed are based on the information provided in the discussion of minimum sizes of habitat blocks provided in the rangewide plan (Van Pelt *et al.* 2013, p. 19).

TABLE 3—POTENTIAL SUITABLE VEGETATION PATCH SIZE ANALYSIS RESULTS

Patch size	Number of patches	Total area of patches
Less than 486 ha (1,200 ac)	127,190	1,588,262.4 ha (3,924,681.8 ac).
486–6,474 ha (1,200–15,999 ac)	1,302	1,636,012 ha (4,042,673.7 ac).
6,475–8,497 ha (16,000–20,999 ac)	13	96,761.4 ha (239,102.6 ac).
Greater than 8,498 ha (21,000 ac)	20	241,124.8 ha (595,832.3 ac).
TOTAL	128,525	3,562,168 ha (8,802,290.4 ac).

When we conducted the second spatial analysis of fragmentation during preparation of the final rule, we also prepared a proximity analysis to help us achieve a better sense of how the various patches in the natural grass and shrubland landcover types relate to each other on the landscape. The proximity analysis groups individual patches, as described above, that are only separated by rural roads. These rural roads fragment the grass and shrub landscape, but they may not always prevent the species from moving between patches. Groups of patches (or remaining individual patches) under 64.7 ha (160 ac) were not included in this analysis. Because these areas were not included, the proximity model accounts for only 37 percent of all patches mapped in the patch analysis (47,157 patches in the proximity analysis compared to 128,525 patches in the patch analysis), but it also accounts for 93 percent of the total patch size acreage. Table 4, below, displays the breakdown in size and area of the various proximity groups (groups of patches).

TABLE 4—POTENTIAL SUITABLE VEGETATION PROXIMITY SIZE ANALYSIS RESULTS

Proximity group	Count	Individual patches within group	Acreage
64.7–485 ha (160–1,199 ac)	1,219	3,122	173,705.3 ha (429,235.2 ac).
485–6,474 ha (1,200–15,999 ac)	302	9,054	529,566.3 ha (1,308,586.9 ac).
6,475–8,497 ha (16,000–20,999 ac)	11	1,172	78,718.9 ha (194,518.7 ac).
8,498–20,234 ha (21,000–49,999 ac)	37	9,685	511,464.9 ha (1,263,857.4 ac).
20,234–40,468 ha (50,000–99,999 ac)	19	7,162	545,478.0 ha (1,347,905.6 ac).
Greater than 40,468 ha (100,000 ac)	22	16,962	1,481,324.0 ha (3,660,431.2 ac).
TOTAL	1,610	47,157	3,562,168 ha (8,204,535.0 ac).

In summary, habitat fragmentation is an ongoing threat that is occurring throughout the estimated occupied range of the lesser prairie-chicken. While 127,190 patches of potentially suitable vegetation are less than 486 ha (1,200 ac), only 20 patches of potentially suitable vegetation greater than 8,498 ha (21,000 ac) remain. Similarly, much of the historical range is disjunct and separated by large expanses of unsuitable habitat. In comparison to the patch size analysis, the proximity analysis shows that there are 1,219 proximity groups that are less than 4856 ha (1,200 ac) and 78 proximity groups that are greater than 8,498 ha (21,000 ac). Fragmentation impacts the lesser prairie-chicken by altering the juxtaposition of suitable habitat patches, by reducing the size of the available habitat patches causing those patches to be smaller than necessary to support stable to expanding populations, reducing the quality of the remaining habitat patches, eliminating the habitat heterogeneity needed to sustain all life history requirements of the species, facilitating increased density of predators that leads to increased rates of predation, and impacting the ability of lesser prairie-chickens to disperse between suitable patches of habitat. Once fragmented, most of the factors contributing to habitat fragmentation cannot be reversed and the effects are cumulative. Many types of human developments likely will exist for extended time periods and will have a significant, lasting adverse influence on persistence of lesser prairie-chickens. Therefore, current and future habitat fragmentation is a threat to the lesser prairie-chicken. In many of the sections that follow, we will examine in more detail the various causes of habitat fragmentation we identified within the estimated occupied range of the five States that support lesser prairie-chickens.

Habitat Conversion for Agriculture

At the time the lesser prairie-chicken was determined to be taxonomically

distinct from the greater prairie-chicken in 1885, much of the historical range was already being altered as settlement of the Great Plains progressed. EuroAmerican settlement in New Mexico and Texas began prior to the 1700s, and at least one trading post already had been established in Colorado by 1825 (Coulson and Joyce 2003, pp. 34, 41, 44). Kansas had become a territory by 1854 and had already experienced an influx of settlers due to establishment of the Santa Fe Trail in 1821 (Coulson and Joyce 2003, p. 37). Western Oklahoma was the last area to experience extensive settlement with the start of the land run in 1889.

Settlement, as previously discussed, brought about many changes within the historical range of the lesser prairie-chicken. Between 1915 and 1925, considerable areas of prairie had been plowed in the Great Plains and planted to wheat (Laycock 1987, p. 4). By the 1930s, the lesser prairie-chicken had begun to disappear from areas where it had been considered abundant with populations nearing extirpation in Colorado, Kansas, and New Mexico, and markedly reduced in Oklahoma and Texas (Davison 1940, p.62; Lee 1950, p.475; Baker 1953, p.8; Oberholser 1974, p. 268; Crawford 1980, p. 2). Several experts on the lesser prairie-chicken identified conversion of native sand sagebrush and shinnery oak rangeland to cultivated agriculture as an important factor in the decline of lesser prairie-chicken populations (Copelin 1963, p. 8; Jackson and DeArment 1963, p. 733; Crawford and Bolen 1976a, p. 102; Crawford 1980, p. 2; Taylor and Guthery 1980b, p. 2; Braun *et al.* 1994, pp. 429, 432–433; Mote *et al.* 1999, p. 3). By the 1930s, Bent (1932, pp. 283–284) concluded that extensive cultivation and overgrazing had already caused the species to disappear from portions of the historical range where lesser prairie-chickens had once been abundant. Additional areas of previously unbroken grassland were brought into cultivation in the 1940s, 1970s, and 1980s (Laycock 1987, pp. 4–5; Laycock 1991, p. 2). Bragg and Steuter (1996, p. 61) estimated that by 1993, only 8 percent of the bluestem-grama association and 58 percent of the mesquite-buffalo grass association, as described by Kuchler (1964, entire), remained.

As the amount of native grasslands and untilled native rangeland declined in response to increasing settlement, the amount of suitable habitat capable of supporting lesser prairie-chicken populations declined accordingly. Correspondingly, as the amount of available suitable habitat diminished, carrying capacity was reduced and the number of lesser prairie-chickens declined. Although the literature supports that lesser prairie-chicken populations have experienced population declines and were nearly extirpated in Colorado, Kansas, and New Mexico, precisely quantifying the degree to which these settlement-induced impacts occurred is complicated by a lack of solid and consistent historical information on lesser prairie-chicken population size and extent of suitable habitat throughout the species' range. Additionally, because cultivated grain crops may have provided increased or more dependable winter food supplies (Braun *et al.* 1994, p. 429), the initial conversion of smaller patches of native prairie to cultivation may have been temporarily beneficial to the short-term needs of the species. Sharpe (1968, pp. 46–50) believed that the presence of cultivated grains may have facilitated the temporary occurrence of lesser prairie-chickens in Nebraska. However, landscapes having greater than 20 to 37 percent cultivated grains may not support stable lesser prairie-chicken populations (Crawford and Bolen 1976a, p. 102). While lesser prairie-chickens may forage in agricultural croplands, they avoid landscapes dominated by cultivated agriculture, particularly where small grains are not the dominant crop (Crawford and Bolen 1976a, p. 102). Areas of cropland do not provide adequate year-round food or cover for lesser prairie-chickens.

Overall, the amount of land used for crop production nationally has remained relatively stable over the last 100 years although the distribution and composition have varied (Lubowski *et al.* 2006, p. 6; Sylvester *et al.* 2013, p. 13). As cultivated land is converted to urbanization and other non-agricultural uses, new land is being brought into cultivation helping to sustain the relatively constant amount of cropland in existence over that period. Nationally, the amount of cropland that was converted to urban uses between 1982 and 1997 was about 1.5 percent (Lubowski *et al.* 2006, p. 3). During that same period nationally, about 24 percent of cultivated cropland was converted to less intensive uses such as pasture, forest and CRP (Lubowski *et al.* 2006, p. 3). The impact of CRP was most influential in the Great Plains States, particularly Colorado, Kansas, Oklahoma and Texas, which have most of the existing CRP lands (Lubowski *et al.* 2006, p. 50).

In our June 7, 1998, 12-month finding for the lesser prairie-chicken (63 FR 31400), we attempted to assess the regional loss of native rangeland using data available through the National Resources Inventory of the USDA NRCS. However, very limited information on lesser prairie-chicken status was available to us prior to 1982. When we examined the 1992 National Resources Inventory Summary Report, we were able to estimate the change in rangeland acreage between 1982 and 1992 by each State within the range of the lesser prairie-chicken. When the trends were examined statewide, each of the five States within the range of the lesser prairie-chicken showed a decline in the amount of rangeland acreage over that time period, indicating that conversion of lesser prairie-chicken habitat likely continued to occur since the 1980s. In assessing the change specifically within areas inhabited by lesser prairie-chickens, we then narrowed our analysis to just those counties where lesser prairie-chickens were known to occur. That analysis, which was based on the information available at that time, used a much smaller extent of estimated occupied range than likely occurred at that time. The analysis of the estimate change in rangeland acreage between 1982 and 1992, for counties specifically within lesser prairie-chicken range, did not demonstrate a statistically significant change, possibly due to small sample size and large variation about the mean. In this analysis, the data for the entire county was used without restricting the analysis to just those areas determined to be within the estimated historical and occupied ranges. A more recent, area-sensitive analysis was needed.

Although a more recent analysis of the Natural Resources Inventory information was desired, we were unable to obtain specific county-by-county information because the NRCS no longer releases county-level information. Release of Natural Resources Inventory results is guided by NRCS policy and is in accordance with Office of Management and Budget and USDA Quality of Information Guidelines developed in 2001. NRCS releases Natural Resources Inventory estimates only when they meet statistical standards and are scientifically credible in accordance with these policies. In general, the Natural Resources Inventory survey system was not developed to provide acceptable estimates for areas as small as counties but rather for analyses conducted at the national, regional, and state levels, and for certain sub-state regions (Harper 2012).

We then attempted to use the 1992 National Land Cover Data (NLCD) information to estimate the extent and change in certain land cover types. The

NLCD was the first land-cover mapping project that was national in scope and is based on images from the Landsat thematic mapper. No other national land-cover mapping program had previously been undertaken, despite the availability of Landsat thematic mapper information since 1984. The 1992 NLCD provides information on 21 different land cover classes at a 30-meter resolution. Based on the 1992 NLCD, and confining our analysis to just the estimated known historical and occupied ranges, we estimated that there were 137,073.6 sq km (52,924.4 sq mi) of cultivated cropland in the entire historical range and 16,436.9 sq km (6,346.3 sq mi) in the estimated occupied range. Based on these estimates, 29.35 percent of the estimated historical range is in cultivated cropland, and 23.28 percent of the estimated occupied range is in cultivated cropland. This includes areas planted to row crops, such as corn and cotton, small grains such as wheat and *Hordeum vulgar*e (barley), and fallow cultivated areas that had visible vegetation at the time of the imagery.

Estimating the extent of untilled rangeland is slightly more complicated. The extent of grassland areas dominated by native grasses and forbs could be determined in a manner similar to that for cultivated cropland. We estimated from the 1992 NLCD that there were 207,846 sq km (80,250 sq mi) of grassland within the entire historical range, with only 49,000 sq km (18,919 sq mi) of grassland in the estimated occupied range. Based on these estimates, 44.51 percent of the estimated historical range and 69.4 percent of the estimated occupied range is in grassland cover. However, the extent of shrubland also must be included in the analysis because areas classified as shrubland (i.e., areas having a canopy cover of greater than 25 percent) are used by lesser prairie-chicken, such as shinnery oak grasslands, and also may be grazed by livestock. We estimated that there were 92,799 sq km (35,830 sq mi) of shrubland within the entire historical range with 4,439 sq km (1,714 sq mi) of shrubland in the estimated occupied range, based on the 1992 NLCD. Based on these estimates, 19.87 percent of the estimated historical range and 6.29 percent of the estimated occupied range is in shrubland.

These values can then be compared with those available through the 2006 NLCD information to provide a rough approximation of the change in land use since 1992. In contrast to the 1992 NLCD, the 2006 NLCD provides information on only 16 different land cover classes at a 30-meter resolution. Based on this dataset, and confining our analysis to just the known estimated historical and occupied ranges, we estimated that there were 126,579 sq km (48,872 sq mi) of cultivated cropland in the entire estimated historical range and 19,588 sq km (7,563 sq mi) in the estimated occupied range. Based on these results, 27.1 percent of the estimated historical range and 27.74 percent of the estimated occupied range is cultivated cropland. This cover type consists of any areas used annually to produce a crop and includes any land that is being actively tilled. Estimating the extent of untilled rangeland is conducted similarly to that for 1992. Using the 2006 NLCD, we estimated that there were 163,011 sq km (62,939 sq mi) of grassland within the entire estimated historical range with 42,728 sq km (16,497 sq mi) of grassland in the estimated occupied range. These results show that grasslands comprise 34.91 percent of the estimated historical range and 60.52 percent of the estimated occupied range. In 2006, the shrubland cover type was replaced by a shrub-scrub cover type. This new cover type was defined as the areas dominated by shrubs less than 5 m (16 ft) tall with a canopy cover of greater than 20 percent. We estimated that there were 146,818 sq km (56,686 sq mi) of shrub/scrub within the entire historical range, with 10,291 sq km (3,973 sq mi) of shrub/scrub in the estimated occupied range. Based on these results, shrub/scrub cover constitutes 31.44 percent of the estimated historical range and 14.58 percent of the estimated occupied range.

Despite the difference in the classification of land cover between 1992 and 2006, we were able to make rough comparisons between the two datasets. The extent of cropland within the entire historical range declined from 29.35 to 27.1 percent between 1992 and 2006. In contrast, the extent of cropland areas within the estimated occupied range increased from 23.28 to 27.74 percent during that same period. A comparison of the grassland and untilled rangeland indicates that the amount of grassland declined in both the estimated historical and occupied ranges between 1992 and 2006. Specifically, the extent of grassland within the estimated historical range declined from 44.51 to 34.91 percent, and the extent of grassland within the estimated occupied range declined from 69.4 to 60.52 percent. However, the amount of shrub-dominated lands increased in both the estimated historical and occupied ranges. Between 1992 and 2006, the extent of shrubland increased from 19.87 to 31.44 percent in the estimated historical range and from 6.29 to 14.58 percent in the estimated occupied range. Overall, the estimated amount of grassland and shrub-dominated land, as an indicator of untilled rangelands, increased from 64.38 to 66.34 percent over the estimated historical range during that period but declined from 75.69 to 75.1 percent within the estimated occupied range during the same period. Based on the definition of shrub/scrub cover type in 2006, the observed increases in shrub-dominated cover only could have been due to increased abundance of eastern red cedar, an invasive, woody species that tends to decrease suitability of grasslands and untilled rangelands for lesser prairie-chickens (Woodward *et al.* 2001, pp. 270–271; Fuhlendorf *et al.* 2002a, p. 625).

However, direct comparison between the 1992 and 2006 NLCD is problematic due to several factors. First, the 1992 NLCD used a different method to classify habitat than the NLCD 2001 and later versions. Second, NLCD 2001 and later versions used higher resolution digital elevation models than the 1992 NLCD. Third, the impervious surface mapping that is part of NLCD 2001 and later versions resulted in the identification of many more roads than could be identified in the 1992 NLCD. However, most of these roads were present in 1992. Fourth, the imagery for the 2001 NLCD and later versions was corrected for atmospheric effects prior to classification, whereas NLCD 1992 imagery was not. Lastly, there are subtle differences between the NLCD 1992 and NLCD 2001 land-cover legends. Additionally, we did not have an estimated occupied range for 1992. Instead we used the occupied range as is currently estimated. The comparison in the amount of cropland, grassland, and shrubland could be influenced by a change in the amount of occupied range in 1992. Due to the influence of CRP grasslands (discussed below) on the distribution of lesser prairie-chickens in Kansas, the estimated occupied range was much smaller in 1992. The Service expects that the influence of CRP establishment north of the Arkansas River in Kansas might have led to considerably more areas of grassland in 2006 as compared to 1992. However, the amount of grassland was observed to have declined within the estimated occupied range of the lesser prairie-chicken between 1992 and 2006, possibly indicating that the extent of grasslands continued to decline despite the increase in CRP grasslands.

If we restrict our analysis to Kansas alone, the extent of grasslands in 1992 was about 39,381 sq km (15,205 sq mi)

within the estimated historical range and 22,923 sq km (8850 sq mi) in the estimated occupied range. In 2006, the extent of grasslands in Kansas was 27,351 sq km (10,560 sq mi) within the historical range and 18,222 sq km (7,035 sq mi) in the estimated occupied range. While not definitive, the analysis indicates that the total extent of grasslands continued to decline even in Kansas where there has been an increase in CRP grasslands.

Other studies have attempted to determine the change in land use patterns over time, particularly with respect to conversion of grasslands/rangelands but such studies are difficult to interpret as they often do not differentiate between native and non-native grassland. Additionally, short-term fluctuations in grassland and cropland acreages often occur at regional levels that may not be apparent at larger scales and often are not indicative of long-term changes in land cover. Reeves and Mitchell (2012, p. 14), using USDA Natural Resources Inventory data, estimated that between 1982 and 2007 non-federal rangelands in the United States, excluding CRP, declined by about 3.6 million ha (8.8 million ac) or about 142,000 ha (350,000 ac) annually. More recent data were not available at the time of their analysis. The estimated losses were largely due to conversion to cultivated agriculture and residential uses (Reeves and Mitchell 2012, p. 27). Four of the five States supporting lesser prairie-chicken populations lost rangeland during this period (Reeves and Mitchell 2012, pp. 15–16). Only Texas had a net gain in the area of rangeland. New Mexico and Oklahoma lost the most rangeland and Colorado lost the least. In all four of these States, cropland increased with New Mexico and Colorado having the largest net change in cropland of the four States (Reeves and Mitchell 2012, pp. 15–16).

When the historical extent of rangelands were examined in the five lesser prairie-chicken States, the estimated percentages of historical rangelands that have been permanently converted to another land use type break down as follows: 9 percent in New Mexico, 29 percent in Colorado, 36 percent in Texas, 59 percent in Oklahoma, and 75 percent in Kansas (Reeves and Mitchell 2012, pp. 26). Although these data are not specific to the estimated occupied range of the lesser prairie-chicken, they highlight the extent and types of changes that have occurred in this region. From a more regional perspective, within the Great Plains, Sylvester *et al.* (2013, p.7) concluded that the extent of grasslands fluctuates considerably as areas alternated between grassland and cultivation in response to conservation programs, masking the overall effect on land use change. However, they reported that the amount of untilled, native grassland, as determined from aerial photography, continued to decline. Within the Western High Plains (portions of west Texas, Oklahoma Panhandle, western Kansas, eastern Colorado and western Nebraska), grassland loss to agriculture, primarily cropland, was the most common form of land cover conversion between 1973 and 1986 (Drummond 2007, p 137). Between 1986 and 2000, grassland cover increased, primarily in response to CRP, but grassland conversion to agriculture continued to occur. Drummond (2007, p. 138) estimated 686,000 ha (1.7 million ac) of grassland was converted to agriculture, primarily cropland, in this region. Increased global demand for wheat and for irrigated grains to supply local feedlots was the primary driving factor (Drummond 2007, p 140). Drummond (2007, p. 141) also thought the observed changes in land cover were influenced by switching of cropland in and out of CRP enrollment. The location of grasslands changed spatially within the region but there was little actual overall gain in grassland cover. When conservation programs, such as cropland retirements, result in no real gain or even a loss in conservation success, this effect is termed ''slippage'' and will be discussed further under the section on CRP below.

In summary, conversion of the native grassland habitats used by lesser prairie-chickens for agricultural uses has resulted in the permanent, and in some limited instances, temporary loss or alteration of habitats used for feeding, sheltering, and reproduction. Consequently, populations of lesser prairie-chickens likely have been extirpated or significantly reduced, underscoring the degree of impact that historical conversion of native grasslands has posed to the species. We expect a very large proportion of the land area that is currently in cultivated agriculture likely will remain so over the future because we have no information to suggest that agricultural practices are likely to change in the future. While persistent drought and declining supplies of water for irrigation may lead to conversion of some croplands to a noncropland state, we anticipate that the majority of cropland will continue to be used to produce a crop. Groundwater levels in the High Plains Aquifer, which underlies much of the range of the lesser prairie-chicken and supplies about 30 percent of the groundwater used for irrigation in the United States (Sophocleous 2005, p. 352), have declined considerably since the 1950s, with an area-weighted, average water level decline of 4.3 m (14.2 ft) (McGuire 2013, pp. 8, 13). Declining water levels may cause some areas of cropland to revert to grassland but most of the irrigated land likely will transition to dryland agriculture, in spite of more efficient methods of irrigation, as water supplies dwindle (Terrell *et al.* 2002, p. 35; Sophocleous 2005, p. 361; Drummond 2007, p. 142). Because much of the suitable arable lands have already been converted to cultivated agriculture, we do not expect significant additional, future habitat conversions to cultivated agriculture within the range of the lesser prairie-chicken. However, as implementation of certain agricultural conservation programs, such as the CRP, change programmatically, some continued conversion of grassland, principally CRP, back into cultivation is still expected to occur (see section ''Conservation Reserve Program'' below). Conservation Reserve Program contracts, as authorized and outlined by regulation, are of limited, temporary duration, and the program is subject to funding by Congress. We also recognize that the historical large-scale conversion of grasslands to agricultural production has resulted in fragmented grassland and shrubland habitats used by lesser prairie-chickens such that currently occupied lands are not adequate to provide for the conservation of the species into the future, particularly when cumulatively considering the threats to the lesser prairie-chicken.

Conservation Reserve Program (CRP)

The loss of lesser prairie-chicken habitat due to conversion of native grasslands to cultivated agriculture has been mitigated somewhat, at least temporarily, by the CRP. The CRP is a voluntary program administered by the USDA's FSA and was established primarily to reduce the production of surplus agricultural commodities and control soil erosion on certain croplands by converting cropped areas to a vegetative cover such as perennial grassland. Authorization and subsequent implementation of the CRP began under the 1985 Food Security Act and, since that time, has facilitated restoration of millions of acres of marginal and highly erosive cropland to grassland, shrubland, and forest habitats (Riffell and Burger 2006, p. 6). Eligibility criteria for participation in CRP have been established by the FSA and not all lands are eligible for

enrollment. Under the general signup process, lands are enrolled in CRP during designated periods using a competitive selection process. However, certain environmentally sensitive lands may be enrolled at any time under a continuous signup provision. The State Acres for Wildlife Enhancement program, previously discussed in the section highlighting Multi-State Conservation Efforts, is an example of a continuous signup program. Additional programs, such as the Conservation Reserve Enhancement Program and designation as a Conservation Priority Area can be used to target enrollment of CRP. Participating producers receive an annual rental payment for the duration of a multiyear CRP contract, usually 10 to 15 years. Cost sharing is provided to assist in the establishment of the vegetative cover and related conservation practices. Once the CRP contract expires, landowners have the option to either seek reenrollment or exit the program. Once a landowner exits the program, lands may then be converted back into cropland or other land use, or remain under a conservation cover. Laycock (1991, p. 4) believes that retention of the cropland base (base acres that are enrolled in the FSA program and are used to estimate the amount of production or dollars that are generated from the land) may be the single most important factor influencing a landowner's decision to convert CRP lands to cropland once the contract expires.

In 2009, the enrollment authority or national acreage cap for CRP was reduced from 15.9 million ha (39.2 million ac) nationwide to 12.9 million ha (32.0 million ac) through fiscal year 2012, with 1.8 million ha (4.5 million ac) allocated to targeted (continuous) signup programs. In 2014, the national acreage cap for CRP was reduced from 12.9 million ha (32.0 million ac) to 9.7 million ha (24 million ac) through fiscal year 2018. While this does not necessarily require a reduction in CRP enrollment within the range of the lesser prairie-chicken, it does indicate that funds available to enroll or reenroll CRP acres likely will decline over the next 5 years. We assume CRP administration within the lesser prairie-chicken range will be impacted by the reduction in funds or acreage caps over the next 5 years. Nationally, the land area enrolled in CRP has declined since 2006. As of July 2013, approximately 11 million ha (27 million ac) were enrolled in CRP nationwide. Within a given county, no more than 25 percent of that county's cropland acreage may be enrolled in CRP and the Wetland Reserve Program. A waiver of this acreage cap may be granted by the Secretary of Agriculture under certain circumstances. These caps influence the maximum amounts of cropland that may exist in CRP at any one time. We are unsure whether or not waivers of the county acreage cap have been granted within the estimated occupied range of the lesser prairie-chicken.

Since May of 2003, midcontract management, typically implemented in years five through seven, has been required on contracts executed since the summer of 2003 (signup period 26) and is voluntary for contracts accepted before that time. Mid-contract management practices include disking, burning, spraying, or interseeding to help establish plants and to assure an early successful plant growth stage. Typically these midcontract management activities, including actions such as prescribed burning, managed grazing, tree thinning, disking, or herbicide application to control invasive species, are intended to enhance wildlife benefits and are generally prohibited during the primary avian nesting and brood rearing season. Within the five States encompassing the estimated occupied range of the lesser prairie-chicken, the primary avian nesting and brood rearing season ends no later than July 15th and varies by State. Under CRP, haying, grazing and several other forms of limited harvest, including emergency haying and grazing, are authorized under certain conditions. Managed haying and grazing may be authorized to improve the quality and performance of the CRP cover. Emergency haying and grazing may be granted on CRP lands to provide relief to livestock producers in areas affected by drought or other natural disaster to minimize loss or culling of livestock herds. In all instances, participants are assessed a payment reduction based on the number of acres harvested. Additionally, the installation of wind turbines, windmills, wind monitoring devices, or other wind-powered generation equipment may be installed on CRP acreage on a case-by-case basis. Up to 2 ha (5 ac) of wind turbines per contract may be approved.

Lands enrolled in CRP encompass a significant portion of estimated occupied range in several lesser prairie-chicken States, but particularly in Kansas where an increase in the lesser prairie-chicken population is directly related to the amount of land that was enrolled in the CRP and planted to mixtures of native grasses. Enrollment information at the county level is publicly available from the Farm Service Agency. However, specific locations of individually enrolled CRP acreages are not publicly available. The Playa Lakes Joint Venture has an agreement with the Farm Service Agency that allows them to use available data on individual CRP allotments for conservation purposes, provided the privacy of the landowner is protected. The Playa Lakes Joint Venture, using this information, determined the extent of CRP lands within the estimated occupied range plus a 16-km (10-mi) buffer (EOR + 10, as defined in the ''Current Range and Distribution'' section, above) (McLachlan *et al.* 2011, p. 24). In conducting this analysis, they restricted their analysis to only those lands that were planted to a grass type of conservation cover and they evaluated all lands within the estimated occupied range. However, in this study the estimated occupied range of 65,012 sq km (25,101 sq mi) was based on the 2007 cooperative mapping efforts conducted by species experts from CPW, KDWPT, NMDGF, ODWC, and TPWD, in cooperation with the Playa Lakes Joint Venture; this is a smaller estimated occupied range than is currently accepted (70,602 sq km (27,259 sq mi)). Based on this analysis, Kansas was determined to have the most land enrolled in CRP with a grass cover type. Kansas had approximately 600,000 ha (1,483,027 ac) followed by Texas with an estimated 496,000 ha (1,227,695 ac) of grassland CRP. Enrolled acreages in Colorado, New Mexico, and Oklahoma were 193,064 ha (477,071 ac), 153,000 ha (379,356 ac), and 166,000 ha (410,279 ac), respectively. The amount of grass type CRP within the study area (EOR + 10) totaled just over 1.61 million ha (3.97 million ac). Based on the estimated amount of occupied habitat remaining in these States, CRP fields having a grass type of conservation cover comprise some 20.6 percent of the estimated occupied lesser prairie-chicken range in Kansas, 45.8 percent of the estimated occupied range in Colorado, and 40.9 percent of the estimated occupied range in Texas. New Mexico and Oklahoma have smaller percentages of CRP within the occupied range, 17.9 and 15.1 percent, respectively. More recently, the FSA estimated the current CRP enrollment, as of March of 2013, within the CHAT EOR + 10 to be 2.05 million ha (5.06 million ac) or about 25 percent of acreage within the CHAT EOR + 10 (FSA 2013, pp. 89, 94).

The importance of CRP acres to the lesser prairie-chicken, particularly in Kansas, is apparent. Not only do CRP lands constitute about 25 percent of the

acreage within the EOR +10 range, about 24 percent of the active lesser prairie-chicken leks may be found in or in close proximity to lands enrolled in CRP with another 22 percent of leks located within 1.6 km (1.0 mi) of CRP lands (FSA 2013, p. 84). The extent of CRP and the location of active leks serve to highlight the importance of CRP for lesser prairie-chickens. When the sizes of the CRP fields were examined, Kansas had 53 percent, on average, of the enrolled lands that constituted large habitat blocks. A large block was defined as areas that were at least 2,023 ha (5,000 ac) in size with minimal amounts of woodland, roads, and developed areas (McLachlan *et al.* 2011, p. 14). All of the other States had 15 percent or less of the enrolled CRP in a large block configuration. The importance of CRP habitat to the status and survival of lesser prairie-chicken also has been emphasized by Rodgers and Hoffman (2005, pp. 122–123). They determined that the presence of CRP lands planted with mixtures of native grasses, primarily little bluestem, switchgrass, and sideoats grama, facilitated the expansion of lesser prairie-chicken range in Colorado, Kansas, and New Mexico. The range expansion was most pronounced in Kansas and resulted in strong population increases there (Rodgers and Hoffman 2005, pp. 122–123). However, in Oklahoma, Texas, and some portions of New Mexico, many CRP fields were planted with a monoculture of introduced grasses. Between 1986 and 1991, 60 percent of the CRP planted in Oklahoma and 43 percent of the CRP planted in Texas were planted to introduced grasses (Farm Service Agency 2013, p. 87). Where introduced grasses were planted, lesser prairie-chickens did not demonstrate a range expansion or an increase in population size (Rodgers and Hoffman 2005, p. 123).

An analysis of lesser prairie-chicken habitat quality within a subsample of 1,019 CRP contracts across all five lesser prairie-chicken States was recently conducted by the Rocky Mountain Bird Observatory (Ripper and VerCauteren 2007, entire). They found that, particularly in Oklahoma and Texas, contracts executed during earlier signup periods allowed planting of monocultures of exotic grasses, such as *Bothriochloa* sp. (old-world bluestem) and *Eragrostis curvula* (weeping lovegrass), which provide poor-quality habitat for lesser prairie-chicken (Ripper and VerCauteren 2007, p. 11). Correspondingly, a high-priority conservation recommendation from this study intended to benefit lesser prairie-chickens was to convert existing CRP fields planted in exotic grasses into fields supporting taller, native grass species and to enhance the diversity of native forbs and shrubs used under these contracts. Although lesser prairie-chickens occasionally will use CRP fields planted to exotic grasses, particularly where suitable stands of native grasses are unavailable, monoculture stands of grass generally lack the habitat heterogeneity and structure preferred by lesser prairie-chickens. Subsequent program adjustments since 1991 have encouraged the planting of native grass species mixtures on new CRP enrollments. Expiring CRP fields formerly planted to monocultures of nonnative, exotic grasses can be reenrolled as native grass cover, provided at least 51 percent of the field has been established to a native grass mix. Native grass plantings now account for well over 80 percent of the cover types established on new CRP enrollments (Farm Service Agency 2013, p. 87). However, conversion of fields initially planted to old world bluestems and weeping lovegrass is difficult considering these species can readily regenerate from seed following land disturbance (Farm Service Agency 2013, p. 112).

Haying and grazing of CRP lands under both managed and emergency conditions have the potential to significantly negatively impact vegetation if the amount of forage removed is excessive and prolonged, or if livestock numbers are sufficient to contribute to soil compaction. Currently, managed haying may occur once every three years in Kansas, Oklahoma, and Texas; once every five years in New Mexico; and once every ten years in Colorado. Managed grazing frequency is currently established at once in every three years for Kansas, New Mexico, Oklahoma and Texas; and once every five years in Colorado. Older, unexpired contracts may have slightly different restrictions than those currently described. The FSA estimates that managed haying and grazing typically occurs on five percent or less of the enrolled acres within the lesser prairie-chicken range States. Acres subject to emergency haying and grazing activities are more substantial. The greatest proportion of emergency hayed or grazed lands in recent years occurred in 2012 (23 percent), 2011 (21 percent) and 2006 (12.4 percent). Emergency grazing is the predominant use, occurring on over 60 percent of the acres subject to emergency haying and grazing. Emergency grazing is of far greater concern relative to the lesser prairie-chicken, specifically considering lesser prairie-chicken habitat is sensitive to livestock grazing particularly during periods of drought (Holechek *et al.* 1982, pp. 206, 208). Additional discussion related to emergency haying and grazing is provided in the section on Drought.

Predicting the fate of CRP enrollments and their influence on the lesser prairie-chicken into the future is difficult. The expiration of a contract does not automatically trigger a change in land use and lands likely will continue to be enrolled in the program as long as the program exists and funds are available to implement the program. The future of CRP lands is dependent upon three sets of interacting factors: the long-term economies of livestock and crop production, the characteristics and attitudes of CRP owners and operators, and the direct and indirect incentives of existing and future agricultural policy (Heimlich and Kula 1990, p. 7). As human populations continue to grow, the worldwide demands for livestock and crop production are likely to continue to grow. If demand for U.S. wheat and feed grains is high, pressure to convert CRP lands back to cropland will be strong. However, in 1990, all five States encompassing the estimated occupied range of the lesser prairie-chicken were among the top 10 States expected to retain lands in grass following contract expiration (Heimlich and Kula 1990, p. 10). A survey of the attitudes of existing CRP contract holders in Kansas, where much of the existing CRP land occurs, revealed that slightly over 36 percent of landowners with an existing contract had made no plans or were uncertain about what they would do once the CRP contract expired (Diebel *et al.* 1993, p. 35). An equal percentage stated that they intended to keep lands in grass for livestock grazing (Diebel *et al.* 1993, p. 35). About 24 percent of enrolled landowners expected they would return to annual crop production in accordance with existing conservation compliance provisions (Diebel *et al.* 1993, p. 35). The participating landowners stated that market prices for crops and livestock was the most important factor influencing their decision, with availability of cost sharing for fencing and water development for livestock also being an important consideration. However, only a small percentage, about 15 percent, were willing to leave their CRP acreages in permanent cover after contract expiration where incentives were lacking (Diebel *et al.* 1993, p. 8).

Although demand for agricultural commodities and the opinions of the landowners are important, existing and future agricultural policy is expected to have the largest influence on the fate of CRP (Heimlich and Kula 1990, p.10). The CRP was most recently renewed under the Agricultural Act of 2014, which was signed by the President on February 7, 2014. The Agricultural Act of 2014 provides $5 billion annually in conservation funding through fiscal year 2018 and extends the CRP authority through 2018. Because the Agricultural Act of 2014 was just recently signed into law, the USDA will be responsible for its implementation, and their next steps include initiation of the rule-making process for many of the conservation program changes including those in CRP. Some of the changes in the CRP as a result of enactment of the new authority include:

- The reduction in the acreage cap (as mentioned earlier in this final rule);
- allowance of emergency haying and grazing use without a penalty in the rental rate paid to the landowner;
- allowance of managed haying at least every 5 years but not more than every 3 years for a 25 percent rental rate reduction;
- allowance of routine grazing no more often than once every 2 years;
- allowance of wind turbine installation with due consideration of threatened or endangered wildlife; and
- allowance for landowners to make conservation and land improvements for economic use 1 year before contract expiration.

The FSA anticipates preparation of a supplemental programmatic environmental impact statement assessing potential changes to the CRP, including the reduction of the CRP enrollment cap, in 2014 (78 FR 71561).

The possibility exists that escalating grain prices due to the potential to generate domestic energy from biofuels, such as ethanol from corn, grain sorghum, and switchgrass, combined with Federal budget reductions that reduce or eliminate CRP enrollments and renewals, will result in an unprecedented conversion of existing CRP acreage within the Great Plains back to cropland (Babcock and Hart 2008, p. 6). Between 2007 and 2013, Statewide enrollment in CRP within the five States where lesser prairie-chicken occurs decreased from 4,641,580 ha (11,469,593 ac) to 3,516,361 ha (8,689,117 ac). This reduction of 1,125,219 ha (2,780,476 ac) not only accounts for lands not re-enrolled in CRP and loss of lands due to attrition, but also accounts for new enrolled lands. The most recent CRP general signup for individual landowners began May 20, 2013, and expired June 14, 2013. Between September 30, 2013, and October 31, 2013, the FSA reported the net loss of 142,425 ha (351,939 ac) from CRP in the five States that comprise the lesser prairie-chicken estimated occupied range; these lands will be eligible for conversion back to cropland production or other uses in 2014. Of the 358,741 ha (886,468 ac) in the five States that expired from CRP enrollment on September 30, 2013, 218,162 ha (539,091 ac) were reenrolled and 140,578 ha (347,375 ac) were not reenrolled. The opportunity to reenroll or extend existing CRP contracts is generally based on the relative environmental benefits of each contract. The Agricultural Act of 2014, however, adds authority for enrollment of 809,371 ha (2 million ac) of working grasslands in CRP, thereby replacing Grassland Reserve Program contracts. Working grasslands are defined as grasslands, including improved range or pasturelands, that contain forbs or shrublands for which grazing is the predominate use. As part of this change, enrollment priority of working grasslands can be given to expiring CRP contracts.

Between 2014 and 2018 (the year the CRP authority expires under the Agricultural Act of 2014), the FSA reports that 743,805 ha (1,837,983 ac) of enrolled CRP lands of all signup types within the five States where the lesser prairie-chicken occurs will expire. It is not yet known whether or not these lands will be reenrolled in the program. More specifically, the FSA estimates that 83, 961 ha (207,471 acres) of CRP within the EOR + 10 will annually be converted back to cropland after contract termination (FSA 2013, p. 181). The FSA states that it intends to enroll an equivalent amount so there is no net loss of reserved lands. However, the FSA is uncertain as to the likelihood of maintaining a no net loss of CRP lands.

The history of the Soil Bank Program provides additional insight into the possible future outcomes of CRP. The Soil Bank Program was initiated in 1956 as a voluntary program intended to divert land from crop production by establishing a permanent vegetative cover on the contracted lands. The contracts ran for periods of three to ten years and enrollment peaked between 1960 and 1961. At the peak of the program there were 306,000 farms with about 11.6 million ha (28.7 million ac) under contract (Laycock 1991, p. 3; Heimlich and Kula, 1991, p. 17). The Great Plains supported about half of the total acreage where much of the area was seeded to perennial grasses. By the close of 1969 all of the contracts had expired and approximately 80 percent of the Soil Bank lands were back in cultivation by the mid-1970s (Laycock 1991, p. 3; Heimlich and Kula, 1991, p. 17).

Should similar large-scale loss or reductions in CRP acreages occur, either by reduced enrollments or by conversion back to cultivation upon expiration of existing contracts, the loss of CRP acreage would further diminish the amount of suitable lesser prairie-chicken habitat. This concern is particularly relevant in Kansas where CRP acreages planted to native grass mixtures facilitated an expansion of the area estimated to be occupied lesser prairie-chicken range in that State. In States that planted a predominance of CRP to exotic grasses, loss of CRP in those States would not be as significant. A reduction in CRP acreage could lead to contraction of the estimated occupied range and reduced numbers of lesser prairie-chicken rangewide and poses a threat to existing lesser prairie-chicken populations. While the CRP program has had a beneficial effect on the lesser prairie-chicken by addressing the primary threat of habitat loss and fragmentation, particularly in Kansas, the contracts are of short duration (10–15 years) and, given current government efforts to reduce the Federal budget deficit, additional significant new enrollments in CRP are not anticipated. However, we anticipate that some CRP grassland acreages would be reenrolled in the program once contracts expire, subject to the established acreage cap.

A recent analysis of CRP by the Natural Resources Conservation Service (Ungerer and Hagen, 2012, pers. comm.) revealed that between 2008 and 2011, approximately 273,160 ha (675,000 ac) of CRP contracts expired within the estimated occupied range, the majority located in Kansas. Many of those expired lands remained in grass. Values varied from a low of 72.4 percent remaining in grass in Colorado to a high of 97.5 percent in New Mexico. Kansas was estimated to have 90.2 percent of the expired acres during this period still in grass. Values for Oklahoma and Texas had not yet been determined. We expect that many of the acreages that remain in grass in New Mexico are likely composed of exotic species of grasses. Despite a small overall loss in CRP acreage, we are encouraged by the relatively high percentage of CRP that remains in grass. However, we remain concerned that the potential for significant loss of CRP acreages remains, particularly considering the lack of financial incentive for Kansas landowner and the survey of

prospective land use changes, as previously discussed above. The importance of CRP to lesser prairie-chickens, particularly in Kansas, is high and continued loss of CRP within the estimated occupied range would be detrimental to lesser prairie-chicken conservation.

We also remain concerned about the future value of these grasslands to the lesser prairie-chicken. We assume that many of these CRP grasslands that remain in grass after their contract expires could be influenced by factors addressed elsewhere in this final rule. Encroachment by woody vegetation, fencing, wind power development, and construction of associated transmission lines have the potential to reduce the value of these areas even if they continue to remain in grass. Unless specific efforts are made to target enrollment of CRP in areas important to lesser prairie-chickens, future enrollments likely will do little to reduce fragmentation or enhance connectivity between existing populations. Considering much of the existing CRP in Kansas was identified as supporting large blocks of suitable habitat, as discussed above, fracturing of these blocks into smaller, less suitable parcels by the threats identified in this final rule would reduce the value of these grasslands for lesser prairie-chickens. Additionally, Fuhlendorf *et al.* 2002b, p. 405) estimated that cropland areas that have been restored to native mixed grass prairie may take at least 30 to 50 years to fully recover from the effects of cultivation. The 10–15 year duration of CRP contracts, therefore, may not be long enough to allow the grasslands to recover from previous cultivation, thereby calling into question the long-term value of these grasslands for lesser prairie-chickens.

In summary, we recognize that lands already converted to cultivated agriculture are located throughout the estimated historical and occupied range of the lesser prairie-chicken and are, therefore, perpetuating continuing habitat fragmentation within the range of the lesser prairie-chicken. We expect that CRP will continue to provide a means of temporarily addressing this threat by restoring cropland to grassland cover and provide habitat for lesser prairie-chickens where planting mixtures and maintenance activities are appropriate. However, we expect that, in spite of the temporary benefits provided by CRP, most of the areas already in agricultural production will remain so into the future. While CRP has contributed to the restoration of grassland habitats and has influenced abundance and distribution of lesser prairie-chickens in some areas, we expect these lands to be subject to conversion back to cropland as economic conditions change in the future possibly reducing the overall benefit of the CRP to the lesser prairie-chicken. A similar conservation program, the Soil Bank, was ineffective in securing permanent gains in grassland acres over the long term. While we acknowledge the short-term conservation value of CRP, we do not anticipate that CRP, at current and anticipated funding levels, will cause significant, permanent increases in the extent of native grassland within the range of the lesser prairie-chicken (Coppedge *et al.* 2001, p. 57; Drummond 2007, p. 142). Consequently, CRP grasslands alone are not adequate to provide for the long-term persistence of the species, particularly when the known threats to the lesser prairie-chicken are considered cumulatively.

Livestock Grazing

Habitats used by the lesser prairie-chicken are naturally dominated by a diversity of drought-tolerant perennial grasses and shrubs. Grazing has long been an ecological driving force within the ecosystems of the Great Plains (Stebbins 1981, p. 84), and much of the untilled grasslands within the range of the lesser prairie-chicken continue to be grazed by livestock and other animals. The evolutionary history of the mixed-grass prairie has produced endemic bird species adapted to an ever-changing mosaic of lightly to severely grazed grasslands (Bragg and Steuter 1996, p. 54; Knopf and Samson 1997, pp. 277–279, 283). Historically the interaction of fire, drought, prairie dogs and large ungulate grazers created and maintained distinctively different plant communities in the western Great Plains that resulted in a mosaic of vegetation structure and composition that sustained lesser prairie-chickens and other grassland bird populations (Derner *et al.* 2009, p. 112). As such, grazing by domestic livestock is not inherently detrimental to lesser prairie-chicken management. For example, appropriate grazing levels or stocking rates can help ensure grass cover in brood rearing habitat is not so dense that movements of the chicks are hindered. However, grazing practices that tend to maximize livestock weight gain and production produce habitat conditions that differ in significant ways from the historical mosaic by reducing the amount of habitat in an ungrazed to lightly grazed condition. The more heavily altered conditions are less suitable for the lesser prairie-chicken (Hamerstrom and Hamerstrom 1961, pp. 289–290; Davis *et al.* 1979, pp. 56, 116; Taylor and Guthery 1980a, p. 2; Bidwell and Peoples 1991, pp. 1–2).

Livestock grazing most clearly affects lesser prairie-chickens when it alters the composition and structure of mixed-grass habitats used by the species. Domestic livestock and native ungulates differentially alter native prairie vegetation, in part through different foraging preferences (Steuter and Hidinger 1999, pp. 332–333; Towne *et al.* 2005, p. 1557). Additionally, domestic livestock grazing, particularly when confined to small pastures, often is managed in ways that produce more uniform utilization of forage and greater total utilization of forage, in comparison to conditions produced historically by free-ranging plains bison (*Bison bison*) herds. For example, grazing by domestic livestock tends to be less patchy, particularly when livestock are confined to specific pastures, creating a more uniform grass coverage and height that is not optimal for lesser prairie-chickens. Such management practices and their consequences may actually exceed the effect produced by differences in livestock forage preferences (Towne *et al.* 2005, p. 1558) but, in any case, produce an additive effect on plant community characteristics.

The effects of livestock grazing, particularly overgrazing or overutilization, are most readily observed through changes in plant community composition and other vegetative characteristics (Fleischner 1994, pp. 630–631; Stoddart *et al.* 1975, p. 267). Typical vegetative indicators include changes in the composition and proportion of desired plant species and overall reductions in forage. Plant height and density may decline, particularly when plant regeneration is hindered, and community composition shifts to show increased proportions of less desirable forage species. Stocking rate and weather account for a majority of the variability associated with plant and grazing animal production on rangelands (Briske *et al.* 2008, p. 8). Stocking rate is a function of the number of animals being grazed, land area under grazing management, and time; and, is the most consistent variable land managers have available to influence plant and animal response to grazing (Briske *et al.* 2008, pp. 5–8). Chronic intensive grazing is detrimental to plants and can be addressed by rest and deferment (periodic cessation of grazing), particularly during growing season when plant growth is often rapid. Plants need to recover following defoliation, including that caused by

grazing, in order to promote plant growth and sustainability. Low stocking rates tend to promote plant production while higher stocking rates reduce plant production by decreasing leaf area per unit ground area (Briske *et al.* 2008, pp. 8–9). Excessive stocking rates often are unsustainable over time (Briske *et al.* 2008, p. 9).

Grazing management favorable to persistence of the lesser prairie-chicken must ensure that a diversity of plants and cover types, including shrubs, remain on the landscape (Taylor and Guthery 1980a, p. 7; Bell 2005, p. 4), and that utilization levels leave sufficient cover in the spring to ensure that lesser prairie-chicken nests are adequately concealed from predators (Davis *et al.* 1979, p. 49; Wisdom 1980, p. 33; Riley *et al.* 1992, p. 386; Giesen 1994a, p. 98). Under any grazing regime, the canopy cover of preferred grasses should be at least 20 to 30 percent with variable grass heights that average no less than 15 inches (Van Pelt *et al.* 2013, pp. 75–76). Canopy cover of shrubs should be between 10 and 50 percent, depending on whether the dominant shrub is sand sagebrush or shinnery oak and whether the area is being used for nesting or brood-rearing (Van Pelt *et al.* 2013, pp. 75–76). Forb cover that exceeds 10 percent is preferred. Utilization rates (percentage of annual forage production that is harvested by the grazing livestock) will vary depending on a variety of factors but should strive to provide vegetative structure that meets the above criteria. The rangewide plan has more detailed information on appropriate habitat for lesser prairie-chickens and indicates that annual utilization rates of 33 percent or less, on average, under typical range conditions are most beneficial to lesser prairie-chickens (Van Pelt *et al.* 2013, pp. 75–76; 150).

Where grazing regimes leave limited residual cover, as described above, in the spring, protection of lesser prairie-chicken nests may be inadequate and desirable food plants can be scarce (Bent 1932, p. 280; Cannon and Knopf 1980, pp. 73–74; Crawford 1980, p. 3). Because lesser prairie-chickens depend on medium and tall grass species that are preferentially grazed by cattle, in regions of low rainfall, the habitat is easily overgrazed in regard to characteristics (i.e. medium and tall grass species) needed by lesser prairie-chickens (Hamerstrom and Hamerstrom 1961, p. 290). In addition, when grasslands are in a deteriorated condition due to overgrazing and overutilization, the soils have less water-holding capacity, and the availability of succulent vegetation and insects utilized by lesser prairie-chicken chicks is reduced. Many effects of overgrazing and overutilization on habitat quality are similar to effects produced by drought and likely are exacerbated by actual drought conditions (Davis *et al.* 1979, p. 122; Merchant 1982, pp. 31–33) (see separate discussion under ''Drought'' in ''Extreme Weather Events'' below).

Fencing is a fundamental tool of livestock management and is often essential to proper herd management. However, fencing, particularly at higher densities, can contribute to structural fragmentation of the landscape and hinder efforts to conserve native grasslands on a landscape scale (Samson *et al.* 2004, p. 11–12). Fencing and related structural fragmentation can be particularly detrimental to the lesser prairie-chicken in areas, such as western Oklahoma, where initial settlement patterns favored larger numbers of smaller parcels for individual settlers (Patten *et al.* 2005b, p. 245). Fencing large numbers of small parcels increases the density of fences on the landscape, increasing opportunities for lesser prairie-chickens to encounter fences during flight. Fencing not only contributes to direct mortality through forceful collisions during flight, but also can indirectly lead to mortality by creating hunting perches used by raptors and by facilitating corridors that may enhance movements of mammalian predators (Wolfe *et al.* 2007, pp. 96–97, 101). In addition, the presence of fence posts can cause general habitat avoidance and displacement in lesser prairie-chickens, which is presumably a behavioral response that serves to limit exposure to predation. However, not all fences present the same mortality risk to lesser prairie-chickens. Mortality risk would appear to be dependent on factors such as fencing design (height, type, number of strands), landscape topography, and proximity to habitats, particularly leks, used by lesser prairie-chickens. Other factors such as the length and density of fences also appear to influence the effects of these structures on lesser prairie-chickens. However, we are not aware of any studies on the impacts of different fencing designs and locations with respect to collision mortality in lesser prairie-chickens. Additional discussion related to impacts of collisions with fences and similar linear features are found in the *Collision Mortality* section below.

Recent rangeland management includes influential elements besides livestock species selection, grazing levels, and fencing, such as applications of fire (usually to promote forage quality for livestock) and water management regimes (usually to provide water supplies for livestock). Current grazing management strategies are commonly implemented in ways that are vastly different and less variable than historical conditions (Knopf and Sampson 1997, pp. 277–79). These practices have contributed to overall changes in the composition and structure of mixed-grass habitats, often making them less suitable for the lesser prairie-chicken. Further, the impacts of grazing are amplified during drought conditions, which limit the ability of plants to recover after being grazed by livestock.

Livestock are known to inadvertently flush lesser prairie-chickens and trample lesser prairie-chicken nests (Toole 2005, p. 27; Pitman *et al.* 2006a, pp. 27–29). This can cause direct mortality to lesser prairie-chicken eggs or chicks or may cause adults to permanently abandon their nests, again resulting in loss of young. For example, Pitman *et al.* (2006a, pp. 27–29) estimated nest loss from trampling by cattle to be about 1.9 percent of known nests. Additionally, even brief flushings of adults from nests can expose eggs and chicks to predation and extreme temperatures. Although documented, the significance of direct livestock effects on the lesser prairie-chicken is largely unknown.

Detailed, rangewide information is lacking on the extent, intensity, and forms of recent grazing, and associated effects on the lesser prairie-chicken. However, livestock grazing is widespread within the five lesser prairie-chicken States and occurs over a large portion of the area currently occupied by lesser prairie-chickens; thus, any habitat degradation resulting from livestock grazing is likely to produce population-level impacts on the lesser prairie-chicken. Kansas, Oklahoma and Texas collectively support 24 percent of all the cattle in the United States; these three States are also within the top five States for cattle numbers as of January 2013 (National Agricultural Statistics Service 2013, p. 5). Where uniform grazing regimes have left inadequate residual cover in the spring, detrimental effects to lesser prairie-chicken populations have been observed (Bent 1932, p. 280; Davis *et al.* 1979, pp. 56, 116; Cannon and Knopf 1980, pp. 73–74; Crawford 1980, p. 3; Bidwell and Peoples 1991, pp. 1–2; Riley *et al.* 1992, p. 387; Giesen 1994a, p. 97). Some studies have shown that overgrazing in specific portions of the lesser prairie-chicken's inhabited range has been detrimental to the species. Taylor and Guthery (1980a, p. 2)

believed overgrazing explained the demise of the lesser prairie-chicken in portions of Texas but thought lesser prairie-chickens could maintain low populations in some areas with high-intensity, long-term grazing. In New Mexico, Patten *et al.* (2006, pp. 11, 16) found that grazing did not have an overall influence on where lesser prairie-chickens occurred within their study areas, but there was some evidence that the species did not nest in portions of the study area subjected to cattle grazing. In some areas within lesser prairie-chicken range, long-term high-intensity grazing results in reduced availability of lightly grazed habitat available to support successful nesting (Jackson and DeArment 1963, p. 737; Davis *et al.* 1979, pp. 56, 116; Taylor and Guthery 1980a, p. 12; Davies 1992, pp. 8, 13).

In summary, domestic livestock grazing (including management practices commonly used to benefit livestock production) has altered the composition and structure of mixed-grass habitats historically used by the lesser prairie-chicken. Much of the remaining remnants of mixed-grass prairie and rangeland, while still important to the lesser prairie-chicken, exhibit conditions quite different from those that prevailed prior to EuroAmerican settlement. These changes have considerably reduced the suitability of remnant areas as habitat for lesser prairie-chickens. Where habitats are no longer suitable for lesser prairie-chicken, these areas can contribute to fragmentation within the landscape even though they may remain in native prairie. Where improper livestock grazing has degraded native grasslands and shrublands, we do not expect those areas to significantly contribute to persistence of the lesser prairie-chicken, particularly when considered cumulatively with the influence of the other known threats. However livestock grazing is not entirely detrimental to lesser prairie-chickens, provided grazing management provides habitat that is suitable for lesser prairie-chickens. When appropriately managed, livestock grazing can reduce grass density to facilitate movements of broods and enhance the production and diversity of forbs that provide insects particularly important to the diet of chicks. Thus, we conclude that livestock grazing is not a threat if conducted appropriately such that sufficient residual vegetation remains to provide cover for lesser prairie-chickens. Negative impacts from livestock grazing are also usually reversible, unlike many of the other forms of habitat loss and degradation described herein. Therefore, keeping lands in appropriately managed rangeland is a key component of lesser prairie chicken conservation.

Collision Mortality

Wire fencing is ubiquitous throughout the Great Plains as the primary means of confining livestock to ranches and pastures or excluding them from areas not intended for grazing, such as CRP lands, agricultural fields, and public roads. As a result, thousands of miles of fencing, primarily barbed wire, have been constructed throughout lesser prairie-chicken range. Like most grassland wildlife throughout the Great Plains, the lesser prairie-chicken evolved in open habitats free of vertical structures or flight hazards, such as linear wires. Until recently, unnatural linear features such as fences, power lines, and similar wire structures were seldom perceived as a significant threat at the population level (Wolfe *et al.* 2007, p. 101). Information on the influence of vertical structures is provided elsewhere in this document.

Mortality of prairie grouse caused by collisions with power lines has been occurring for decades, but the overall extent is largely unmonitored. Proximity to power lines has been associated with extirpations of Gunnison and greater sage-grouse due to collisions and predation (Wisdom *et al.* 2011, pp. 467–468). Leopold (1933, p. 353) mentions a two-cable transmission line in Iowa where the landowner would find as many as a dozen dead or injured greater prairie-chickens beneath the line annually. Prompted by recent reports of high collision rates in species of European grouse (Petty 1995, p. 3; Baines and Summers 1997, p. 941; Bevanger and Broseth 2000, p. 124; Bevanger and Broseth 2004, p. 72) and seemingly unnatural rates of mortality in some local populations of lesser prairie-chicken, the Sutton Center began to investigate collision mortality in lesser prairie-chickens. From 1999 to 2004, researchers recovered 322 carcasses of radio-marked lesser prairie-chickens in New Mexico, Oklahoma, and portions of the Texas panhandle. For lesser prairie-chickens in which the cause of death could be determined, 42 percent of mortality in Oklahoma was attributable to collisions with fences, power lines, or automobiles. In New Mexico, only 14 percent of mortality could be traced to collision. The difference in rates of observed collision between States was attributed to differences in the amount of fencing on the landscape resulting from differential land settlement patterns in the two States (Patten *et al.* 2005b, p. 245). In Oklahoma, settlement typically involved smaller areas of land ownership when compared with New Mexico, leading to a higher density of fences per unit area. Higher density of fences contributed to the higher collision rates observed in Oklahoma.

With between 14 and 42 percent of adult lesser prairie-chicken mortality currently attributable to collision with human-induced structures, Wolfe *et al.* (2007, p. 101) assert that fence collisions will negatively influence long-term population viability for lesser prairie-chickens. Precisely quantifying the scope of the impact of fence collisions rangewide is difficult due to a lack of relevant information, such as the extent and density of fencing within the estimated occupied range. However, we presume that hundreds of miles of fences are constructed or replaced annually within the estimated historical and occupied ranges of the lesser prairie-chicken, based on the extent of livestock grazing within these regions. We presume that only rarely are old fences (also see discussion in Summary of Ongoing and Future Conservation Efforts section for more information on fence removal). While we are unable to quantify the amount of new fencing being constructed, collision with fences and other linear features, such as power lines, is likely an important source of mortality for lesser prairie-chicken, but primarily in localized areas where the density of these structures on the landscape is high.

Fence collisions are known to be a significant source of mortality in other grouse. Moss (2001, p. 256) modeled the estimated future population of capercaille grouse (*Tetrao urogallus*) in Scotland and found that, by removing fence collision risks, the entire Scotland breeding population would consist of 1,300 females instead of 40 females by 2014. Similarly, recent experiments involving fence marking to increase visibility resulted in a 71 percent overall reduction in grouse collisions in Scotland (Baines and Andrew 2003, p. 174).

As previously discussed, collision and mortality risk appears to be dependent on factors such as fencing design (height, type, number of strands), length, and density, as well as landscape topography and proximity of fences to habitats used by lesser prairie-chickens. Although single-strand, electric fences may be a suitable substitute for multiple strand barbed-wire fences, and possibly lead to reduced fence collisions, we have no information demonstrating such is the case. However, marking the top two

strands of barbed-wire fences increases their visibility and may help minimize incidence of collision (Wolfe *et al.* 2009, entire).

In summary, power lines and unmarked wire fences are known to cause injury and mortality of lesser prairie-chickens, although the specific rangewide impact on lesser prairie-chickens is largely unquantified. However, the prevalence of fences and power lines within the species' range and studies showing significant impacts to other grouse species suggest these structures may have at least localized, if not widespread, detrimental effects. While some conservation programs have emphasized removal of unneeded fences, we conclude that, without substantially increased removal efforts, a majority of existing fences will remain on the landscape indefinitely because they are used to manage livestock grazing on many private lands. Existing fences likely operate cumulatively with other mechanisms described in this final rule to diminish the ability of the lesser prairie-chicken to persist, particularly in areas with a high density of fences.

Shrub Control and Eradication

Shrub control and eradication are additional forms of habitat alteration that can influence the availability and suitability of habitat for lesser prairie-chickens (Jackson and DeArment 1963, pp. 736–737). Herbicide applications (primarily 2,4-dichlorophenoxyacetic acid (2,4-D) and tebuthiuron) to reduce or eliminate shrubs from native rangelands is a common ranching practice throughout much of lesser prairie-chicken range, primarily intended to increase forage production for livestock. Through foliar (2,4-D) or pelleted (tebuthiuron) applications, these herbicides are designed to suppress or kill, by repeated defoliation, dicotyledonous plants such as forbs, shrubs, and trees, while causing no significant damage to monocotyledon plants such as grasses.

As defined here, shrub control includes efforts that are designed to have a relatively short-term, temporary effect, generally less than 4 to 5 years, on the target shrub. Eradication consists of efforts intended to have a more long-term or lasting effect on the target shrub. Control and eradication efforts have been applied to both shinnery oak and sand sagebrush dominated habitats, although most shrub control and eradication efforts are primarily focused on shinnery oak. The shinnery oak vegetation type is endemic to the southern Great Plains and is estimated to have historically covered an area of 2.3 million ha (over 5.6 million ac), although its current range has been considerably reduced through eradication (Mayes *et al.* 1998, p. 1609). The distribution of shinnery oak overlaps much of the estimated occupied lesser prairie-chicken range in New Mexico, southwestern Oklahoma, and Texas panhandle region (Peterson and Boyd 1998, p. 2). Sand sagebrush tends to be the dominant shrub in lesser prairie-chicken range in Kansas and Colorado as well as portions of northwestern Oklahoma, the northeast Texas panhandle, and northeastern New Mexico.

Control or eradication of sand sagebrush occurs within the lesser prairie-chicken range (Rodgers and Sexson 1990, p. 494), but the extent is unknown. Control or eradication of sand sagebrush appears to be more prevalent in other parts of the western United States. Other species of shrubs, such as skunkbush sumac or *Prunus angustifolia* (Chicksaw plum), also have been the target of treatment efforts. The herbicide 2,4-D has been commonly used to control sand sagebrush (Thacker et al. 2012. p. 517). Use of 2,4-D in sand sagebrush communities reduced habitat structure and sand sagebrush density and cover (Thacker *et al.* 2012. p. 518). Application of this herbicide was not found to increase the density of perennial forbs or forb species richness (Thacker *et al.* 2012. p. 518). However annual forb density did increase in pastures that were treated prior to 1985 where time since treatment allowed annual forbs to recover post treatment. Typically use of 2,4-D suppressed sand sagebrush densities for over 20 years, with no increase in the abundance of grasshoppers, an important food item for lesser prairie-chickens (Thacker *et al.* 2012. p. 520). Consequently, Thacker *et al.* (2012, p. 521) cautioned against use of 2,4-D for lesser prairie-chicken habitat management in the absence of research documenting its impacts on lesser prairie-chicken productivity, particularly when nesting cover is limited.

Shinnery oak is toxic to cattle when it first produces leaves in the spring, and it also competes with more palatable grasses and forbs for water and nutrients (Peterson and Boyd 1998, p. 8), which is why it is a common target for control and eradication efforts. In areas where *Gossypium* spp. (cotton) is grown, shinnery oak was managed to control boll weevils (*Anthonomus grandis*), which can destroy cotton crops (Slosser *et al.* 1985, entire). Boll weevils overwinter in areas where large amounts of leaf litter accumulate but tend not to overwinter in areas where grasses predominate (Slosser *et al.* 1985, p. 384). Fire is typically used to remove the leaf litter, and then tebuthiuron, an herbicide, is used to remove shinnery oak (Plains Cotton Growers 1998, pp. 2–3). Prior to the late 1990s, approximately 40,469 ha (100,000 ac) of shinnery oak in New Mexico and 404,685 ha (1,000,000 ac) of shinnery oak in Texas were lost due to the application of tebuthiuron and other herbicides for agriculture and range improvement (Peterson and Boyd 1998, p. 2).

Once shinnery oak is eradicated, it is unlikely to recolonize treated areas. Shinnery oak is a rhizomatous shrub that reproduces very slowly and does not invade previously unoccupied areas (Dhillion *et al.* 1994, p. 52). Shinnery oak rhizomes do not appear to be viable in sites where the plant was previously eradicated, even decades after treatment. While shinnery oak has been germinated successfully in a laboratory setting (Pettit 1986, pp. 1, 3), little documentation exists that shinnery oak acorns successfully germinate in the wild (Wiedeman 1960, p. 22; Dhillion *et al.* 1994, p. 52). In addition, shinnery oak produces an acorn crop in only about 3 of every 10 years (Pettit 1986, p. 1).

While lesser prairie-chickens are found in Colorado and Kansas where preferred habitats lack shinnery oak, the importance of shinnery oak as a component of lesser prairie-chicken habitat has been demonstrated by several studies (Fuhlendorf *et al.* 2002a, pp. 624–626; Bell 2005, pp. 15, 19–25). In a study conducted in west Texas, Haukos and Smith (1989, p. 625) documented strong nesting avoidance by lesser prairie-chickens of rangelands where shinnery oak had been controlled with the herbicide tebuthiuron, demonstrating a preference for habitats with a shinnery oak component. Similar behavior was confirmed by three recent studies, explained below, in New Mexico examining aspects of lesser prairie-chicken habitat use, survival, and reproduction relative to shinnery oak density and herbicide application to control shinnery oak.

First, Bell (2005, pp. 20–21) documented strong thermal selection for and dependency of lesser prairie-chicken broods on dominance of shinnery oak in shrubland habitats. In this study, lesser prairie-chicken hens and broods used sites within the shinnery oak community that had a statistically higher percent cover and greater density of shrubs. Within these sites, microclimate differed statistically between occupied and random sites, and lesser prairie-chicken survival was

statistically higher in microhabitat that was cooler, more humid, and less exposed to the wind. Survivorship was statistically higher for lesser prairie-chickens that used sites with greater than 20 percent cover of shrubs than for those choosing 10–20 percent cover; in turn, survivorship was statistically higher for lesser prairie-chickens choosing 10–20 percent cover than for those choosing less than 10 percent cover. Similarly, Copelin (1963, p. 42) stated that he believed the reason lesser prairie-chickens occurred in habitats with shrubby vegetation was due to the need for summer shade.

In a second study, Johnson *et al.* (2004, pp. 338–342) observed that shinnery oak was the most common vegetation type in lesser prairie-chicken hen home ranges. Hens were detected more often than randomly in or near pastures that had not been treated to control shinnery oak. Although hens were detected in both treated and untreated habitats in this study, 13 of 14 nests were located in untreated pastures, and all nests were located in areas dominated by shinnery oak. Areas immediately surrounding nests also had higher shrub composition than the surrounding pastures. This study suggested that treatment of shinnery oak can adversely impact nesting by lesser prairie-chickens.

Finally, a third study showed that over the course of four years and five nesting seasons, lesser prairie-chicken in the core of estimated occupied range in New Mexico distributed themselves non-randomly among shinnery oak rangelands treated and untreated with tebuthiuron (Patten *et al.* 2005a, pp. 1273–1274). Lesser prairie-chickens strongly avoided habitat blocks treated with tebuthiuron but were not statistically influenced by presence of cattle grazing. Further, herbicide treatment explained nearly 90 percent of the variation in occurrence among treated and untreated areas. Over time, radio-collared lesser prairie-chickens spent progressively less time in treated habitat blocks, with almost no use of treated pastures in the fourth year following herbicide application (25 percent in 2001, 16 percent in 2002, 3 percent in 2003, and 1 percent in 2004). Although shinnery oak is an important food source for lesser prairie-chickens, shinnery oak, particularly in the Southern High Plains, may be more important for microclimate and thermal regulation than as a food source (Grisham *et al.* 2013, entire). Grisham *et al.* (2013, p. 7) observed that hens may select shrubby areas over grasses in dry years, possibly because shrubs, such as shinnery oak, are often the first to leaf out and are less dependent on short term precipitation, providing suitable cover for lesser prairie-chicken during short term drought.

In contrast, McCleery *et al.* (2007, pp. 2135–2136) argued that the importance of shinnery oak habitats to lesser prairie-chickens has been overemphasized, primarily based on occurrence of the species in areas outside of shinnery oak dominated habitats. We agree that shinnery oak may not be a rigorously required component of lesser prairie-chicken habitat rangewide. However, we find that shrub cover is an important component of lesser prairie-chicken habitat, and shinnery oak is a key shrub in a large portion of the estimated occupied range of the species. Recently, Timmer (2012, pp. 38, 73–74) found that lesser prairie-chicken lek density peaked when approximately 50 percent of the landscape was composed of shrubland patches consisting of shrubs less than 5 m (16 ft) tall and comprising at least 20 percent of the total vegetation. Shrubs are an important component of suitable habitat and where shinnery oak occurs, lesser prairie-chickens use it both for food and cover. The loss of these habitats likely contributed to observed population declines in lesser prairie-chickens. Mixed-sand sagebrush and shinnery oak rangelands are well documented as preferred lesser prairie-chicken habitat, and long-term stability of shrubland landscapes has been shown to be particularly important to the species (Woodward *et al.* 2001, p. 271).

On BLM-managed lands, where the occurrence of the dunes sagebrush lizard and lesser prairie-chicken overlaps, their Resource Management Plan Amendment (RMPA) states that tebuthiuron may only be used in shinnery oak habitat if there is a 500-m (1,600-ft) buffer around dunes, and that no chemical treatments should occur in suitable or occupied dunes sagebrush lizard habitat (BLM 2008, pp. 4–22). In this RMPA (BLM 2008, pp. 16–17), BLM will allow spraying of shinnery oak in lesser prairie-chicken habitat where it does not overlap with the dunes sagebrush lizard. Additionally, the New Mexico State Lands Office and private land owners continue to use tebuthiuron to remove shinnery oak for cattle grazing and other agricultural purposes (75 FR 77809, December 14, 2010). In the past, the NRCS's herbicide spraying program has treated shinnery oak in at least 39 counties within shinnery oak habitat (Peterson and Boyd 1998, p. 4). Under the Lesser Prairie-chicken Initiative, the NRCS may conduct some thinning of shinnery oak but the specific extent is not enumerated. Thinning of shinnery oak is addressed under the brush management practice. Total acres estimated to be treated under the brush management practice in the shinnery oak ecosystem is 19,230 ha (47,520 ac), however, thinning is expected to be used only in limited circumstances (Shaughnessy 2013, pp. 50, 54).

The BLM, through the Restore New Mexico program, also treats mesquite with herbicides to restore grasslands to a more natural condition by reducing the extent of brush. While some improvement in livestock forage occurs, the areas are rested from grazing for two growing seasons and no increase in stocking rate is allowed. Because mesquite is not readily controlled by fire, herbicides often are necessary to treat its invasion. The BLM has treated approximately 157,018 ha (388,000 ac) and has plans to treat an additional 140,425 ha (347,000 ac) (Watts 2014, pers. comm.). In order to treat encroaching mesquite, BLM aerially treats with a mix of the herbicides Remedy (triclopyr) and Reclaim (clopyralid). Although these chemicals are used to treat the adjacent mesquite, some herbicide drift into shinnery oak habitats can occur during application. Oaks are also included on the list of plants controlled by Remedy, and one use for the herbicide is treatment specifically for sand shinnery oak suppression, as noted on the specimen label (Dow AgroSciences 2008, pp. 5, 7). While Remedy can be used to suppress shinnery oak, depending on the concentration, the anticipated impacts of herbicide drift into non-target areas are expected to be largely short-term due to differences in application rates necessary for the desired treatments. Forbs are also susceptible to Remedy, according to the specimen label, and may be impacted by these treatments, at least temporarily (Dow AgroSciences 2008, p. 2). Typically, shinnery oak and mesquite occurrences do not overlap. Shinnery oak typically occurs in areas with sandy soils while mesquite is more often found in areas where soils have a higher clay content. Depending on the density of mesquite, these areas may or may not be used by lesser prairie-chickens prior to treatment.

Lacking germination of shinnery oak acorns, timely recolonization of treated areas, or any established propagation or restoration method, the application of tebuthiuron at rates approved for use in most States can eliminate high-quality lesser prairie-chicken habitat. Large tracts of shrubland communities are decreasing, and native shrubs drive reproductive output for ground-nesting

birds in shinnery oak rangelands (Guthery *et al.* 2001, p. 116).

In summary, we conclude that the long-term to permanent removal of native shrubs such as shinnery oak and sand sagebrush is an ongoing threat to the lesser prairie-chicken throughout the estimated occupied range, but particularly in New Mexico, Oklahoma, and Texas. Habitat, which historically included shrubs, in which the shrubs are permanently removed may fail to continue to meet basic needs of the species, such as foraging, nesting, predator avoidance, and thermoregulation. Nesting habitat typically consists primarily of shrubs and native grasses. In some instances, herbicide use may aid in the restoration of lesser prairie-chicken habitat, particular where dense monocultures of shinnery oak may exist. However, long term to permanent conversion of shinnery oak and sand sagebrush shrubland to other land uses contributes to habitat fragmentation and poses a threat to population persistence.

Pesticides

To our knowledge, no studies have been conducted examining potential effects of agricultural pesticide use on lesser prairie-chicken populations. However, impacts from pesticides to other prairie grouse have been documented. Of approximately 200 greater sage grouse known to be feeding in a block of alfalfa sprayed with dimethoate, 63 were soon found dead, and many others exhibited intoxication and other negative symptoms (Blus *et al.* 1989, p. 1139). Because lesser prairie-chickens are known to selectively feed in alfalfa fields (Hagen *et al.* 2004, p. 72), we find there may be cause for concern that similar impacts could occur when pesticides are applied. Additionally some insect control efforts, such as grasshopper suppression in rangelands by the USDA Animal and Plant Health Inspection Service, treat economically damaging infestations of grasshoppers with insecticides. Treatment could cause reductions in insect populations consumed by lesser prairie-chickens. However, in the absence of more conclusive evidence, we do not currently consider application of insecticides for most agricultural purposes to be a threat to the species.

The use of anticoagulant rodenticides like Rozol® (active ingredient–chlorophacinone) that are used to control black-tailed prairie dogs (*Cynomys ludovicianus*) also may present a hazard to lesser prairie-chickens. Lesser prairie-chickens are known to occasionally use black-tailed prairie dog colonies (Tyler and Shackford 2002, p. 43), typically as lek sites (NRCS 1999b, p. 3; Bidwell et al. 2002, pp. 1–2, 4; NRCS 2011, p. 3). Application of this rodenticide to control black-tailed prairie dogs is registered for use in ten States, including the five States that comprise the estimated occupied range of the lesser prairie-chicken (Vyas *et al.* 2013, p. 97). Typical application involves placement of chorophacinone-treated winter wheat at least 15.24 cm (6 in) inside the burrow from October 1 to March 15th of the following year (Vyas *et al.* 2013, pp. 98–99). Application of the bait inside the burrow would normally make the bait largely unavailable to ground foraging, granivorous birds, like the lesser prairie-chicken. However Vyas *et al.* (2013, p. 100) confirmed that birds can be exposed and ingest the treated bait, at least in some instances. While they raise the concern that impacts could occur on a larger scale even when the rodenticide is applied according to label instructions, the best available information does not confirm that lesser prairie-chickens or other western grouse species have been affected by prairie dog control measures.

Although herbicides are applied within the estimated historical and occupied ranges, to our knowledge no studies have been conducted examining potential effects of herbicide use on the health of lesser prairie-chickens. Typically herbicides are applied as a means of altering vegetation types or structure and can indirectly alter habitat used by lesser prairie-chickens. Information on herbicide application and its effects on lesser prairie-chicken habitat is provided in the previous section on Shrub Control and Eradication above.

Pesticide application, particularly for agricultural uses, occurs within both the estimated historical and occupied ranges of the lesser prairie-chicken. While there are opportunities for individual lesser prairie-chickens to be exposed to pesticides, we are not aware of any specific studies addressing the implications of such application on the individual health of lesser prairie-chickens. In some instances, such as for grasshopper control programs, pesticide applications have the potential to reduce food availability for lesser prairie-chickens but such effects are expected to be localized in nature. While the effects can be negative, we do not believe this stressor will impact the long term stability or persistence of the lesser prairie-chicken rangewide and does not constitute a current threat to the lesser prairie-chicken.

Altered Fire Regimes and Encroachment by Invasive, Woody Plants

Preferred lesser prairie-chicken habitat is characterized by expansive regions of treeless grasslands interspersed with patches of small shrubs (Giesen 1998, pp. 3–4). Prior to extensive EuroAmerican settlement, frequent fires and grazing by large, native ungulates helped confine trees like *Juniperus virginiana* (eastern red cedar) to river and stream drainages and rocky outcroppings. However, settlement of the southern Great Plains altered the historical disturbance regimes and contributed to habitat fragmentation and conversion of native grasslands. The frequency and intensity of these disturbances directly influenced the ecological processes, biological diversity, and patchiness typical of Great Plains grassland ecosystems, which evolved with frequent fire and ungulate herbivory and that provided ideal habitat for lesser prairie-chickens (Collins 1992, pp. 2003–2005; Fuhlendorf and Smeins 1999, pp. 732, 737).

Once these historical fire and grazing regimes were altered, the processes which helped maintain extensive areas of grasslands ceased to operate effectively. Following EuroAmerican settlement, fire suppression allowed trees, such as eastern red cedar, to begin invading or encroaching upon neighboring grasslands. Increasing fire suppression that accompanied settlement, combined with government programs promoting eastern red cedar for windbreaks, erosion control, and wildlife cover, increased availability of eastern red cedar seeds in grassland areas (Owensby *et al.* 1973, p. 256, DeSantis *et al.* 2011, p. 1838). In Oklahoma alone, 1.4 million red cedar seedlings were estimated to have been planted in 3,058 km (1,900 mi) of shelterbelts between 1935 and 1942 (DeSantis *et al.* 2011, p. 1838). Once established, windbreaks and cedar plantings for erosion control contributed to fragmentation of the prairie landscape. Because eastern red cedar is not well adapted to survive most grassland fires due to its thin bark and shallow roots (Briggs *et al.* 2002b, p. 290), the lack of frequent fire greatly facilitated encroachment by eastern red cedar. Once trees began to invade these formerly treeless prairies, the resulting habitat became increasingly unsuitable for lesser prairie-chickens.

Similar to the effects of man-made vertical structures, the presence of trees causes lesser prairie-chickens to cease using areas of otherwise suitable habitat. Woodward *et al.* (2001, pp. 270–271)

documented a negative association between landscapes with increased woody cover and lesser prairie-chicken population indices. Similarly, Fuhlendorf *et al.* (2002a, entire) examined the effect of landscape structure and change on population dynamics of lesser prairie-chicken in western Oklahoma and northern Texas. They found that landscapes with declining lesser prairie-chicken populations had significantly greater increases in tree cover types (riparian, windbreaks, and eastern red cedar encroachment) than landscapes with stable or increasing (sustained) lesser prairie-chicken populations (Fuhlendorf *et al.* 2002a, pp. 622, 625).

Tree encroachment into grassland habitats has been occurring for decades, but the extent has been increasing rapidly in recent years (Drake and Todd 2002, p. 24; Zhang and Hiziroglu 2010, p. 1033; Ge and Zou 2013, p. 9094). Based on the estimated rates of encroachment, tree invasion in native grasslands and rangelands has the potential to render significant portions of remaining occupied habitat unsuitable within two to four decades. Once a grassland area has been colonized by eastern red cedar, the trees are mature within 6 to 7 years and provide a plentiful source of seed in which adjacent areas can readily become infested with eastern red cedar. Eastern red cedar cones (fleshy fruit containing seeds) are readily consumed and dispersed by several species of migratory and resident birds, many of which favor vertical structure (Holthuijzen and Sharik 1985, p. 1512, Holthuijzen *et al.* 1987, p. 1092). Some birds may disperse the seeds considerable distances from the seed source (Holthuijzen *et al.* 1987, p. 1094) and passage of the cones through the digestive tract increased seed germination by 1.5 to 3.5 times (Holthuijzen and Sharik 1985, p. 1512). Despite the relatively short viability of the seeds, typically only one growing season, the large cone crop, potentially large seed dispersal ability, and the physiological adaptations of eastern red cedar to open, relatively dry sites help make the species a successful invader of prairie landscapes (Holthuijzen *et al.* 1987, p. 1094). Most trees are relatively long-lived species and, once they become established in grassland areas, will require intensive management to return areas to a grassland state.

Specific information documenting the extent of eastern red cedar infestation within the estimated historical and occupied ranges of the lesser prairie-chicken is limited. Reeves and Mitchell (2012. p. 92) estimated the percent of non-federal rangeland, by state, where invasive cedars were present. Although their analysis did not specifically target the range of the lesser prairie-chicken, the general scope of the impact of eastern red cedar is apparent. An estimated 20.4 percent of non-federal rangeland in Oklahoma has eastern red cedar present. Lesser amounts occur in Kansas (5.1 percent), Texas (2.6 percent) and Colorado (trace amount). New Mexico was the only State not currently experiencing encroachment by eastern red cedar.

Additional information from Oklahoma and portions of Kansas also help demonstrate the significance of this threat to lesser prairie-chicken habitat. In Riley County, Kansas, within the tallgrass prairie region known as the Flint Hills, the amount of eastern red cedar coverage increased over 380 percent within a 21-year period (Price and Grabow 2010, as cited in Beebe *et al.* 2010, p. 2). In another portion of the Flint Hills of Kansas, transition from a tallgrass prairie to a closed canopy (where tree canopy is dense enough for tree crowns to fill or nearly fill the canopy layer so that light cannot reach the floor beneath the trees) eastern red cedar forest occurred in as little as 40 years (Briggs *et al.* 2002a, p. 581). Similarly, the potential for development of a closed canopy (crown closure) in western Oklahoma is very high (Engle and Kulbeth 1992, p. 304), and eastern red cedar encroachment in Oklahoma is occurring at comparable rates. Estimates developed by NRCS in Oklahoma revealed that about 121,406 ha (300,000 ac) a year are being invaded by eastern red cedar (Zhang and Hiziroglu 2010, p. 1033). Stritzke and Bidwell (1989, as cited in Zhang and Hiziroglu 2010, p. 1033) estimated that the area infested by eastern red cedar increased from over 600,000 ha (1.5 million ac) in 1950 to over 1.4 million ha (3.5 million ac) by 1985. By 2002, the NRCS estimated that eastern red cedar had invaded approximately 3.2 million ha (8 million ac) of prairie and cross timbers habitat in Oklahoma (Drake and Todd 2002, p. 24). Zhang and Hiziroglu (2010, p. 1033) estimated that eastern red cedar encroachment in Oklahoma, based on an estimated expansion rate of 308 ha (762 ac) per day, is expected to exceed 5 million ha (12.6 million ac) by 2013 (). At these rates, the area invaded by eastern red cedar could reach almost 6 million ha (14.5 million ac) by the year 2020 if control efforts are not implemented. While the area infested by eastern red cedar in Oklahoma is not restricted to the estimated occupied range of the lesser prairie-chicken, the problem appears to be the worst in northwestern and southwestern Oklahoma, which overlaps with the range of the lesser prairie-chicken (Zhang and Hiziroglu 2010, p. 1032). Considering that southwestern Kansas and the northeastern Texas panhandle have comparable rates of precipitation, fire exclusion, and grazing pressure as western Oklahoma, this rate of infestation is likely occurring in many areas of the estimated occupied lesser prairie-chicken range.

Ge and Zou (2013, p. 9094) hypothesized that encroachment of eastern red cedar will be an important factor affecting suitability of rangelands within the southern Great Plains well into the future. Based on the observed rate of eastern red cedar expansion in northwestern Oklahoma between 1965 to 1995, they projected that woody cover would increase 500 percent by 2015, assuming control efforts are not implemented. At these rates, eastern red cedar would dominate approximately 20 percent of a typical landscape. Similar levels of encroachment are being experienced in Kansas and Texas (Ge and Zou 2013, p. 9094). Schmidt and Wardle (1998, p. 12) predicted that eastern red cedar expansion in the Great Plains would continue into the future because of limitations on the use of prescribed fire and the economic costs of mechanical and chemical treatment of eastern red cedar over large areas.

Eastern red cedar is not the only woody species known to be encroaching in prairies used by lesser prairie-chicken. Within the southern- and western-most portions of the estimated historical and occupied ranges in eastern New Mexico, western Oklahoma, and the Texas Panhandle, mesquite is a common woody invader within these grasslands and can preclude nesting and brood use by lesser prairie-chickens (Riley 1978, p. vii). Other tall, woody plants, such as *Juniperus pinchotii* (redberry or Pinchot juniper), *Robinia pseudoacacia* (black locust), *Elaeagnus angustifolia* (Russian olive), and *Ulmus pumila* (Siberian elm) also can be found in prairie habitats historically and currently used by lesser prairie-chickens and may become invasive in these areas. For example, in some portions of the Texas panhandle, Pinchot juniper distribution increased by about 61 percent over a 50 year period (Ansley *et al.* 1995, p. 50). All of these woody invaders can provide perch sites for raptors that may prey on lesser prairie-chickens.

Mesquite is a particularly effective woody invader in grassland habitats due to its ability to produce abundant, long-lived seeds that can germinate and

establish in a variety of soil types and moisture and light regimes (Archer *et al.* 1988, p. 123). Much of the remaining grasslands and rangelands in the southern portions of the Texas panhandle, including areas within the estimated occupied range, have been invaded by mesquite. Reeves and Mitchell (2012, p. 92) estimated the percent of non-federal rangeland in New Mexico, Oklahoma and Texas that has been invaded by mesquite. Estimates ranged from a low of 7.5 percent in western Oklahoma to a high of 47.6 percent in Texas. Areas that have been invaded by mesquite include portions of the estimated occupied range in these States. Once established, mesquite can alter nutrient cycles and reduce herbaceous cover (Reeves and Mitchell 2012, p. 99). Teague *et al.* (2008, p. 505) reported an average reduction in herbaceous biomass of 1,400 kg/ha (1247.8 lbs/ac) in areas having 100 percent mesquite cover.

Although the precise extent and rate of mesquite invasion is difficult to determine rangewide, the ecological process by which mesquite and related woody species invades these grasslands has been described by Archer *et al.* (1988, pp. 111–127) for the Rio Grande Plains of Texas. In this study, once a single mesquite tree colonized an area of grassland, this plant acted as the focal point for seed dispersal of woody species that previously were restricted to other habitats (Archer *et al.* 1988, p. 124). Once established, factors such as overgrazing, reduced fire frequency, and drought interacted to enable mesquite and other woody plants to increase in density and stature on grasslands (Archer *et al.* 1988, p. 112). On their study site near Alice, Texas, they found that woody plant cover significantly increased from 16 to 36 percent between 1941 and 1983, likely facilitated by heavy grazing (Archer *et al.* 1988, p. 120). The study site had a history of heavy grazing since the late 1800s. However, unlike eastern red cedar, mesquite is not as readily controlled by fire. Wright *et al.* (1976, pp. 469–471) observed that mesquite seedlings older than 1.5 years were difficult to control with fire unless the above ground portions of the trees had first been damaged by an herbicide application, and the researchers observed that survival of 2- to 3-year-old mesquite seedlings was as high as 80 percent even following very hot fires.

Prescribed burning is often the best method to control or preclude tree invasion of native grassland and rangeland. However, burning of native prairie is often perceived to be destructive to rangelands, undesirable for optimizing cattle production, and likely to create wind erosion or ''blowouts'' in sandy soils. Often, prescribed fire is employed only after significant tree invasion has already occurred and landowners consider forage production for cattle to have diminished. Consequently, fire suppression is common, and relatively little prescribed burning occurs on private land. Additionally, in areas where grazing pressure is heavy and fuel loads are reduced, a typical grassland fire may not be intense enough to eradicate eastern red cedar (Briggs *et al.* 2002a, p. 585; Briggs *et al.* 2002b, pp. 293; Bragg and Hulbert 1976, p. 19). Briggs *et al.* (2002a, p. 582) found that grazing reduced potential fuel loads by 33 percent, and the reduction in fuel load significantly reduced mortality of eastern red cedar post-fire. While establishment of eastern red cedar reduces the abundance of herbaceous grassland vegetation, grasslands have a significant capacity to recover rapidly following cedar control efforts (Pierce and Reich 2010, p. 248). However, both Van Auken (2000, p. 207) and Briggs *et al.* (2005, p. 244) stated that expansion of woody vegetation into grasslands will continue to pose a threat to grasslands well into the future.

In summary, invasion of native grasslands by certain opportunistic woody species like eastern red cedar and mesquite cause otherwise suitable grassland habitats to no longer be used by lesser prairie-chickens and contribute to fragmentation of native grassland habitats. Lesser prairie-chickens are grassland obligates and do not thrive in environments invaded by trees like eastern red cedar and mesquite. We expect that efforts to control invasive, woody species like eastern red cedar and mesquite will continue but that treatment efforts likely will be insufficient to keep pace with rates of expansion, especially when considering the environmental changes resulting from climate change (see discussion below). Therefore, encroachment by invasive, woody plants contributes to further habitat fragmentation and poses a threat to lesser prairie-chicken population persistence.

Climate Change

The effects of ongoing and projected changes in climate are appropriate for consideration in our analyses conducted under the Act. The Intergovernmental Panel on Climate Change (IPCC) has concluded that warming of the climate in recent decades is unequivocal, as evidenced by observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global sea level (Solomon *et al.* 2007, p.1). The term ''climate'', as defined by the IPCC, 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 2007a, p. 78). The IPCC defines the term ''climate change'' to refer 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 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of greenhouse gasses comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of greenhouse gas emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the intensity and rate of warming

differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that greenhouse gas emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century and that the extent and rate of change will be influenced substantially by the extent of greenhouse gas emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also, see IPCC (2012, entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may 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 interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007a, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, intensity, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Some species of grouse have already exhibited significant and measurable negative impacts attributed to climate change. For example, capercaillie grouse in Scotland have been shown to nest earlier than in historical periods in response to warmer springs yet reared fewer chicks (Moss *et al.* 2001, p. 58). The resultant lowered breeding success as a result of the described climactic change was determined to be the major cause of the decline of the Scottish capercaillie (Moss *et al.* 2001, p. 58).

Within the Great Plains, average temperatures have increased and projections indicate this trend will continue over this century (Karl *et al.* 2009, p. 1). Precipitation within the southern portion of the Great Plains is expected to decline, with extreme events such as heat waves, sustained droughts, and heavy rainfall becoming more frequent (Karl *et al.* 2009, pp. 1–2). Seager *et al.* (2007, pp. 1181, 1183–1184) suggests that 'dust bowl' conditions of the 1930s could be the new climatology of the American Southwest, with future droughts being much more extreme than most droughts on record.

As a result of changing conditions, the distribution and abundance of grassland bird species will be affected (Niemuth *et al.* 2008, p. 220). Warmer air and surface soil temperatures and decreased soil moisture near nest sites have been correlated with lower survival and recruitment in some ground-nesting birds such as the bobwhite quail (Guthery *et al.* 2001, pp. 113–115) and the lesser prairie-chicken (Bell 2005, pp. 16, 21). On average, lesser prairie-chickens avoid sites that are hotter, drier, and more exposed to the wind (Patten et al. 2005a, p. 1275). Specific to lesser prairie-chickens, an increased frequency of heavy rainfall events could negatively affect their reproductive success (Lehmann 1941 as cited in Peterson and Silvy 1994, p. 223; Morrow *et al.* 1996, p. 599) although the deleterious effects of increased spring precipitation have been disputed by Peterson and Silvy (1994, pp. 227–228). Peterson and Silvy (1994, pp. 227–228) concluded that spring precipitation does not negatively impact annual breeding success, particularly when the indirect, positive influence of spring precipitation on nesting and brood rearing habitat is considered.

Additionally, more extreme droughts, in combination with existing threats, will have detrimental implications for the lesser prairie-chicken (see Drought discussion in ''Extreme Weather Events'' below). Boal *et al.* (2010, p. 4) suggests that increased temperatures, as projected by climate models, may lead to egg death or nest abandonment of lesser prairie-chickens. Furthermore, the researchers suggest that if lesser prairie-chickens shift timing of reproduction (to later in the year) to compensate for lower precipitation, then temperature impacts could be exacerbated.

In 2010, we evaluated three different climate change vulnerability models (U.S. Environmental Protection Agency 2009, *draft review;* NatureServe 2010; USDA Rocky Mountain Research Station 2010, *in development*) to determine their usefulness as potential tools for examining the effects of climate change on lesser prairie chickens. Outcomes from our assessment of each of these models for the lesser prairie-chicken suggested that the lesser prairie-chicken is highly vulnerable to, and will be negatively affected by, projected climate change (Service 2010). Factors identified in the models that increase the vulnerability of the lesser prairie-chicken to climate change include, but are not limited to the following: (1) The species' limited distribution and relatively small declining population, (2) the species' physiological sensitivity to temperature and precipitation change, (3) specialized habitat requirements, and (4) the overall limited ability of the habitats occupied by the species to shift at the same rate as the species in response to climate change.

Increasing temperatures, declining precipitation, and extended, severe drought events would be expected to adversely alter habitat conditions, reproductive success, and survival of the lesser prairie-chicken. While populations of lesser prairie-chicken in the southwestern part of the range are likely to be most acutely affected because this area is expected to see significant changes in temperature and precipitation (Grisham *et al,* 2013, entire), populations throughout the entire estimated occupied range, including Colorado and Kansas, likely will be impacted as well. The fragmented nature of the estimated occupied range and habitat losses to date have isolated populations and will increase their susceptibility to climate change. Based on current climate change projections of increased temperatures, decreased rainfall, and an increase of severe events such as drought and rainfall within the southern Great Plains, the lesser prairie-chicken is likely to be adversely impacted by the effects of climate changes, especially when considered in combination with other known threats, such as habitat loss and fragmentation, and the anticipated vulnerability of the species.

Additionally, many climate scientists predict that numerous species will shift their geographical distributions in response to warming of the climate (McLaughlin *et al.* 2002, p. 6070). In mountainous areas, species may shift their range altitudinally, in flatter areas, ranges may shift lattitudinally (Peterson 2003, p. 647). Such shifts may result in localized extinctions over portions of the range, and, in other portions of their distributions, the occupied range may expand, depending upon habitat suitability. Changes in geographical distributions can vary from subtle to more dramatic rearrangements of occupied areas (Peterson 2003, p. 650). Species occupying flatland areas such as the Great Plains generally were expected to undergo more severe range alterations than those in montane areas (Peterson 2003, p. 651). Additionally, populations occurring in fragmented habitats can be more vulnerable to effects of climate change and other threats, particularly for species with limited dispersal abilities (McLaughlin *et al.* 2002, p. 6074). Species inhabiting relatively flat lands will require corridors that allow north-south movements, presuming suitable habitat exists in these areas. Where existing occupied range is bounded by areas of unsuitable habitat, the species' ability to move into suitable areas is reduced and the amount of occupied habitat could shrink accordingly. In some cases, particularly when natural movement has a high probability of failure, assisted migration may be necessary to ensure populations persist ((McLachlan *et al.* 2007, entire).

We do not currently know how the distribution of lesser prairie-chickens may change geographically under anticipated climate change scenarios. Certainly the presence of suitable grassland habitats created under CRP may play a key role in how lesser prairie-chickens respond to the effects of climate change. Additionally, species that are insectivorous throughout all or a portion of their life cycle, like the lesser prairie-chicken, may have increased risks where a phenological mismatch exists between their biological needs and shifts in insect abundance due to vulnerability of insects to changes in thermal regimes (Parmesan 2006, pp. 638, 644, 657; McLachlan *et al.* 2011, p. 5). McLachlan *et al.* (2011, pp. 15, 26) predicted that lesser prairie-chicken carrying capacity would decline over the next 60 years due to climate change, primarily the result of decreased vegetation productivity (reduced biomass); however, they could not specifically quantify the extent of the decline. They estimated the current carrying capacity within the estimated occupied range to be 49,592 lesser prairie-chickens (McLachlan *et al.* 2011, p. 25). Based on their analysis, McLachlan *et al.* (2011, p. 29) predicted that the lesser prairie-chicken may be facing significant challenges to long-term survival over the next 60 years due to climate-related changes in native grassland habitat. We anticipate that climate-induced changes in ecosystems, including grassland ecosystems used by lesser prairie-chickens, coupled with ongoing habitat loss and fragmentation will interact in ways that will amplify the individual negative effects of these and other threats identified in this final rule (Cushman *et al.* 2010, p. 8).

Extreme Weather Events

Weather-related events such as drought, and snow and hail storms influence habitat quality or result in direct mortality of lesser prairie-chicken. Although hail storms typically only have a localized effect, the effects of snow storms and drought can often be more wide-spread and can affect considerable portions of the estimated occupied range.

Drought—Drought is considered a universal ecological driver across the Great Plains (Knopf 1996, p. 147). Annual precipitation within the Great Plains is considered highly variable (Wiens 1974a, p. 391) with prolonged drought capable of causing local extinctions of annual forbs and grasses within stands of perennial species, and recolonization is often slow (Tilman and El Haddi 1992, p. 263). Net primary production in grasslands is strongly influenced by annual precipitation patterns (Sala *et al.* 1988, pp. 42–44; Weltzin *et al.* 2003, p. 944) and drought, in combination with other factors, is thought to limit the extent of shrubby vegetation within grasslands (Briggs *et al.* 2005, p. 245). Grassland bird species, in particular, are impacted by climate extremes such as extended drought, which acts as a bottleneck that allows only a few species to survive through the relatively harsh conditions (Wiens 1974a, pp. 388, 397; Zimmerman 1992, p. 92). Drought also can influence many of the factors previously addressed in this final rule, such as exaggerating and prolonging the effect of fires and overgrazing. Seager *et al.* (2007, pp. 1181, 1183–1184) suggests that conditions experienced during the droughts of the 1930s could become more frequent in the southwestern United States, with future droughts being much more extreme than most droughts on record.

Drought also may exacerbate the impacts of encroachment of woody species, such as eastern red cedar and *Juniperus pinchotii* (redberry or Pinchot juniper). Eastern red cedar, as previously discussed, and Pinchot juniper (McPherson *et al.* 1988, entire) have been rapidly expanding their range and encroaching into grassland communities due to lack of fire and other human activities since EuroAmerican settlement. Pinchot juniper occurs in southwestern Oklahoma through portions of the Texas panhandle and as far south as the Edwards Plateau in southcentral Texas (Willson *et al.* 2008, p. 301). In portions of the Texas panhandle, the extent of Pinchot juniper increased by about 61 percent during the period from 1948 to 1982 (Ansley *et al.* 1995, p. 50) and encroachment continues to occur although the rate of expansion is not known. While a lack of moisture does hinder germination of many juniper species (Smith *et al.* 1975, p. 126), once established, junipers are capable of tolerating conditions typical of most droughts. Although eastern red cedar is one of the least drought tolerant species of junipers, juniper species as a whole, including those native to North America, are considered some of the most drought resistant species in the world (Willson *et al.* 2008, pp. 299, 303). Increased frequency of drought, as might occur under a typical climate change scenario, may slow the initial establishment of eastern red cedar and other junipers but would not be expected to influence their survival in areas that have already been invaded. Their observed tolerance to drought conditions contributes to their ability to invade and multiply, once established, into more xeric (dry) environments (Willson *et al.* 2008, p. 305; DeSantis *et al.* 2011, p. 1838). Due to their known drought tolerance and potential for widespread dispersal by birds, we expect that encroachment by eastern red cedar and other junipers would continue to occur under anticipated climate change scenarios. Such drought tolerance may actually enhance their ability to survive under conditions that are less favorable for other species of plants. Similarly, we do not anticipate that drought conditions would diminish the potential for continued expansion of eastern red cedar and other junipers into regions historically dominated by grasslands.

The Palmer Drought Severity Index (Palmer 1965, entire) is a measure of the balance between moisture demand (evapotranspiration driven by temperature) and moisture supply

(precipitation) and is widely used as an indicator of the intensity of drought conditions (Alley 1984, entire). This index is standardized according to local climate (i.e., climate divisions established by the National Oceanic and Atmospheric Administration) and is most effective in determining magnitude of long-term drought occurring over several months. The index uses zero as normal with drought expressed in terms of negative numbers. Positive numbers imply excess precipitation.

The droughts of the 1930s and 1950s are some of the most severe on record (Schubert *et al.* 2004, p. 485). During these periods, the Palmer Drought Severity Index exceeded negative 4 and 5 in many parts of the Great Plains, which would be classified as extreme to exceptional drought. The drought that impacted much of the estimated occupied lesser prairie-chicken range in 2011 also was classified as severe to extreme, particularly during the months of May through September (National Climatic Data Center 2013). This time period is significant because the period of May through September generally overlaps the lesser prairie-chicken nesting and brood-rearing season. Review of the available records for the Palmer Drought Severity Index during the period from May through September 2011, for the climate divisions that overlap most of the lesser prairie-chicken estimated occupied range, revealed that the index exceeded negative 4 in most of the climate divisions. Climate division 4 in westcentral Kansas was the least impacted by drought in 2011, with a Palmer Drought Severity Index of negative 2.37. The most severe drought conditions, based on the Palmer Index, occurred in the Texas panhandle. Of the eight climate divisions that encompass the majority of the estimated occupied range, drought conditions were ranked the worst on record for the entire 118 year period in four of those climate divisions. Conditions in all but one climate division were ranked within the ten worst droughts over the period of record.

Based on an evaluation of the Palmer Drought Severity Index for May through July of 2012, several of the climate divisions which overlap the estimated occupied range continued to experience extreme to exceptional drought. Colorado, New Mexico, and Texas are experiencing the worst conditions, based on Palmer Index values varying from a low of negative 6.23 in Colorado to a high index value of negative 4.33 in Texas and negative 4.51 in New Mexico. Drought conditions were least severe in Oklahoma, varying from negative 2.15 to negative 4.33. Index values for Kansas remained in the severe range and were all negative 3.23 or worse.

In 2013, conditions improved slightly in Colorado, Texas, New Mexico and portions of Oklahoma and Kansas; however, all but two climate divisions over the majority of the estimated occupied range were ranked within the top 15 worst droughts on record within those climate divisions. Although the drought severity index improved across much of the range, severe drought continued to persist. Persistent drought conditions, such as those observed between 2011 and 2013 will impact vegetative cover for nesting and can reduce insect populations needed by growing chicks. The lesser prairie-chicken estimated population size in 2013 declined considerably; likely in response to degraded habitat conditions cause by the drought conditions that prevailed over most of the estimated occupied range in 2011 and 2012 (see section on ''Recent Population Estimates and Trends'' for information related to estimated population size). Existing and ongoing fragmentation of suitable habitat likely contributed to the inability of lesser prairie-chickens to maintain population numbers in response to the drought.

Additionally, drought impacts forage needed by livestock and continued grazing under such conditions can rapidly degrade native rangeland. During times of severe to extreme drought, suitable livestock forage may become unavailable or considerably reduced due to a loss of forage production on existing range and croplands. Through provisions of the CRP, certain lands under existing CRP contract can be used for emergency haying and grazing, provided specific conditions are met, to help relieve the impacts of drought by temporarily providing livestock forage. Typically, emergency haying and grazing is allowed only on those lands where appropriate Conservation Practices (CP), already approved for managed haying and grazing, have been applied to the CRP field. For example, CRP fields planted to either introduced grasses (CP–1) or native grasses (CP–2) are eligible. However, during the widespread, severe drought of 2012 and 2013, eight additional CPs that were not previously eligible to be hayed or grazed were approved for emergency haying and grazing only during 2012. These additional CPs primarily include areas associated with grassed waterways and wetlands. Areas under CP–25, rare and declining habitats, were included and were the most valuable to lesser prairie-chickens of the eight additional practices. Kansas has the most land under CP–25 with about 316,000 ha (781,000 ac) enrolled statewide.

Typically any approved emergency haying or grazing must occur outside of the primary nesting season. The duration of the emergency haying can be no longer than 60 calendar days, and the emergency grazing period cannot extend beyond 90 calendar days, and both must conclude by September 30th of the current growing season. Generally areas that were emergency hayed or grazed in 1 year are not eligible the following 2 years. Other restrictions also may apply.

In most years, the amounts of land that are emergency hayed or grazed are low, typically less than 15 percent of eligible acreage, likely because the producer must take a 25 percent reduction in the annual rental payment, based on the amount of lands that are hayed or grazed. However, during the 2011 drought, requests for emergency haying and grazing were larger than previously experienced. For example, in Oklahoma, more than 103,200 ha (255,000 ac) or roughly 30 percent of the available CRP lands statewide were utilized. Within those counties that encompass the estimated occupied range, almost 55,400 ha (137,000 ac) or roughly 21 percent of the available CRP in those counties were hayed or grazed. In Kansas, there were almost 95,900 ha (237,000 ac) under contract for emergency haying or grazing within the estimated occupied range. The number of contracts for emergency haying and grazing within the estimated occupied range in Kansas is about 18 percent of the total number of contracts within the estimated occupied range. Within New Mexico in 2011, there were approximately 21,442 ha (52,984 ac) under contract for emergency grazing, the entire extent of which were in counties that are either entirely or partially within the estimated occupied range of the lesser prairie-chicken. Texas records do not differentiate between managed CRP grazing and haying and that conducted under emergency provisions. Within the historical range in 2011, 65 counties had CRP areas that were either hayed or grazed. The average percent of areas used was 22 percent. Within the counties that overlap the estimated occupied range, the average percent grazed was the same, 22 percent.

As of the end of July 2012, the entire estimated occupied and historical range of the lesser prairie-chicken was classified as abnormally dry or worse (FSA 2012, p. 14). The abnormally dry category roughly corresponds to a Palmer Drought Index of minus 1.0 to

minus 1.9. Based on new provisions announced by USDA on July 23, 2012, the entire estimated historical and occupied ranges of the lesser prairie-chicken were eligible for emergency haying and grazing. Additionally, the reduction in the annual rental payment was reduced from 25 percent to 10 percent. In 2012, New Mexico did not have any areas that were under contract for emergency haying or grazing. Colorado had 1,032 ha (2,550.9 ac) under contract for emergency haying and 30,030 ha (74,206 ac) under contract for emergency grazing within the estimated occupied range of the lesser prairie-chicken (Barbarika 2014). In Kansas, about 34,158 ha (84,405 ac) were under contract for emergency haying and 80,526 ha (198,985 ac) were under contract for emergency grazing within the estimated occupied range of the lesser prairie-chicken (Barbarika 2014). In 2012, Oklahoma had about 2,247 ha (5,552.1 ac) were under contract for emergency haying and 36,736 ha (90,777.7 ac) were under contract for emergency grazing within the estimated occupied range (Barbarika 2014). In Texas, about 3,801 ha (9,392.3 ac) were under contract for emergency haying and 21,950 ha (54,239.5 ac) were under contract for emergency grazing in 2012 within the estimated occupied range of the lesser prairie-chicken (Barbarika 2014). Combined, about 41,238 ha (101,900.3 ac) were under contract for emergency haying and about 169,122 ha (417,908.2 ac) were under contract for emergency grazing within the estimated occupied range of the lesser prairie-chicken in 2012 (Barbarika 2014). Although the extent of emergency haying and grazing that occurred in 2012 represents only about 3 percent of the total estimated occupied range, the implications become more significant considering this emergency use occurs during drought. Under drought conditions, much of the lands that are not enrolled in CRP are grazed heavily and lands that are enrolled in CRP represent some of the best remaining habitat under drought conditions. When these CRP lands are grazed, the effect is to reduce the amount of usable habitat that is available for lesser prairie-chicken nesting, brood rearing and thermal regulation. In many instances, areas that were previously grazed or hayed under the emergency provisions of 2011 have not recovered due to the influence of the ongoing drought. Additionally, current provisions will allow additional fields to be eligible for emergency haying and grazing that have previously not been eligible, including those classified as rare and declining habitat (CP–25). Conservation Practice 25 provides for very specific habitat components beneficial to ground-nesting birds such as lesser prairie-chickens. The overall extent of relief provided to landowners could result in more widespread implementation of the emergency provisions than has been observed in previous years. The FSA estimated that about 23 percent of the available CRP was emergency hayed or grazed in 2012 (FSA 2014, p. 60). Widespread haying and grazing of CRP under drought conditions may compromise the ability of these grasslands to provide year-round escape cover and thermal cover during winter, at least until normal precipitation patterns return (see sections Summary of Ongoing and Future Conservation Actions and ''Conservation Reserve Program'' for additional information related to CRP).

Although the lesser prairie-chicken has adapted to drought as a component of its environment, drought and the accompanying harsh, fluctuating conditions have influenced lesser prairie-chicken populations. Following extreme droughts of the 1930s and 1950s, lesser prairie-chicken population levels declined and a decrease in their overall range was observed (Lee 1950, p. 475; Schwilling 1955, pp. 5–6; Hamerstrom and Hamerstrom 1961, p. 289; Copelin 1963, p. 49; Crawford 1980, pp. 2–5; Massey 2001, pp. 5, 12; Hagen and Giessen 2005, unpaginated; Ligon 1953 *as cited in* New Mexico Lesser Prairie Chicken/Sand Dune Lizard Working Group 2005, p. 19). A reduction in lesser prairie-chicken population numbers was documented after drought conditions in 2006 followed by severe winter conditions in 2006 and early 2007. For example, Rodgers (2007b, p. 3) determined that the estimated number of lesser prairie-chickens per unit area, based on lek surveys conducted in Hamilton County, Kansas, declined by nearly 70 percent from 2006 levels and were the lowest on record at that time. In comparison to the 2011 and 2012 drought, the Palmer Drought Severity Index for the May through September period in Kansas during the 2006 drought was minus 2.83 in climate division 4 and minus 1.52 in climate division 7. Based on the Palmer Drought Severity Index, drought conditions from 2011to 2013 were much more severe than those observed in 2006. The National Weather Service Climate Prediction Center (2014) predicts that through the end of April 2014, drought conditions will persist or intensify over the entire estimated occupied range. Unless the outlook changes, we anticipate that drought conditions will again adversely impact habitat during the nesting and brood rearing season. Such impacts will reduce nesting success and recruitment well into 2014.

Drought impacts the lesser prairie-chicken through several mechanisms. Drought affects seasonal growth of vegetation necessary to provide suitable nesting and roosting cover, food, and opportunity for escape from predators (Copelin 1963, pp. 37, 42; Merchant 1982, pp. 19, 25, 51; Applegate and Riley 1998, p. 15; Peterson and Silvy 1994, p. 228; Morrow *et al.* 1996, pp. 596–597). Lesser prairie-chicken home ranges will temporarily expand during drought years (Copelin 1963, p. 37; Merchant 1982, p. 39) to compensate for scarcity in available resources. During these periods, the adult birds expend more energy searching for food and tend to move into areas with limited cover in order to forage, leaving them more vulnerable to predation and heat stress (Merchant 1982, pp. 34–35; Flanders-Wanner *et al.* 2004, p. 31). Chick survival and recruitment may also be depressed by drought (Merchant 1982, pp. 43–48; Morrow 1986, p. 597; Giesen 1998, p. 11; Massey 2001, p. 12), which likely affects population trends more than annual changes in adult survival (Hagen 2003, pp. 176–177). Drought-induced mechanisms affecting recruitment include decreased physiological condition of breeding females (Merchant 1982, p. 45); heat stress and water loss of chicks (Merchant 1982, p. 46); and effects to hatch success and juvenile survival due to changes in microclimate, temperature, and humidity (Patten *et al.* 2005a, pp. 1274–1275; Bell 2005, pp. 20–21; Boal *et al.* 2010, p. 11). Precipitation, or lack thereof, appears to affect lesser prairie-chicken adult population trends with a potential lag effect (Giesen 2000, p. 145). That is, rain in one year promotes more vegetative cover for eggs and chicks in the following year, which enhances their survival.

Although lesser prairie-chickens have persisted through droughts in the past, the effects of such droughts are exacerbated by 19th–21st century land use practices such as heavy grazing, overutilization, and land cultivation (Merchant 1982, p. 51; Hamerstrom and Hamerstrom 1961, pp. 288–289; Davis *et al.* 1979, p. 122; Taylor and Guthery 1980a, p. 2), which have altered and fragmented existing habitats. In past decades, fragmentation of lesser prairie-chicken habitat likely was less extensive than current conditions, and connectivity between occupied habitats

was more prevalent, allowing populations to recover more quickly. As lesser prairie-chicken populations decline and become more fragmented, their ability to rebound from prolonged drought is diminished. This reduced ability to recover from drought is particularly concerning given that future climate projections suggest that droughts will only become more severe. Projections based on an analysis using 19 different climate models revealed that southwestern North America, including the entire estimated historical and occupied range of the lesser prairie-chicken, will consistently become drier throughout the 21st century (Seager *et al.* 2007, p. 1181). Severe droughts should continue into the future, particularly during persistent La Niña events, but they are anticipated to be more severe than most droughts on record (Seager *et al.* 2007, pp. 1182–1183).

Grisham *et al.* (2013, entire) recently evaluated the influence of drought and projected climate change on reproductive ecology of the lesser prairie-chicken in the Southern High Plains (eastern New Mexico and Texas panhandle). They predicted that average daily survival would decrease dramatically under all climatic scenarios they examined. Nest survival from onset of incubation through hatching were predicted to be less than or equal to 10 percent in this region within 40 years. Modeling results indicated that nest survival would fall well below the threshold for population persistence during that time (Grisham *et al.* 2013, p. 8). Although estimates of persistence of lesser prairie-chickens provided by Garton (2012, pp. 15–16) indicated that lesser prairie-chickens in the Shinnery Oak Prairie Region (New Mexico and Texas) had a relatively high likelihood of persisting over the next 30 years, he only examined current information and did not fully consider the implications of projected impacts of climate change in his analysis. Climate change projections provided by Grisham *et al.* (2013, p.8) indicate that the prognosis for persistence of lesser prairie-chickens within this isolated region on the southwestern periphery of the range is considerably worse than previously predicted under projected climate change scenarios.

Storms—Very little published information is available on the effects of certain isolated weather events, like storms, on lesser prairie-chicken. However, hail storms are known to cause mortality of prairie grouse, particularly during the spring nesting season. Fleharty (1995, p. 241) provides an excerpt from the May 1879 Stockton News that describes a large hailstorm near Kirwin, Kansas, as responsible for killing prairie-chickens (likely greater prairie-chicken) and other birds by the hundreds. In May of 2008, a hailstorm killed six lesser prairie-chickens in New Mexico (Beauprez 2009, p. 17; Service 2009, p. 41). Although such phenomena are undoubtedly rare, the effects can be significant, particularly if they occur during the nesting period.

A severe winter snowstorm in 2006, centered over southeastern Colorado, resulted in heavy snowfall, no cover, and little food in southern Kiowa, Prowers, and most of Baca Counties for over 60 days. The storm was so severe that more than 10,000 cattle died in Colorado alone from this event, in spite of the efforts of National Guard and other flight missions that used cargo planes and helicopters to drop hay to stranded cattle (Che *et al.* 2008, pp. 2, 6). Lesser prairie-chicken numbers in Colorado experienced a 75 percent decline from 2006 to 2007, from 296 birds observed to only 74. Active leks also declined from 34 leks in 2006 to 18 leks in 2007 (Verquer 2007, p. 2). Most strikingly, no active leks have been detected since 2008 in Kiowa County, which had six active leks in the several years prior to the storm. The impacts of the severe winter weather, coupled with drought conditions observed in 2006, probably account for the decline in the number of lesser prairie-chickens observed in 2007 in Colorado (Verquer 2007, pp. 2–3). Birds continued to slowly recover following this storm event, with numbers peaking in 2011 (Smith 2013, p.3). Since 2011, numbers of birds have declined and are just slightly above numbers reported in 2007.

In summary, extreme weather events can have a significant impact on individual populations of lesser prairie-chickens. While improving habitat quality and quantity can help stabilize grouse populations and enhance resiliency, it has little influence on stochastic processes like drought and hailstorms that can lead to extinction in local populations (Silvy *et al.* 2004, p. 19). Extreme weather events will continue to occur, as they have in the past, and only where lesser prairie-chickens populations are sufficiently resilient can they be expected to persist. The impact of extreme weather events is especially significant in considering the status of the species as a whole if the impacted population is isolated from individuals in other nearby populations that may be capable of recolonizing or supplementing the impacted population. Droughts, severe storms and other extreme weather events, although recurring, are unpredictable and little can be done to alter or control the occurrence or significance of these events. Such events, and the anticipated impacts, are expected to continue to occur into the future. Drought, in particular, may occur throughout the range of the species, as it did in 2011, 2012, and 2013, and can severely impact persistence of the lesser prairie-chicken. In particular, the persistence of the lesser prairie-chicken in the southwestern portions of the estimated occupied range (New Mexico and Texas) appears to be highly unlikely over the next 30 to 40 years, particularly considering the implications of climate change and recurring droughts (Grisham *et al.* (2013, entire). Loss of these populations would exacerbate the ongoing reduction in occupied range that has been evident over the past century. Extreme weather events, principally drought, are a threat to the lesser prairie-chicken, particularly when considered in light of other threats such as habitat loss, fragmentation and climate change, that reduce resiliency of the species.

Influence of Noise

The timing of displays and frequency of vocalizations in lesser prairie-chickens and other prairie grouse appear to have developed in response to conditions prevalent in prairie habitats and indicates that effective communication, particularly during the lekking season, operates within a fairly narrow set of conditions. Grasslands are considered poor environments for sound transmission because absorption by vegetation and the ground, combined with scattering caused by high winds and thermal turbulence causes the sound intensity to diminish (attenuate) rapidly (Morton 1975, pp. 17, 28; Sparling 1983, p. 40). In a response to this excess attenuation, grassland birds would have to evolve mechanisms that counteract this attenuation in order to communicate effectively over long distances. One primary means of overcoming this barrier would be to produce vocalizations with low carrier frequencies (Sparling 1983, p. 40), as is common in prairie grouse. Activity patterns also may play an important role in facilitating communication in grassland environments (Morton 1975, p. 30). Prairie grouse usually initiate displays on the lekking grounds around sunrise, and occasionally near sunset, corresponding with times of decreased wind and thermal turbulence (Sparling 1983, p. 41). Considering the narrow set of conditions in which communication appears most effective for breeding lesser prairie-chickens, and the

importance of communication to successful reproduction, activities that disrupt or alter these conditions likely will have a negative impact on reproductive potential and population growth.

While human activities, such as livestock management, grassland restoration, shrub control and pesticide application, as discussed in the sections above, all cause varying degrees of noise, the impacts of noise on lesser prairie-chickens is more readily apparent and often most persistent (chronic) when it occurs in association with placement of human infrastructure, as discussed in several of the sections below. Almost any anthropogenic feature or related activity that occurs on the landscape can create noise that exceeds the natural background or ambient level. Expansion of transportation networks, urban/suburban development, mineral and other forms of resource extraction and motorized recreation are responsible for most chronic noise exposure in terrestrial environments (Barber *et al.* 2009, p. 1980). In terrestrial systems, the impact of noise may manifest itself in modified behavioral response, physiological stress, and various impacts on communication (Barber *et al.* 2009, p. 181). Noise that results in either physiological stress or impacts communication is likely to then cause a behavioral response. When the behavioral response to noise is avoidance, as it often is for lesser prairie-chickens and other prairie grouse, noise can be a major source of habitat loss or degradation and lead to increased habitat fragmentation.

Several studies have examined the effect of noise on greater sage-grouse. Crompton (2005, p. 10) monitored the installation of a well pad in Utah that was placed within 200 m (656 ft) of a greater sage-grouse lek during 2001. When construction was complete and the pumping unit was operating, noise levels recorded 20 m (66 ft) from the pumping unit were 70 dB and had dropped to 45 dB when measured 200 m (656 ft) from the pumping unit (Crompton 2005, p. 10). Attendance of males at this lek declined dramatically beginning with installation of the well pad and the lek was completely abandoned within 2 years. The following year, the pumping unit was shut down for repairs during April and grouse briefly recolonized the lek. Overall, male lek attendance declined by 44 percent in areas that were developed for coalbed methane production compared with a 15 percent increase in male lek attendance in undeveloped areas (Crompton 2005, p. 10). Annual survival rates for females also were much lower (12.5 percent) in areas developed for coalbed methane than in undeveloped areas (73 percent) (Crompton 2005, p. 19). Consequently, Crompton (2005, p. 22) recommended that noise levels at active leks should be less than 40 dB and no well pad should be located within 1,500 m (0.93 mi) of an active lek. Sound muffling devices were recommended for all existing wells that were within this 1,500 m (0.93 mi) buffer.

Blickley *et al.* (2012a, entire) examined the impact of chronic noise on greater sage-grouse using playback experiments. This study was accomplished by recording noise associated with natural gas drilling rigs and the traffic associated with gas-field roads and then re-playing these recordings near leks. Their results suggest that chronic noise had a negative impact on lek attendance by male greater sage-grouse. Peak male attendance decreased by 73 percent at leks exposed to road noise and 29 percent at leks exposed to noise from gas drilling activity, when compared to paired control leks (Blickley *et al.* 2012a, p. 467). The observed decrease in lek attendance was immediate and sustained throughout the study, although modeling suggested that attendance at the leks rebounded once the noise ceased (Blickley *et al.* 2012a, p. 467). Because the sound volume of the recorded playback was not loud enough to cause direct injury, they concluded that the sounds caused displacement of the males that would normally have attended the leks (Blickley *et al.* 2012a, p. 468). Although higher mortality caused by increased predation was another possible mechanism for the observed decreases in lek attendance, they did not consider increased predation to be a factor due to low observations of predation events at the leks and because predation would result in a gradual decrease in attendance rather than the rapid and sustained decline they observed (Blickley *et al.* 2012a, p. 467). Displacement was likely the result of masking of the male's vocalizations at the lek, reducing ability of females to detect acoustic cues and locate leks in noisy areas (Blickley *et al.* 2012a, p. 469).

Related work by Blickley and Patricelli (2012, entire) examined the potential for noise to mask the sounds used by greater sage-grouse during communication. They stated that most anthropogenic noise is dominated by low frequencies and that birds, such as greater sage-grouse, that produce vocalizations dominated by low frequencies will disproportionately have their vocalizations masked by these developments (Blickley and Patricelli 2012, p. 31). Measurements were taken at various noise sources typically associated with oil and gas operations, including a compressor station, a deep natural gas drilling rig, and at a diesel powered generator (Blickley and Patricelli 2012, p. 27). They also measured the ambient noise associated with an undisturbed lek after lekking had ceased in the morning and expressed the noise produced by each source in relation to the ambient noise levels at various distances. All sounds were recorded at a height of 25 cm (10 in) which roughly corresponds to the height of a typical grouse (Blickley and Patricelli 2012, p. 27). Noise produced by the compressor was 48.9 dB higher than ambient levels at a distance of 75 m (246 ft) from the source and 34.2 dB higher at 400 m (1,312 ft) from the source (Blickley and Patricelli 2012, p. 28). Noise produced by the drilling rig was slightly less than these values at the same distances and noise produced by the generator was 24.9 dB and 18.4 dB higher than ambient levels at these distances. Butler *et al.* (2010. pp. 1160–1161) observed the intensity of booming in lekking lesser prairie-chickens and estimated that sound intensity of booming vocalizations would be less than or equal to 60 dB at 21 m (69 ft), less than or equal to 30 dB at 645 m (2,116 ft) and about 22 dB at 1.6 km (5,240 ft).

The frequency of the sounds produced by these sources at these same distances was 8 kilohertz (kHz) or less. The variety of vocalizations produced by greater sage-grouse peaked at 11.5 kHz or less (Blickley and Patricelli 2012, p. 29). Based on this study, noise produced by typical oil and gas infrastructure can mask grouse vocalizations and compromise the ability of female greater sage-grouse to find active leks when such noise is present (Blickley and Patricelli 2012, p. 32). Although female grouse also use visual cues to assess potential mates on a lek, noisy leks can cause female attendance at these leks to decline. As previously discussed in this section, chronic noise associated with human activity also leads to reduced male attendance at noisy leks. While the effects of masking will decline with distance from the sound source, other communication used by grouse off the lek, such as parent-offspring communication, may continue to be susceptible to masking by noise from human infrastructure (Blickley and Patricelli 2012, p. 33). These findings

are particularly important in assessing the impacts of development on grouse activity, especially considering that females use the sounds produced by the males during courtship to locate a lek, then once a lek has been located, to select a mate from the males displaying on that lek. Breeding, reproductive success and ultimately recruitment in areas with human developments could be impaired by inappropriate placement of such developments, impacting survival. Additionally behavioral responses exhibited by grouse when exposed to chronic noise could lead to reductions in the amount of suitable habitat and negatively influence survival and population size in such areas.

During related studies, Blickley *et al.* (2012b, entire) evaluated the implications of chronic noise on the physiological health of lekking male greater sage-grouse through the assessment of glucocorticoid hormone levels. Glucocorticoid hormones are secreted into the blood in response to stress and their metabolites can be measured in fecal samples as an indication of the stress response. In this study, noise associated with roads and drilling activity, as described in Blickley *et al.* (2012a, pp. 464–466), was recorded and replayed at active greater sage-grouse leks. Males exposed to chronic noise had higher (16.7 percent, on average) fecal levels of immunoreactive corticosteroid metabolites than did males from undisturbed leks, confirming chronic noise increased stress levels in male sage grouse that remained on the noisy leks (Blickley *et al.* 2012b, pp. 4–5). However, there was little difference in male response in relation to the type (e.g., road or drilling) of noise. Chronic noise created less desirable habitat for greater sage-grouse than habitat present at undisturbed locations, at least at breeding sites (Blickley *et al.* 2012b, p. 6). The impacts of chronic noise on stress levels in wintering, nesting, and for foraging males are unknown. Noise is likely perceived as a threat by greater sage-grouse and may impact social interactions, including territorial response and recognition of other greater sage grouse (conspecifics), feeding activities and responses to predation, particularly if alarm calls are masked by noise (Blickley *et al.* 2012b, p. 6). Chronic noise may not only reduce the amount of useable space but chronic physiological stress could potentially affect overall health of the organism including disease resistance, survival, and reproductive success.

We anticipate similar behavioral responses by lesser prairie-chickens because their vocalizations are low frequency and vocalization intensity is less than or equal to sound intensity produced by many man-made developments. Blickley *et al.* (2012a, p. 470) believed that noise may be a possible factor in the population declines of other species of lekking grouse in North America, particularly for populations that are exposed to human developments. Like sage grouse, lesser prairie-chicken vocalizations are low frequency, generally less than 4 kHz (Sharpe 1968, p. 111–146; Hagen and Giesen 2005, unpaginated), and subject to being masked by noise from human developments. Butler *et al.* (2010, p. 1161) predicted sound intensity of lesser prairie-chicken booming vocalizations would be 60 dB or less at 21 m (69 ft) and 30 dB or less at 645 m (2,116 ft) from the lek.

Hunt (2004, p. 141) measured sound levels at 33 active and 39 abandoned lesser prairie-chicken leks in New Mexico in an attempt to determine the relationship between noise levels and lek activity. Noise levels from several types of infrastructure associated with oil and gas drilling operations were measured (Hunt 2004, pp. 147–148). Average noise levels of drilling rigs at a distance of 320 m (1,050 ft) was 24 dB above ambient levels measured at active leks and average noise levels for propane and electric powered pumping units at this same distance were 14 and 5.9 dB higher, respectively, than ambient levels at active leks. Although ambient noise levels at abandoned leks were significantly higher (average difference was 4 dB) than ambient noise levels at active leks, he concluded that the observed difference did not, by itself, completely explain why the leks were abandoned (Hunt 2004, p. 142). Other factors associated with petroleum development, such as human activity, presence of power lines and road density, likely contributed to abandonment of the leks they observed (Hunt 2004, p. 142). Abandoned leks had more active wells, more total wells, and greater length of road than active leks, and were more likely than active leks to be near power lines (Hunt 2004, p. iv).

Pitman *et al.* (2005, p. 1264) observed the behavioral responses of nesting lesser prairie-chicken hens to the presence of anthropogenic features, such as wellheads, buildings, roads, transmission lines, and center-pivot irrigation fields, in southwestern Kansas. They reported that the presence of anthropogenic features resulted in the avoidance of 7,114 ha (17,579 ac) of the 13,380 ha (33,063 ac) of nesting habitat available within their study area and concluded that noise associated with these features likely contributed to the behavioral response exhibited by the nesting hens (Pitman *et al.* 2005, p. 1267). They also noted that sound levels, as measured 100 m (328 ft) from the source, ranged from 60–80 dB for center-pivots, 80–100 dB for compressor stations, and over 100 dB for a power plant. Additionally noise associated with transmission lines and heavy traffic from improved roads was audible at a distance over 2 km (1.2 mi) from the source.

In summary, noise can be associated with almost any form of human activity and wildlife often exhibit behavioral and physiological responses to the presence of noise. Vocalizations between individuals of a species are important social cues that can influence habitat use, mate selection, breeding activity, survival and ultimately population size and persistence. In prairie chickens, the ''boom'' call transmits information about sex, territorial status, mating condition, location, and individual identity of the signaler and thus are important to courtship activity and for long-range advertisement of the display ground (Sparling 1981, p. 484). Chronic noise can interfere with these social interactions by masking important forms of communication between individuals. Opportunities for effective communication on the display ground also occurs under fairly narrow conditions and disturbance during this period may have negative consequences for reproductive success. In lesser prairie-chickens, persistent noise likely causes lek attendance to decline, disrupts courtship and breeding activity, impairs habitat quality and reduces reproductive success. Noise causes abandonment of otherwise suitable habitats and contributes to habitat loss and degradation. Many of the development activities discussed in the sections below, particularly energy development, emit noises that likely cause specific behavioral responses by lesser prairie-chickens. As these types of developments continue to increase within the estimated occupied range, as expected, the impacts of noise from these activities likely will be amplified and will be detrimental to the persistence of the lesser prairie-chicken, particularly at the local level.

Wind Power and Energy Transmission Operation and Development

Wind power is a form of renewable energy that is increasingly being used to meet electricity demands in the United States. The U.S. Energy Information Administration has estimated that the

demand for electricity in the United States will grow by 39 percent between 2005 and 2030 (U.S. Department of Energy (DOE) 2008, p. 1). Wind energy, under one scenario, would provide 20 percent of the United States' estimated electricity needs by 2030 and require at least 250 gigawatts of additional land-based wind power capacity to achieve predicted levels (DOE 2008, pp. 1, 7, 10). The forecasted increase in production would require about 125,000 turbines based on the existing technology and equipment in use and assuming a turbine has a generating capacity of 2 megawatts (MW). Achieving these levels also would require expansion of the current electrical transmission system. Most of the wind power development needed to meet these anticipated demands is likely to come from the Great Plains States because they have high wind resource potential, which exerts a strong, positive influence on the amount of wind power developed within a particular State (Staid and Guikema 2013, p. 384).

All 5 lesser prairie-chicken States are within the top 12 States nationally for potential wind capacity, with Texas ranking second for potential wind energy capacity and Kansas ranking third (American Wind Energy Association 2012b, entire). The potential for wind development within the estimated historical and occupied ranges of the lesser prairie-chicken is apparent from the wind potential estimates developed by the DOE's National Renewable Energy Laboratory and AWS Truewind (DOE National Renewable Energy Laboratory 2010b, p. 1). These estimates present the predicted mean annual wind speeds at a height of 80 m (262 ft). Areas with an average wind speed of 6.5 m/s (21.3 ft/s) and greater at a height of 80 m (262 ft) are generally considered to have a suitable wind resource for large scale development. All of the estimated historical and occupied range of the lesser prairie-chicken occurs in areas determined to have 6.5 m/s (21.3 ft/s) or higher average windspeed (DOE National Renewable Energy Laboratory 2010b, p. 1). The vast majority of the estimated occupied range lies within areas having wind speeds of 7.5 m/s (24.6 ft/s) or higher. These wind speeds provide good to excellent potential for wind energy production and represent the highest potential areas for wind energy development.

Numerous financial incentives, including grants, production incentives and tax relief, already are available to help encourage and promote development of renewable energy sources. Four (Colorado, Kansas, New Mexico and Texas) of the five states that encompass the range of the lesser prairie-chicken have renewable portfolio standards (Hitaj 2013, pp. 408–409). Renewable portfolio standards require that utilities obtain a certain percentage of their electricity from renewable energy sources and there may be substantial financial penalties for noncompliance. The percentage of renewable energy in each portfolio varies from a low of 4.4 percent in Texas to a high of 27 percent in Colorado (Hitaj 2013, pp. 408–409). With the exception of Texas, which was extended to 2025, all of the renewable portfolio standards that have been established within the lesser prairie-chicken States have an established target date of 2020. Only Oklahoma does not have a renewable portfolio standard. Evaluation of the effects of renewable portfolio standards have concluded that these standards have had a significant, positive impact on the development of wind power within those States with existing renewable portfolio standards (Yin and Powers 2010, p. 1149). Oklahoma and New Mexico offer production incentives, and Colorado, Kansas and Texas provide property tax incentives. Texas also provides a corporate tax credit on equipment and installation costs (Hitaj 2013, p. 409).

At the National level, wind power development has been incentivized by the Federal renewable energy production tax credit, most recently 2.3 cents per kilowatt-hour. The credit typically applies to the first 10 years of operation but unused credits may be carried forward for up to 20 years. This credit first became available in 1992 and has had an important effect on investment and development by the wind power industry (Hitaj 2013, p. 404; Staid and Guikema 2013, p. 378). Development has slowed during periods when the availability of the Federal production tax credit was uncertain (Bird *et al.* 2005, p. 1398; Staid and Guikema 2013, p. 378). The production tax credit expired in 2012 but was extended in January of 2013 through the end of the calendar year. The Federal production tax credit has since expired and its future is currently unknown. Typically, for years in which the production tax credit has not been in place development has slowed and the years prior to expiration have shown a boom in wind power development (Blair 2012, p. 10).

Wind farm development begins with site monitoring and collection of meteorological data to characterize the available wind regime. Turbines are installed after the meteorological data indicate appropriate siting and spacing. The tubular towers of most commercial, utility-scale onshore wind turbines are between 65 m (213 ft) and 100 m (328 ft) tall. The most common system uses three rotor blades and can have a diameter of as much as 100 m (328 ft). The total height of the system is measured when a turbine blade is in the 12 o'clock position and will vary depending on the length of the blade. With blades in place, a typical system will exceed 100 m (328 ft) in height. A wind farm will vary in size depending on the size of the turbines and amount of land available. Typical wind farm arrays consist of 30 to 150 towers each supporting a single turbine. The individual permanent footprint of a single turbine unit, about 0.3 to 0.4 ha (0.75 to 1 ac), is relatively small in comparison with the overall footprint of the entire array (DOE 2008, pp. 110–111). Spacing between each turbine is usually 5 to 10 rotor diameters to avoid interference between turbines. Roads are necessary to access the turbine sites for installation and maintenance. One or more substations, where the generated electricity is collected and transmitted, also may be built depending on the size of the wind farm. Considering the initial capital investment, and that the service life of a single turbine is at least 20 years (DOE 2008, p. 16), we expect most wind power developments to be in place for at least 20 years.

Siting of commercially viable wind energy developments is largely based on wind intensity (speed) and consistency, and requires the ability to transmit generated power to the users. Any discussion of the effects of wind energy development on the lesser prairie-chicken also must take into consideration the influence of the transmission lines critical to distribution of the energy generated by wind turbines. Transmission lines can traverse long distances across the landscape and can be both above ground and underground, although the vast majority of transmission lines are erected above ground. Most of the impacts to lesser prairie-chicken associated with transmission lines are with the aboveground systems. Support structures vary in height depending on the size of the line. Most high-voltage powerline towers are 30 to 38 m (98 to 125 ft) high but can be higher if the need arises. Local distribution lines are usually much shorter in height but can still contribute to fragmentation of the landscape. Local distribution lines, while more often are erected above ground, can be placed below ground. Financial investment in the

transmission of electrical power has been steadily climbing since the late 1990s and includes not only the cost of maintaining the existing system but also includes costs associated with increasing reliability and development of new transmission lines (DOE 2008, p. 94). Manville (2005, p. 1052) reported that there are at least 804,500 km (500,000 mi) of transmission lines (lines carrying greater than 115 kilovolts (kV)) within the United States. Recent transmission-related activities within the estimated historical and occupied ranges include the creation of Competitive Renewable Energy Zones in Texas and the ''X plan'' under consideration by the Southwest Power Pool, which are discussed in more detail below.

Wind energy developments already exist within the estimated historical range of the lesser prairie-chicken, some of which have impacted occupied habitat. The 5 lesser prairie-chicken States are all within the top 20 States nationally for installed wind capacity (American Wind Energy Association 2012a, p. 6). By the close of 1999, the installed capacity, in MW, of wind power facilities within the five lesser prairie-chicken States was 209 MW; the majority, 184 MW, was provided by the State of Texas (DOE National Renewable Energy Laboratory 2010a, p. 1). At the close of 2012, the installed capacity within the five lesser prairie-chicken States had grown to 21,140 MW (Wiser and Bollinger 2013, p. 9). Although not all of this installed capacity is located within the estimated historical or occupied ranges of the lesser prairie-chicken, and includes any offshore wind projects in Texas (one non-commercial tower at close of 2013), there is considerable overlap between the estimated historical and occupied ranges and those areas having good to excellent wind potential, as determined by the DOE's National Renewable Energy Laboratory (DOE National Renewable Energy Laboratory 2010b, p. 1). Areas having good to excellent wind potential represent the highest priority sites for wind power development, particularly where projects have access to transmission systems with available capability.

Within the estimated occupied range in Colorado, existing wind projects are located in Baca, Bent, and Prowers Counties. Colorado's installed wind capacity grew by 39 percent in 2011 (American Wind Energy Association 2012b, entire). In Kansas, Barber, Ford, Gray, Kiowa, and Wichita Counties have existing wind projects. Kansas is expected to double their existing capacity in 2012 and leads the United States with the most wind power under construction (American Wind Energy Association 2012b, entire). By the close of 2012, Kansas had installed the most capacity (1,441 MW) of any State (Wiser and Bollinger 2013, p. 9). Curry, Roosevelt, and Quay Counties in the New Mexico portion of the estimated occupied range currently have operating wind projects. There are 14,136 MW (roughly 5,654 2.5 MW turbines) in the queue awaiting construction (American Wind Energy Association 2012b, entire). In Oklahoma, Custer, Dewey, Harper, Roger Mills, and Woodward Counties have existing wind farms. Approximately 393 MW are under construction and there is another 14,667 MW in the queue awaiting construction. In Texas, Carson, Moore, Oldham and Randall counties have existing wind farms. Wiser and Bollinger (2013, p. 12) reported that nationwide, by the end of 2012, there were about 125 GW of wind power projects within the interconnection queues awaiting development. This figure represents more than double the existing developed wind capacity in the United States with Texas (Electric Reliability Council of Texas) and the Southwest Power Pool having almost 32 percent of the total capacity in the interconnection queues (Wiser and Bollinger 2013, pp. 12–13). These two transmission system operators encompass almost all of the estimated occupied range of the lesser prairie-chicken in Kansas, New Mexico, Oklahoma and Texas.

Most published literature on the effects of wind development on birds focuses on the risks of collision with towers or turbine blades. Until recently, there was very little published research specific to the effects of wind turbines and transmission lines on prairie grouse and much of that focuses on avoidance of the infrastructure associated with renewable energy development (see previous discussion on vertical structures in the ''Causes of Habitat Fragmentation within Lesser Prairie-Chicken Range'' section above and discussion that follows). We find that many wind power facilities are not monitored consistently enough to detect collision mortalities and the observed avoidance of and displacement influenced by the vertical infrastructure observed in prairie grouse likely minimizes the opportunity for such collisions to occur. However, Vodenhal *et al.* (2011, unpaginated) has observed both greater prairie-chickens and plains sharp-tailed grouse (*Tympanuchus phasianellus jamesi*) lekking near the Ainsworth Wind Energy Facility in Nebraska since 2006. The average distance of the observed display grounds to the nearest wind turbine tower was 1,430 m (4,689 ft) for greater prairie-chickens and 1,178 m (3,864 ft) for sharp-tailed grouse.

Greater prairie-chickens also were observed within a wind power development in Kansas, indicating that strong avoidance of such developments by prairie grouse is not always evident and, under some conditions, the impacts may occasionally be beneficial. Winder *et al.* (2013, entire), as part of a larger study that examined the environmental impacts of the Meridian Way wind power project in northcentral Kansas, examined the effects of wind energy development on survival of female greater prairie-chickens. The study site was located in an area that was considerably fragmented, having a relatively high density of roads and moderately high incidence of row crop agriculture (35 percent) for a primarily grassland landscape (Winder *et al.* 2013, p. 3). They concluded that development of this wind power facility did not negatively impact survival of female greater prairie-chickens. In fact, survival increased significantly post construction (Winder *et al.* 2013, p. 5), perhaps in response to changes in predator behavior following completion of construction in 2008. Prior to construction, they observed that the majority of greater prairie-chicken mortality was due to predation, principally during the lekking season (Winder *et al.* 2013, p. 6). Post construction, they speculated that the presence of the wind farm altered predator activity on the study area although they did not specifically record information on numbers of predators before and after construction (Winder *et al.* 2013, p. 7).

Because Winder *et al.* (2013, entire) only provided information on adult survival associated with wind farm development; we lack information on recruitment and the long-term persistence of greater prairie-chickens at this site. While adult survival is one of several demographic factors that influence population growth, it is rarely as important as nest and brood survival in prairie grouse, particularly lesser prairie-chickens (Pitman *et al.* 2006b, p. 679; Hagen *et al.* 2009, pp. 1329–1330; Grisham 2012, p. 153; Hagen *et al.* 2013, p. 750). The lack of information on nest and brood survival, thus recruitment, could result in misrepresentation of the impacts of the wind farm. For example, female survival may have been demonstrated to increase post construction, but we do not know from this study if the females nested or the fate of those nests and of any broods

that might have been produced. Previous studies on lesser prairie-chickens demonstrated that females would not nest within specific distances of certain vertical structures (Pitman *et al.* 2005, pp. 1267–1268). Additionally, Winder *et al.* (2013, entire) did not provide any information on habitat selectivity by the adults or persistence of leks at the study site. Consequently, we do not know whether the birds actively chose to remain at that location, or simply continued to use the only remaining usable habitat and are unable to persist long term. While they did report that over 75 percent of the leks were located within 8 km (5 mi) of a turbine, the fate of those leks post construction were not reported (Winder *et al.* 2013, p. 3).

However, additional information regarding this study is available that provides more insight into some aspects of the effects of wind power development on greater prairie-chickens and helps address some of the concerns presented above (Sandercock *et al.* 2012, entire). With respect to lek persistence, the distance from a wind turbine was not shown to have a statistically significant effect on the probability of lek persistence (Sandercock *et al.* 2012, p. 11). However, lek sites located less than 5 km (3.1 mi) from a turbine had a lower probability of persistence than leks that were located larger distances from a turbine, leading the authors to conclude that wind energy development negatively impacted lek persistence (Sandercock *et al.* 2012, p. 11). Females were not observed to select nest sites at random; instead they preferred to nest in native grasslands (Sandercock *et al.* 2012, p. 25). Although females may have remained at the site post construction due to the continued presence of suitable grassland habitat, Sandercock *et al.* (2012, p. 3) did not observe any impacts of wind power development on nest site selection, nesting success, or female reproductive effort. However, they did report weak evidence for avoidance of wind turbines by female greater prairie-chickens that were not attending nests or broods during the breeding season (Sandercock *et al.* 2012, p. 25). Prior to construction, some 20 percent of the observed movements would have crossed the location of the proposed wind farm but post construction only 11 percent of the observed movements crossed the area where actual wind energy infrastructure existed. They concluded that females were more likely to move away from wind power infrastructure and may lead to fragmentation of existing populations post construction (Sandercock *et al.* 2012, p. 25).

When male fitness was examined, they observed that the residual body mass of male greater prairie-chickens at lek sites near turbines declined post construction and may have negatively impacted individual survival or reproductive performance (Sandercock *et al.* 2012, p. 53). Reduced body condition also may impact flight performance and increase predation risk in males displaying on leks. Based on counts of males at leks, Sandercock *et al.* (2012, p. 61), did not find that greater prairie-chicken population size was negatively impacted by wind power development. However, following construction, they observed that the number of males declined over the next 3 years of the study and resulted in finite rates of population change indicative of a declining population (Sandercock *et al.* (2012, p. 61). They also observed that wind power development did appear to reduce dispersal rates or change settlement patterns in greater prairie-chickens, leading to higher rates of relatedness among males.

As evident from the study of the Meridian Way Wind Power Development, under some conditions, and with some species of grouse, the displacement effects of wind power projects may not be as strong as observed with other types of developments. In the instance of female survival, the presence of wind turbines may enhance survival, particularly if the presence of the turbines leads to reduced rates of predation. However, at least in this study, the presence of the wind power development was not entirely benign and the fragmented nature of the landscape surrounding the study site may have exerted a stronger influence on the observed behavior of greater prairie-chickens than did the presence of the wind turbines over the three year period examined in this study. Under these conditions, the birds may have perceived the wind project site as more suitable than the surrounding landscape.

These studies also appear to indicate that greater prairie-chickens may be more tolerant of wind turbine towers than other species of prairie grouse (Winder *et al.* (2013, p. 9). Hagen (2004, p. 101) cautions that occurrence near such structures may be due to strong site fidelity or continued use of suitable habitat remnants and that these populations actually may not be able to sustain themselves without immigration from surrounding populations (i.e., population sink). If greater prairie-chickens are less sensitive to wind energy development, this may, at least partially explain why greater prairie-chickens also continue to utilize grassland habitats at the Ainsworth Wind Energy Facility in Nebraska.

Currently, we have no documentation of any collision-related mortality in wind farms for lesser prairie-chickens. In Kansas, Winder *et al.* (2013, p. 8) did observe collision mortality before and after construction of a wind farm but those mortalities were due to fences or power lines and not the turbines themselves. Similarly, no deaths of gallinaceous birds (upland game 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 minimized the risk of collision (Erickson *et al.* 2001, pp. 8, 11, 14, 15). However, Johnson and Erickson (2011, p. 17) monitored commercial scale wind farms in the Columbia Plateau of Washington and Oregon and observed that about 13 percent of the observed collision mortalities were nonnative upland game birds: Ring-necked pheasant, gray partridge (*Perdix perdix*), and chukar (*Alectoris chukar*). Although the risk of collision with individual wind turbines appears low, commercial wind energy developments can directly alter existing habitat, contribute to habitat and population fragmentation, and cause more subtle alterations that influence how species use habitats in proximity to these developments (National Research Council 2007, pp. 72–84).

Wind turbines can generate significant levels of noise. Estimates of the noise created by wind turbines vary depending on a variety of factors. Cummins (2012, p. 12–15) summarizes information on wind turbine noise, including use of sound contour maps to explain how turbine noise changes with distance, topography, and turbine layout. Generally, the wind energy industry expects that turbine noise will average 35 to 45 dB at 350 m (1,150 ft) from an operating turbine but in some instances the sound may continue to exceed 45 dB as far as 0.8 km (0.5 mi) from the sound source (Cummings 2012, p. 13). Noise levels obviously could peak at levels higher than the average. Most noise produced by wind turbines also is low frequency, typically 0.25 kHz or less (Cummings 2012, p. 40). Noise levels of this magnitude and frequency may generate a behavioral response in lesser prairie-chickens and may result in avoidance of areas of otherwise suitable habitat.

Electrical transmission lines can directly affect prairie grouse by posing

a collision hazard (Leopold 1933, p. 353; Connelly *et al.* 2000, p. 974; Patten *et al.* 2005b, pp. 240, 242) and can indirectly lead to decreased lek recruitment, increased predation, and facilitate invasion by nonnative plants. The physical footprint of the actual project is typically much smaller than the actual impact of the transmission line itself. Lesser prairie-chickens exhibit strong avoidance of tall vertical features such as utility transmission lines (Pitman *et al.* 2005, pp. 1267–1268). In typical lesser prairie-chicken habitat where vegetation is low and the terrain is relatively flat, power lines and power poles provide attractive hunting, loafing, and roosting perches for many species of raptors (Steenhof *et al.* 1993, p. 27). The elevated advantage of transmission lines and power poles serve to increase a raptor's range of vision, allow for greater speed during attacks on prey, and serve as territorial markers. Raptors actively seek out power lines and poles in extensive grassland areas where natural perches are limited. While the effect of this predation on lesser prairie-chickens undoubtedly depends on raptor densities, as the number of perches or nesting features increase, the impact of avian predation will increase. Additional discussion concerning the influence of vertical structures on predation of lesser prairie-chickens can be found in the ''Causes of Habitat Fragmentation Within Lesser Prairie-Chicken Range'' section above, and additional information on predation is provided in a separate discussion under ''*Predation''* below.

Transmission lines, particularly due to their length, can be a significant barrier to dispersal of prairie grouse, disrupting movements to feeding, breeding, and roosting areas. Both lesser and greater prairie-chickens avoided otherwise suitable habitat near transmission lines and crossed these power lines much less often than nearby roads, suggesting that power lines are a particularly strong barrier to movement (Pruett *et al.* 2009a, pp. 1255–1257). Because lesser prairie-chickens avoid tall vertical structures like transmission lines and because transmission lines can increase predation rates, leks located in the vicinity of these structures may see reduced recruitment of new males to the lek (Braun *et al.* 2002, pp. 339–340, 343–344). Lacking recruitment, leks may disappear as the number of older males decline due to death or emigration. Linear corridors such as road networks, pipelines, and transmission line rights-of-way can create soil conditions conducive to the spread of invasive plant species, at least in semiarid sagebrush habitats (Knick *et al.* 2003, p. 619; Gelbard and Belnap 2003, pp. 424–425), but the scope of this impact within the range of the lesser prairie-chicken is unknown. Spread of invasive plants is most critical where established populations of invasive plants begin invading areas of native grassland vegetation.

Electromagnetic fields associated with transmission lines 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 exposure with domestic chickens known to be very sensitive. Although many raptor species are less affected by these fields (Fernie and Reynolds 2005, p. 135), no specific studies have been conducted on lesser prairie-chickens. However electromagnetic fields associated with powerlines and telecommunication towers may explain, at least in part, avoidance of such structures by sage grouse (Wisdom *et al.* 2011, pp. 467–468).

Identification of the actual number of proposed wind energy projects that will be built within the range of the lesser prairie-chicken in any future timeframe is difficult to accurately discern, particularly at smaller scales. Nationally, during the period from 1997 to 2002, the average annual growth rate in wind power was 24 percent (Bird *et al.* 2005, p. 1397). An analysis of the Federal Aviation Administration's Daily Digital Obstruction File (obstacle database) can provide some insight into the number of existing and proposed wind generation towers. The Federal Aviation Administration is responsible for ensuring wind towers and other vertical structures are constructed in a manner that ensures the safety and efficient use of the navigable airspace. In accomplishing this mission, they evaluate applications submitted by the party responsible for the proposed construction and alteration of these structures. Included in the application is information on the precise location of the proposed structure. This information can be used, in conjunction with other databases, to determine the number of existing and proposed wind generation towers within the estimated historical and occupied ranges of the lesser prairie-chicken.

Analysis of the information contained in the obstacle database, as available in April 2010, revealed that 6,279 vertical structures, such as wind turbines, telecommunication towers, radio towers, meteorological towers and similar vertical structures, were located within the estimated historical range of the lesser prairie-chicken at that time. An additional estimated 8,501 vertical structures had been cleared for construction, and another 1,693 vertical structures were pending approval within the estimated historical range of the lesser prairie-chicken. While not all of these structures are wind generation towers, the vast majority are. A similar analysis was conducted on lesser prairie-chicken estimated occupied range. As of April 2010, the estimated occupied range included 173 vertical structures. Approximately 1,950 vertical structures had been cleared for construction, and another 250 vertical structures were awaiting approval. In January of 2012, an analysis of the Federal Aviation Administration's obstacle database showed that there were 405 existing wind turbines in or within 1.6 km (1 mi) of the estimated occupied range. In March of 2012, there were 4,887 wind turbines awaiting construction, based on the Federal Aviation Administration's obstruction evaluation database.

For this final rule, we conducted a more complete analysis of vertical structures in an effort to update the analysis we conducted in 2010, as explained above. As before, we used the Federal Aviation Administration's Daily Digital Obstruction File, current as of November 2013 to identify the vertical structures that were built and remain operational between 1974 and 2013. Generally these are vertical structures, such as wind towers and communication towers, that are at least 60.6 m (199 ft) above ground level or otherwise have been deemed a hazard to aviation. Within the historical range of the lesser prairie-chicken, there were a total of 17,800 vertical structures identified, of which 9,109 were classified as windmill type (wind turbine) structures. Of those windmill structures 1,074 had been approved after December 12, 2012, the date of our proposed rule. Within the EOR +10, as previously described, there were 3,714 vertical structures identified in the database of which about 1,398 vertical structures were classified by the Federal Aviation Administration (FAA) as windmill type structures. Of those structures, 405 were approved after December 12, 2012, the date of our proposed rule.

Similarly, we used a portion of the FAA's Obstruction Evaluation/Airport Airspace Analysis database, current as of December 2013, to estimate the number of wind turbines and meteorological towers that are awaiting construction or alteration, pending

approval from the FAA. We included meteorological towers because their presence is often a good first indication that an area is being studied for wind development or as a means of monitoring wind and related data within an existing wind farm. These structures/features are grouped into four classes: Determined hazard—structure has been given a hazard determination by FAA; determined with no build date—evaluation by FAA is complete, structure is not a hazard but no completion date has been provided; determined with build date—evaluation by FAA is complete, structure is not a hazard and a completion date has been provided; not yet determined—all structures proposed to be built and have submitted the Form 7460–1 but for which FAA has not yet made a determination as to whether the structure poses a hazard to air navigation. Our analysis of the historical range revealed that 36,197 wind and meteorological tower features have been proposed for development. Of that total number of features, 12,020 windmill features and 169 meteorological towers have been proposed for development within the EOR +10. Within the EOR +10, 1,513 windmill features and 37 meteorological towers were submitted for approval by FAA after the date of publication of our proposed listing rule on December 12, 2012.

Additionally, the Southwest Power Pool provides public access to its Generation Interconnection Queue (*https://studies.spp.org/GenInterHomePage.cfm*), which provides all of the active requests for connection from new energy generation sources requiring Southwest Power Pool approval prior to connecting with the transmission grid. The Southwest Power Pool is a regional transmission organization which overlaps all or portions of nine States, including Kansas, New Mexico, Oklahoma, and Texas, and functions to ensure reliable supplies of power, adequate transmission infrastructure, and competitive wholesale prices of electricity exist. The Southwest Power Pool's jurisdiction in Kansas, New Mexico, Oklahoma, and Texas does not include all of the historical or estimated occupied range of the lesser prairie-chicken but serves as a very conservative indicator of the amount of interest in wind power development in these four States. In 2010, within the Southwest Power Pool portion of Kansas, New Mexico, Oklahoma, and Texas, there were 177 wind generation interconnection study requests totaling 31,883 MW awaiting approval. A maximum development scenario, assuming all of these projects are built and they install all 2.0 MW wind turbines, would result in approximately 15,941 wind turbines being erected in these four States. Recently we conducted an additional analysis of the current information, as of January 28, 2014, within the Southwest Power Pool's Generation Interconnection Queue. We conducted this analysis to obtain a more recent evaluation of existing and proposed wind power development within the Southwest Power Pool's jurisdiction in portions of Kansas, New Mexico, Oklahoma, and Texas. There were a total of 74 projects in the queue within the counties encompassed by the EOR +10. Thirty-one of those projects were in commercial operation, thirty-eight were identified as being in planning or development and five projects were suspended and not currently moving forward. Fifteen of those thirty-eight projects, totaling 3,208.3 MW of power, that were identified as being in active planning or development were submitted for consideration after publication of our proposed rule on December 12, 2012. The total planned power production, in MW, for the projects in operation and in planning or development were 4,706.5 and 9,324.3, respectively. If we assume a typical turbine size of 2.0 MW, an estimated 7,015 turbines have been built or are in planning and development at this time within the counties encompassed by the EOR +10 within the Southwest Power Pool jurisdiction. These estimated values do not include development and planning within the Electric Reliability Council of Texas whose jurisdiction extends over most of the Texas Panhandle.

The possible scope of this anticipated wind energy development on the status of the lesser prairie-chicken can readily be seen in Oklahoma where the locations of many of the current and historically occupied leks are known. Most remaining large tracts of untilled native rangeland, and hence lesser prairie-chicken habitat, occur on topographic ridges. Leks, the traditional mating grounds of prairie grouse, are consistently located on elevated grassland sites with few vertical obstructions (Flock 2002, p. 35). Because of the increased elevation, these ridges also are prime sites for wind turbine development. In cooperation with ODWC, Service personnel in 2005 quantified the potential degree of wind energy development in relation to existing populations of lesser prairie-chicken in Oklahoma. All active and historically occupied lesser prairie-chicken lek locations in Oklahoma, as of the mid 1990s (n = 96), and the estimated occupied range, were compared with the Oklahoma Neural Net Wind Power Development Potential Model map created by the Oklahoma Wind Power Assessment project. The mapping analysis revealed that 35 percent of the estimated occupied range in Oklahoma is within areas designated by the Oklahoma Wind Power Assessment as ''excellent'' for wind energy development. When both the ''excellent'' and ''good'' wind energy development classes are combined, about 55 percent of the lesser prairie-chicken's occupied range in Oklahoma lies within those two classes.

When leks were examined, the analysis revealed a nearly complete overlap on all known active and historically occupied lek locations, based on the known active leks during the mid 1990s. Roughly 91 percent of the known lesser prairie-chicken lek sites in Oklahoma are within 8 km (5 mi) of land classified as ''excellent'' for wind development (O'Meilia 2005). Over half (53 percent) of all known lek sites in Oklahoma occur within 1.6 km (1 mi) of lands classified as ''excellent'' for commercial wind energy development. This second metric is particularly relevant considering a majority of lesser prairie-chicken nesting generally occurs, on average, within 3.4 km (2.1 mi) of active leks (Hagen and Giesen 2005, p. 2). Robel (2002, p. 23) estimated that habitat within 1.6 km (1.0 mi) or more of a single commercial-scale wind turbine is rendered unsuitable for greater prairie chickens due to their tendency to avoid tall structures. Using Robel's (2002, p. 23) estimate of this zone of avoidance (1.6 km or 1.0 mi) for a single commercial-scale wind turbine, development of commercial wind farms, which would consist of multiple turbines spaced over a large area (typical wind farm arrays consist of 30 to 150 towers each supporting a single turbine), likely will have a significant adverse influence on reproduction of the lesser prairie-chicken, provided lesser prairie-chickens consistently avoid nesting within 1.6 km (1 mi) of each turbine.

Unfortunately, a similar analysis of active and historically occupied leks is not available for the other States due to a lack of comparable information on the location of lek sites. Considering western Kansas currently supports the largest number and distribution of lesser prairie-chickens of all five States, the influence of wind energy development

on the lesser prairie-chicken in Kansas would likely be equally, if not more, significant. As previously discussed in this section, wind power development in Kansas is expanding (Wiser and Bollinger 2013, p. 9) and the industry is seeking to continue development of additional wind farms. In 2006, the Governor of Kansas initiated the Governor's 2015 Renewable Energy Challenge, an objective of which is to have 1,000 MW of renewable energy capacity in Kansas by 2015 (Cita *et al.* 2008, p. 1). A cost-benefit study (Cita *et al.* 2008, Appendix B) found that wind power was the most likely and most cost effective form of renewable energy resource for Kansas. Modestly assuming an average of 2 MW per turbine—most commercial scale turbines are between 1.5 and 2.5 MW—an estimated 500 turbines would have to be erected in Kansas if this goal is to be met.

While not all of those turbines would be placed in occupied habitat, and some overlap in avoidance would occur if turbines were oriented in a typical wind farm array, the potential impact could be significant. First, the best wind potential in Kansas occurs in the western two-thirds of the State and largely overlaps the estimated occupied lesser prairie-chicken range (DOE, National Renewable energy Laboratory 2010b, p. 1). Additionally, Kansas has a voluntary moratorium on the development of wind power in the Flint Hills of eastern Kansas, which likely will shift the focus of development into the central and western portions of the State. Taking these two factors into consideration, construction of much of the new wind power anticipated in the Governor's 2015 Renewable Energy Challenge likely would occur in the western two-thirds of Kansas. If we assume that even one-half of the estimated 500 turbines are placed in lesser prairie-chicken range, 250 turbines would individually impact over 101,000 ha (250,000 ac), based on an avoidance distance of 1.6 km (1 mi). The habitat loss resulting from the above scenario would further reduce the extent of large, unfragmented parcels and influence connectivity between remaining occupied blocks of habitat, reducing the amount of suitable habitat available to the lesser prairie-chicken. Consequently, siting of wind energy arrays and associated facilities, including electrical transmission lines, appears to be a serious threat to lesser prairie-chickens in western Kansas within the near future (Rodgers 2007a).

In Colorado, the DOE, National Renewable Energy Laboratory (2010b, p. 1) rated the southeastern corner of Colorado as having good wind resources, the largest area of Colorado with that ranking. The area almost completely overlaps the estimated occupied range of the lesser prairie-chicken in Colorado. Colorado currently ranks 10th in both total installed capacity and number of commercial scale wind turbines in operation (AWEA 2014). The 162 MW Green Wind Power Project and 75 MW Twin Buttes Wind Project are located with Prowers County which includes portions of the estimated occupied range. The CPW reported that commercial wind development is occurring in Colorado, but that most of the effort is currently centered north of the estimated occupied range of lesser prairie-chicken in southeastern Colorado.

Wind energy development in New Mexico is less likely than in other States within the range of the lesser prairie-chicken because the suitability for wind energy development in the estimated occupied range of the lesser prairie-chicken in New Mexico is only rated as fair (DOE, National Renewable Energy Laboratory 2010b, p. 1). However, some parts of northeastern New Mexico within lesser prairie-chicken historical range have been rated as excellent. Northeastern New Mexico is important to lesser prairie-chicken conservation because this area is vital to efforts to reestablish or reconnect the New Mexico lesser prairie-chicken population to those in Colorado and the Texas panhandle.

In Texas, the Public Utility Commission recently directed the Electric Reliability Council of Texas (ERCOT) to develop transmission plans for wind capacity to accommodate between 10,000 and 25,000 MW of power (American Wind Energy Association 2007b, pp. 2–3). ERCOT is a regional transmission organization with jurisdiction over most of Texas. The remainder of Texas, largely the Texas panhandle, lies within the jurisdiction of the Southwest Power Pool. A recent assessment from ERCOT identified more than 130,000 MW of high-quality wind sites in Texas, more electricity than the entire State currently uses. The establishment of Competitive Renewable Energy Zones by ERCOT within the State of Texas will facilitate wind energy development throughout western Texas. Based on the development priority of each zone, the top four Competitive Renewable Energy Zones, which are designated for future wind energy development in the Texas panhandle, are located within occupied and historical lesser prairie-chicken habitat in the Texas panhandle.

Wind energy and associated transmission line development in the Texas panhandle and portions of west Texas represent a threat to extant lesser prairie-chicken populations in the State. Once established, wind farms and associated transmission features would severely hamper future efforts to restore population connectivity and gene flow (transfer of genetic information from one population to another) between existing populations that are currently separated by incompatible land uses in the Texas panhandle.

Development of high-capacity transmission lines is critical to the development of the anticipated wind energy resources in ensuring that the generated power can be delivered to the consumer. According to ERCOT (American Wind Energy Association 2007a, p. 9), every $1 billion invested in new transmission capacity enables the construction of $6 billion of new wind farms. We estimate, based on a spatial analysis prepared by The Nature Conservancy in 2011 under their license agreement with Ventyx Energy Corporation, that there are 35,220 km (21,885 mi) of transmission lines, having a capacity of 69 kilovolts (kV) or larger, in service within the historical range of the lesser prairie-chicken. Within the estimated currently occupied range, this analysis estimated that about 3,610 km (2,243 mi) of transmission lines with a capacity of 69kV and larger are currently in service. Within the estimated occupied range, this same analysis revealed that an additional 856 km (532 mi) of 69kV or higher transmission line is anticipated to be in service within the near future.

Because we did not have access to the same commercially available dataset used by The Nature Conservancy, but we wanted to provide an updated analysis of the scope of transmission line development within the range of the lesser prairie-chicken, we used transmission line data maintained by the Southwest Power Pool. This dataset has some limitations, particularly for Texas and New Mexico which are largely outside of the jurisdiction of the Southwest Power Pool. However the data can be used to get a sense of the scope of existing development within portions of the range. Our analysis revealed that 9,153 km (5,687.4 mi) of transmission lines having a capacity of 69kV or higher exist within those portions of the estimated occupied range that lie within the jurisdiction of the Southwest Power Pool. Although the analysis performed by The Nature Conservancy using the Ventyx Energy Corporation dataset has not been updated since 2011, we can use that analysis to derive the density of transmission lines in existence at that

time within the estimated occupied range. Assuming all of the 69 kV or larger transmission lines in service at the time of that analysis (about 3,610 km (2,243 mi) of transmission lines) are still in service, the density of these transmission lines would be 0.04 km/sq km (0.07 mi/sq mi). Although similar information for lesser prairie-chickens is not available, transmission line densities were particularly important in assessing the value of habitat for greater sage grouse. Habitat suitability for sage grouse was the highest when densities of transmission lines were below 0.06 km/sq km (Knick 2013 *et al.,* p. 6). Leks were absent from areas where transmission line densities exceeded 0.20 km/sq km (Knick 2013 *et al.,* p. 6).

The Southwest Power Pool also has information about several proposed electric transmission line upgrades. This organization identified approximately 423 km (263 mi) of proposed new transmission lines, commonly referred to as the ''X Plan'', that were being evaluated during the transmission planning process. Transmission planning continues to move forward, and numerous alternatives are being evaluated, many of which will increase transmission capacity throughout all or portions of the estimated occupied lesser prairie-chicken range and serve to catalyze extensive wind energy development throughout much of the remaining estimated occupied lesser prairie-chicken range in Kansas, Oklahoma, and Texas. Additionally, Clean Line Energy is planning to build a high voltage direct current transmission line (Plains and Eastern Clean Line) that would originate within Texas County of the Oklahoma panhandle, travel the length of the panhandle region, and then drop south to near Woodward, Oklahoma, before continuing eastward across Oklahoma, Arkansas and western Tennessee. The Plains and Eastern Clean Line project would deliver a maximum of 3,500 MW of electric power. Increased transmission capacity provided by the Clean Line project will facilitate development of additional wind power. Additionally, the fragmenting effect of this transmission line is a significant concern. Corman (2011, pp. 151–152) concluded that the northeast Texas population of lesser prairie-chickens was too small to retain high amounts of genetic diversity over the long term. He thought connectivity between the Oklahoma and Kansas lesser prairie-chicken populations was crucial to maintaining persistence in the northeast Texas population. Should lesser prairie-chickens avoid areas adjacent to this high voltage transmission line, as demonstrated with a comparable high voltage transmission line (Pruett 2009a, pp. 1255–1257), movement between populations across the line will diminish significantly. A draft Environmental Impact Statement on this project is anticipated in the fall of 2014; the project cannot proceed until that analysis is complete and the potential route approved. The project is expected to commence commercial operation now earlier than 2018.

Another similar high voltage direct current transmission line proposed by Clean Line Energy Partners, known as the Grain Belt Express, is planned for Kansas. The line would originate in west-central Kansas and continue to its endpoint in the upper Midwestern United States. Very little opportunity to interconnect with these direct current lines exists due to the anticipated high cost associated with development of an appropriate interconnecting substation. Consequently, most of the anticipated wind power that will be transmitted across the Oklahoma and Kansas projects likely will occur near the western terminals associated with these two Clean Line projects. Assuming a fairly realistic build-out scenario for these transmission lines, in which wind power projects would most likely be constructed within 64 km (40 mi) of the western end points of each line (77 FR 75624), much of the estimated occupied range in Colorado, Kansas, Oklahoma, and northeast Texas falls within the anticipated development zone. Although both of these projects are still relatively early in the planning process, and the specific environmental impacts have yet to be determined, a reasonably likely wind power development scenario would place much of the estimated occupied range at risk of wind power development.

In summary, wind energy and associated infrastructure development is occurring now and is expected to continue into the future within occupied portions of lesser prairie-chicken habitat. Proposed transmission line improvements, such as the proposed Plains and Eastern Clean Line project, will serve to facilitate further development of additional wind energy resources but will take several years to commence operations. Future wind energy developments, based on the known locations of areas with excellent to good wind energy development potential, likely will have substantial overlap with known lesser prairie-chicken populations. There is little published information on the specific effects of wind power development on lesser prairie-chickens. Most published reports on the effects of wind power development on birds focus on the risks of collision with towers or turbine blades. However, we do not expect that significant numbers of collisions with spinning blades would be likely to occur due to avoidance of the wind towers and associated transmission lines by lesser prairie-chickens. The most significant impact of wind energy development on lesser prairie-chickens is caused by the avoidance of useable space due the presence of vertical structures (turbine towers and transmission lines) within suitable habitat. The noise produced by wind turbines also is anticipated to contribute to behavioral avoidance of these structures. Avoidance of these vertical structures by lesser prairie-chickens can be as much as 1.6 km (1 mi), resulting in large areas (814 ha (2,011 ac) for a single turbine) of unsuitable habitat relative to the overall footprint of a single turbine. Where such development has occurred or is likely to occur, these areas are no longer suitable for lesser prairie-chicken even though many of the typical habitat components used by lesser prairie-chicken remain. Therefore, considering the scale of current and future wind development that is likely within the range of the lesser prairie-chicken and the significant avoidance response of the species to these developments, we conclude that wind energy development is a threat to the species, especially when considered in combination with other habitat fragmenting activities.

Roads and Other Similar Linear Features

Similar to transmission lines, roads are a linear feature on the landscape that can contribute to loss and fragmentation of habitat suitable for the species and can fragment populations as a result of behavioral avoidance. The observed behavioral avoidance associated with roads is likely due to noise, visual disturbance, and increased predator movements paralleling roads. For example, roads are known to contribute to lek abandonment when they disrupt the important habitat features associated with lek sites (Crawford and Bolen 1976b, p. 239). The presence of roads allows human encroachment into habitats used by lesser prairie-chickens, further causing fragmentation of suitable habitat patches. Some mammalian species known to prey on lesser prairie-chickens, such as red fox, raccoons, and striped skunks, 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).

Traffic noise from roads may indirectly impact lesser prairie-chickens. Because lesser prairie-chickens depend on acoustical signals to attract females to leks, noise from roads, oil and gas development, wind turbines, and similar human activity may interfere with mating displays, influencing female attendance at lek sites and causing young males not to be drawn to the leks. Within a relatively short period, leks can become inactive due to a lack of recruitment of new males to the display grounds.

Roads also may influence lesser prairie-chicken dispersal, likely dependent upon the volume of traffic, and thus disturbance, associated with the road. However, roads generally do not constitute a significant barrier to dispersal unless they are large, multiple-land roads. Lesser prairie-chickens have been shown to avoid areas of suitable habitat near larger, multiple-lane, paved roads (Pruett *et al.* 2009a, pp. 1256, 1258). Generally, roads were between 4.1 and 5.3 times less likely to occur in areas used by lesser prairie-chickens than areas that were not used and can influence habitat and nest site selection (Hagen et al. 2011, pp. 68, 71–72). Lesser prairie-chickens are thought to avoid major roads due to disturbance caused by traffic volume and, perhaps behaviorally, to avoid exposure to predators that may use roads as travel corridors. Similar behavior has been documented in sage grouse (Oyler-McCance *et al.* 2001, p. 330). Wisdom *et al.* (2011, p. 467) examined factors believed to have contributed to extirpation of sage grouse in areas scattered throughout the entire species' historical range and found that extirpated range contained almost 27 times the human density, was 60 percent closer to highways, and had 25 percent higher density of roads, in contrast to occupied range.

Roads also can cause direct mortality due to collisions with automobiles and possibly increased predation. Although individual mortality resulting from collisions with moving vehicles does occur, the mortalities typically are not monitored or recorded. Therefore we cannot determine the importance of direct mortality from roads on lesser prairie-chicken populations.

Using the data layers provided in StreetMap USA, a product of ESRI Corporation and intended for use with ArcGIS, we estimated the scope of the impact of roads on lesser prairie-chickens. Within the entire historical range, there are 622,061 km (386,581 mi) of roads. This figure includes major Federal and state highways as well as county highways and smaller roads. Within the estimated occupied range, approximately 81,874 km (50,874 mi) of roads have been constructed. We also used topographically integrated geographic encoding and referencing (TIGER) files available from the U.S. Census Bureau to conduct a similar analysis of the impact of roads. These files, dated 2007, are more current than the information provided in StreetMap USA. Within the historical range in 2007 there was a total of 642,860 km (399,454.8 mi) of roads within the historical range. Of these roads, about 84,531 km (52,525.3 mi) were located within the estimated occupied range. More detailed examination of the roads in the estimated occupied range revealed there were about 2,386 km (1,482.8 mi) of primary roads, 2,002 km (1,244.3 mi) of secondary roads, and 80,142 km (49,798.2 mi) of local or rural roads. Density (number per unit area) of roads within the estimated occupied range was 1.04 km of road per square km (1.68 mi of road per sq mi). The density of primary roads was 0.03 km of road per square km (0.05 mi of road per sq mi) and for secondary roads was 0.02 km of road per square km (0.04 mi of road per sq mi). The density of local and rural roads was highest at 0.99 km of road per square km (1.59 mi of road per sq mi). Although we do not have similar information for lesser prairie-chickens, Knick *et al.* (2013, entire) found that road densities were particularly important in assessing the value of habitat for greater sage grouse. The most valuable sage grouse habitats had densities of secondary roads that were below 1.0 km per sq km, highway densities below 0.05 km per sq km, and interstate highway densities at or below 0.01 km per sq km (Knick *et al.* 2013, p. 1544). Ninety-three percent of the active leks were located in areas where interstate highway densities were less than 0.01 km/sq km (Knick *et al.* 2013, p. 1544).

While we do not anticipate significant expansion of the number or distance of existing roads in the near or longterm, these roads have already contributed to significant habitat fragmentation within both the estimated historical and occupied range of the lesser prairie-chicken. Assigning buffer values, as described in the rangewide plan (Van Pelt *et al.* 2013, p. 95), to the existing roads within the estimated occupied range provides an estimate of the amount of habitat that has been lost to the lesser prairie-chicken, either by construction, displacement or both. These buffer distances are 500 m (1,640 ft) for primary roads, 67 m (220 ft) for secondary roads, and 10 m (33 ft) for local, rural roads. The total habitat impacted by all types of roads within the estimated occupied range is 402,739.4 ha (995,189.3 ac). The fragmentation caused by roads in combination with other causes of fragmentation described in this final listing rule contributes to the further reduction of usable habitat available to support lesser prairie-chicken populations. The resultant fragmentation is detrimental to lesser prairie-chickens because they rely on large, expansive areas of contiguous rangeland and grassland to complete their life cycle.

Although the best available information does not allow us to predict the number or distance of new roads that will exist into the future, we do not anticipate that the number or distance of primary and secondary roads will increase significantly in the future. However, we do anticipate that increasing human populations within the estimated occupied range, as discussed previously, will lead to increased traffic and road noise on the roads that do exist. Consequently, roads that are already being avoided by lesser prairie-chickens will continue to be barriers, and increasing traffic volumes will lead to additional roads being avoided, further fragmenting an already highly fragmented landscape. Additionally, Pitman *et al.* (2005, p. 1267) believes roads served as travel corridors for predators and may increase the impact of predation on lesser prairie-chickens (see section on *Predation* below).

In summary, roads occur throughout the range of the lesser prairie-chicken and contribute to the threat of cumulative habitat fragmentation to the species.

Petroleum Production

Petroleum production, primarily oil and gas development, is occurring over much of the estimated historical and occupied range of the lesser prairie-chicken. Oil and gas development involves activities such as surface exploration, exploratory drilling, field development, facility construction, and operation and maintenance. Ancillary facilities can include compressor stations, pumping stations, and electrical generators. Activities such as well pad construction, seismic surveys, access road development, power line construction, and pipeline corridors can directly impact lesser prairie-chicken habitat. Indirect impacts from noise, gaseous emissions, and human presence also influence habitat quality in oil and gas development areas. These activities affect lesser prairie-chickens by

disrupting reproductive behavior (Hunt and Best 2004, p. 41) and through habitat fragmentation and conversion (Hunt and Best 2004, p. 92). Smith *et al.* (1998, p. 3) observed that almost one-half, 13 of 29, of the abandoned leks examined in southeastern New Mexico in an area of intensive oil and gas development had a moderate to high level of noise. Hunt and Best (2004, p. 92) found that abandoned leks in southeastern New Mexico had more active wells, more total wells, and greater length of access road than active leks. They concluded that petroleum development at intensive levels, with large numbers of wells in close proximity to each other necessitating large road networks and an increase in the number of power lines, is likely not compatible with life-history requirements of lesser prairie-chickens (Hunt and Best 2004, p. 92).

Impacts from oil and gas development and exploration is thought to be the primary reason responsible for the species' near absence throughout previously occupied portions of the Carlsbad BLM unit in southeastern New Mexico (Belinda 2003, p. 3). This conclusion is supported by research examining lesser prairie-chicken losses over the past 20 years on Carlsbad BLM lands (Hunt and Best 2004, pp. 114–115). Those variables associated with oil and gas development explained 32 percent of observed lek abandonment (Hunt and Best 2004) and the consequent population extirpation.

Colorado currently ranks within the top ten States in both crude oil and natural gas production. Oil and gas development began in Colorado the late 1800s. Much of the development within the estimated historical and occupied range of the lesser prairie-chicken occurs within the Hugoton and Denver Basin fields. Since 1995 the number of drilling permits issued annually has steadily grown from 1,002 in 1995 to 8,027 in 2008 (Dennison 2009). However, 84 percent of that activity is located in only six counties that lie outside of the estimated occupied range. Some development is anticipated in Baca County, Colorado, although the timeframe for initiation of those activities is uncertain (CPW 2007, p. 2). The State of Colorado, Oil and Gas Conservation Commission also has established rules that provide some protection to the lesser prairie-chicken from oil and gas development in this State. A full list of those measures are provided in the rangewide plan (Van Pelt *et al.* 2013, pp. 6–8) and include a requirement to solicit review by the CPW prior to development in an effort to avoid and minimize impacts to the lesser prairie-chicken. Other measures include timing and distance stipulations, including a provision to avoid development within 3.5 km (2.2 mi) of an active lek.

Kansas is one of the top ten oil producing States in the Nation and is within the top 12 States in Natural gas production. Between 1995 and 2010, over 37.2 million barrels of oil were produced in Kansas (Circle Star Energy 2014). The major oil and gas fields (Hugoton and Panoma) in Kansas primarily occur in the southwestern corner and central regions of the State, overlapping large portions of the estimated historic and occupied ranges of the lesser prairie-chicken. Gas development is the primary activity in the southwestern corner with oil being primary in the central region. In the central region of Kansas, development of the Mississippian Lime Play using hydraulic fracturing techniques has revived oil and gas development in the region. The Kansas Department of Commerce has stated that potentially hundreds of wells could be drilled in this region in the next 20 to 30 years (Kansas Department of Commerce 2014). Some gas development also occurs in the central region of the State.

New Mexico currently ranks in the top ten States in the Nation for production of both crude oil and natural gas (U.S. Energy Information Administration 2014). Within the range of the lesser prairie-chicken, much of the oil and gas development occurs on lands administered by the BLM. In the BLM's Special Status Species Record of Decision and approved Resource Management Plan Amendment (RMPA), some protections for the lesser prairie-chicken on BLM lands in New Mexico are provided by reducing the number of drilling locations, decreasing the size of well pads, reducing the number and length of roads, reducing the number of powerlines and pipelines, and implementing best management practices for development and reclamation (BLM 2008, pp. 5–31). The RMPA provides guidance for management of approximately 344,000 ha (850,000 ac) of public land and 121,000 ha (300,000 ac) of Federal minerals below private or state lands in Chaves, Eddy, Lea, and Roosevelt Counties in New Mexico. Implementation of these restrictions, particularly curtailment of new mineral leases, is concentrated in the Core Management and Primary Population Areas (BLM 2008, pp. 9–11). The Core Management and Primary Population Areas are located in the core of the lesser prairie-chicken estimated occupied range in New Mexico. The effect of these best management practices on the population of the lesser prairie-chicken is unknown, particularly considering about 33,184 ha (82,000 ac) have already been leased in those areas (BLM 2008, p. 8). The plan stipulates that measures designed to protect the lesser prairie-chicken and dunes sagebrush lizard may not allow approval of all spacing unit locations or full development of the lease (BLM 2008, p. 8).

Oklahoma currently ranks in the top five States in the Nation for production of both crude oil and natural gas (U.S. Energy Information Administration 2014). In Oklahoma, oil and gas exploration statewide continues at a high level. Since 2002, the average number of active drilling rigs in Oklahoma has steadily risen (Boyd 2009, p. 1). Since 2004, the number of active drilling rigs has remained above 150, reflecting the highest level of sustained activity since the 'boom' years from the late 1970s through the mid-1980s in Oklahoma (Boyd 2007, p. 1). The Oklahoma Department of Wildlife Conservation worked with the Oklahoma Independent Petroleum Association to address potential impacts of oil and gas development on the lesser prairie-chicken. Through this effort, a set of voluntary best management practices, such as minimizing surface disturbance and removal of unneeded equipment, have been developed (Van Pelt *et al.* 2013, p. 60).

Texas currently ranks as the top State in the Nation for production of both crude oil and natural gas (U.S. Energy Information Administration 2014). In some areas within the estimated occupied range, the scope of development has increased significantly. For example, the amount of habitat fragmentation due to oil and gas extraction in the Texas panhandle and western Oklahoma associated with the Buffalo Wallow oil and gas field within the Granite Wash formation of the Anadarko Basin has steadily increased over time. In 1982, the rules for the Buffalo Wallow field in Hemphill and Wheeler counties, Texas allowed one well per 130 ha (320 ac). In late 2004, the Texas Railroad Commission changed the field rule regulations for the Buffalo Wallow oil and gas field to allow oil and gas well spacing to a maximum density of one well per 8 ha (20 ac) (Rothkopf *et al.* 2011, p. 1). When fully developed at this density, this region of the Texas panhandle, which overlaps portions of the estimated occupied range, will have experienced a 16-fold increase in habitat fragmentation in comparison with the rates allowed prior to 2004.

Oil and gas development and exploration is ongoing in all five lesser prairie-chicken States. Based on the information available to us, none of the States, with the exception of Colorado, has implemented specific regulatory measures to address impacts of oil and gas development on the lesser prairie-chicken. In New Mexico, much of the oil and gas development within the estimated historic and occupied range is regulated by the BLM. Where Federal minerals occur outside of New Mexico and within the estimated occupied range, BLM has implemented timing, noise, and distance stipulations that primarily provide protections during the lekking season but do little to protect nesting hens and the broods. We attempted to assess the extent of oil and gas development using available information from the State oil and gas regulatory agencies within the five State range of the lesser prairie-chicken. Although we do not have access to information on oil and gas activity beyond 2008, the data provide a fairly good assessment of development activity before 2008. We identified 670,509 existing oil and gas wells within the historical range and of those wells, 53,205 oil and gas wells existed within the estimated occupied range. The rangewide plan (Van Pelt *et al.* 2013, pp. 132–134) estimated 68,716 active wells exist within the EOR +10, based on data from 2010 to 2013.

If we apply a 200 m buffer to those wells, as used in the rangewide plan (Van Pelt *et al.* 2013, p. 95), and remove any overlap from our analysis, an estimated 516,000 ha (1.27 million ac) of habitat within the estimated occupied range was impacted by oil and gas development by 2008. The buffers established in the rangewide plan were based on the best available science and the professional judgment of the members of the Interstate Working Group Science team, which included representation from the Service, U.S. Geological Survey, Natural Resources Conservation Service, State Fish and Wildlife Agencies, public universities, private conservation organizations and private consultants.

We lacked data from which we could independently project oil and gas development into the future. However, the rangewide plan (Van Pelt *et al.* 2013, pp. 138) provided a high and low projection of oil and gas development within the EOR +10 for 10, 20 and 30 years into the future. Within 30 years, they estimate that about 122,639 new wells under a low price scenario and 179,416 new wells under a high price scenario could be developed within the EOR +10.

Wastewater pits associated with energy development are not anticipated to be a major threat to lesser prairie-chickens primarily due to the presence of infrastructure and the lack of suitable cover near these pits. In formations with high levels of hydrogen sulfide gas, the presence of this gas can cause mortality.

In summary, infrastructure associated with current petroleum production contributes to the ongoing habitat fragmentation within the estimated occupied range of the lesser prairie-chicken. Reliable information about future trends for petroleum production indicates that this impact will continue into the future. Habitat impacts, based on our estimates, as provided above, and those of WAFWA (Van Pelt *et al.* 2013, p. 95), could be in excess of a million of acres throughout the estimated occupied range.

Predation

Lesser prairie-chickens have coevolved with a variety of predators, but none are lesser prairie-chicken specialists. Prairie falcon (*Falco mexicanus*), northern harrier (*Circus cyaneus*), Cooper's hawk (*Accipiter cooperii*), great-horned owl (*Bubo virginianus*), other unspecified birds of prey (raptors), and coyote (*Canis latrans*) have been identified as predators of lesser prairie-chicken adults and chicks (Davis *et al.* 1979, pp. 84–85; Merchant 1982, p. 49; Haukos and Broda 1989, pp. 182–183; Giesen 1994a, p. 96). Predators of nests and eggs also include Chihuahuan raven (*Corvus cryptoleucus*), striped skunk (*Mephitis mephitis*), ground squirrels (*Spermophilus* spp.), and bullsnakes (*Pituophis melanoleucus*), as well as coyotes and badgers (*Taxidea taxus*) (Davis *et al.* 1979, p. 51; Haukos 1988, p. 9; Giesen 1998, p. 8).

Lesser prairie-chicken predation varies in both form and frequency throughout the year. In Kansas, Hagen *et al.* (2007, p. 522) attributed about 59 percent of the observed mortality of female lesser prairie-chickens to mammalian predators and between 11 and 15 percent, depending on season, to raptors. Coyotes were reported to be responsible for 64 percent of the nest depredations observed in Kansas (Pitman *et al.* 2006a, p. 27). Observed mortality of male and female lesser prairie-chickens associated with raptor predation reached 53 percent in Oklahoma and 56 percent in New Mexico (Wolfe *et al.* 2007, p. 100). Predation by mammals was reported to be 47 percent in Oklahoma and 44 percent in New Mexico (Wolfe *et al.* 2007, p. 100). In Texas, over the course of three nonbreeding seasons, Boal and Pirius (2012, p. 8) assessed cause-specific mortality for 13 lesser prairie-chickens. Avian predation was identified as the cause of death in 10 of those individuals, and mammalian predation was responsible for 2 deaths. The cause of death could not be identified in one of those individuals. Behney *et al.* (2012, p. 294) suspected that mammalian and reptilian predators had a greater influence on lesser prairie-chicken mortality during the breeding season than raptors.

Predation is a naturally occurring phenomenon and generally does not pose a risk to wildlife populations, including the lesser prairie-chicken, unless the populations are extremely small or have an abnormal level of vulnerability to predation. The lesser prairie-chicken's cryptic plumage and behavioral adaptations allow the species to persist under normal predation pressures. Birds may be most susceptible to predation while on the lek when birds are more conspicuous. Both Patten *et al.* (2005b, p. 240) and Wolfe *et al.* (2007, p. 100) reported that raptor predation increased coincident with lek attendance. Patten *et al.* (2005b, p. 240) stated that male lesser prairie-chickens are more vulnerable to predation when exposed during lek displays than they are at other times of the year and that male lesser prairie-chicken mortality was chiefly associated with predation. However, during 650 hours of lek observations in Texas, raptor predation at leks was considered to be uncommon and an unlikely factor responsible for declines in lesser prairie-chicken populations (Behney *et al.* 2011, pp. 336–337). But Behney *et al.* (2012, p. 294) observed that the timing of lekking activities in their study area corresponded with the lowest observed densities of raptors and that lesser prairie-chickens contend with a more abundant and diverse assemblage of raptors in other seasons.

Predation and related disturbance of mating activities by predators may impact reproduction in lesser prairie-chickens. For females, predation during the nesting season likely would have the most significant impact on lesser prairie-chicken populations, particularly if that predation resulted in total loss of a particular brood. Predation on lesser prairie-chicken may be especially significant relative to nest success. Nest success and brood survival of greater prairie-chickens accounted for most of the variation in population finite rate of increase (Wisdom and Mills 1997, p. 308). Bergerud (1988, pp. 646, 681, 685) concluded that population changes in many grouse species are driven by

changes in breeding success. An analysis of Attwater's prairie-chicken supported this conclusion (Peterson and Silvy 1994, p. 227). Demographic research on lesser prairie-chicken in southwestern Kansas confirmed that changes in nest success and chick survival, two factors closely associated with vegetation structure, have the largest impact on population growth rates and viability (Hagen *et al.* 2009, p. 1329).

Rates of predation on lesser prairie-chicken likely are influenced by certain aspects of habitat quality such as fragmentation or other forms of habitat degradation (Robb and Schroeder 2005, p. 36). As habitat fragmentation increases, suitable habitats become more spatially restricted and the effects of terrestrial nest predators on grouse populations may increase (Braun *et al.* 1978, p. 316). In a study on Attwater's prairie-chicken, Horkel *et al.* (1978, p. 239) observed that artificial nests located within 46 m (150 ft) of a road or mown pipeline rights-of-way were less successful than artificial nests located further away from these features. They concluded that these fragmenting features served as activity centers and travel lanes for predators and contributed to increased predator activity and decreased nest success in proximity to these features (Horkel *et al.* 1978, p. 240). Nest predators typically have a positive response (e.g., increased abundance, increased activity, and increased species richness) to fragmentation, although the effects are expressed primarily at the landscape scale (Stephens *et al.* 2003, p. 4). Similarly, as habitat quality decreases through reduction in vegetative cover due to grazing or herbicide application, predation of lesser prairie-chicken nests, juveniles, and adults are all expected to increase. For this reason, ensuring adequate shrub cover and removing raptor perches such as trees, power poles, and fence posts may lower predation more than any conventional predator removal methods (Wolfe *et al.* 2007, p. 101). As discussed at several locations within this document, existing and future development of transmission lines, fences, and vertical structures will either contribute to additional predation on lesser prairie-chickens or cause areas of suitable habitat to be abandoned due to behavior avoidance by lesser prairie-chickens. Increases in the encroachment of trees into the native prairies also will contribute to increased incidence of predation by providing additional perches for avian predators. Because predation has a strong relationship with certain anthropogenic factors, such as fragmentation, vertical structures, and roads, continued development is likely to increase the effects of predation on lesser prairie-chickens beyond natural levels. As a result, predation is likely to contribute to the declining population of the species.

Disease

Giesen (1998, p. 10) provided no information on ectoparasites or infectious diseases in lesser prairie-chicken, although several endoparasites, including nematodes and cestodes, are known to infect the species. In Oklahoma, Emerson (1951, p. 195) documented the presence of the external parasites (biting lice—Order Mallophaga) *Goniodes cupido* and *Lagopoecus* sp. in an undisclosed number of lesser prairie-chickens. Between 1997 and 1999, Robel *et al.* (2003, p. 342) conducted a study of helminth parasites in lesser prairie-chickens from southwestern Kansas. Of the carcasses examined, 95 percent had eye worm (*Oxyspirura petrowi*), 92 percent had stomach worm (*Tetrameres* sp.), and 59 percent had cecal worm (*Subulura* sp.) (Robel *et al.* 2003, p. 341). No adverse impacts to the lesser prairie-chicken population they studied were evident as a result of the observed parasite burden. Addison and Anderson (1969, p. 1223) also found eyeworm (*O. petrowi*) from a limited sample of lesser prairie-chickens in Oklahoma. The eyeworm also has been reported from lesser prairie-chickens in Texas (Pence and Sell 1979, p. 145). Pence and Sell (1979, p. 145) also observed the roundworm *Heterakis isolonche* and the tapeworm *Rhabdometra odiosa* from lesser prairie-chickens in Texas. Smith *et al.* (2003, p. 347) reported on the occurrence of blood and fecal parasites in lesser prairie-chickens in eastern New Mexico. Eight percent of the examined birds were infected with *Eimeria tympanuchi,* an intestinal parasite, and 13 percent were infected with *Plasmodium pedioecetii,* a hematozoan. Stabler (1978, p. 1126) first reported *Plasmodium pedioecetii* in the lesser prairie-chicken from samples collected from New Mexico and Texas. In the spring of 1997, a sample of 12 lesser prairie-chickens from Hemphill County, Texas, were tested for the presence of disease and parasites. No evidence of viral or bacterial diseases, hemoparasites, parasitic helminths, or ectoparasites was found (Hughes 1997, p. 2).

In southwestern Kansas, Hagen *et al.* (2002 entire) tested for the presence of mycoplasmosis, a respiratory infection, in lesser prairie-chickens. Although some birds tested positive for antibodies to *Mycoplasma meleagridis, M. synoviae,* and *M. gallisepticum,* all were at rates less than 10 percent and no infection was confirmed (Hagen *et al.* 2002, p. 708). However, lesser prairie-chickens testing positive should be considered potential carriers of mycoplasmosis (Hagen *et al.,* 2002, p. 710). Infections may be transmitted most commonly during winter and spring when lesser prairie-chickens are likely to be grouped together to forage or conduct breeding activity.

Peterson *et al.* (2002, p. 835) reported on an examination of 24 lesser prairie-chickens from Hemphill County, Texas, for several disease agents. Lesser prairie-chickens were seropositive for both the Massachusetts and Arkansas serotypes of avian infectious bronchitis, a type of coronavirus. All other tests were negative.

Reticuloendotheliosis is a viral disease of poultry that has been found to cause mortality in captive Attwater's prairie-chickens and greater prairie-chickens (Drew *et al.* 1998, entire). Symptoms include immunosuppression, reduced body size and tumors that can result in significant morbidity and mortality (Bohls *et al.* 2006a, p. 613). Researchers surveyed blood samples from 184 lesser prairie-chickens from three States during 1999 and 2000, for the presence of reticuloendotheliosis. All samples were negative, suggesting that reticuloendotheliosis may not be a serious problem for most wild populations of lesser prairie-chicken (Wiedenfeld *et al.* 2002, p. 143). A vaccine has recently been developed that, while not preventing infection, provided partial protection from reticuloendotheliosis in captive Attwater's prairie-chicken (Drechsler *et al.* 2013, pp. 258–259). This vaccine has not yet been tested on lesser prairie-chickens to our knowledge.

The impact of West Nile virus on lesser prairie-chickens is unknown. Recently scientists at Texas Tech University detected West Nile virus in a small percentage (1.3 percent) of the lesser prairie-chicken blood samples they analyzed. Other grouse, such as ruffed grouse (*Bonasa umbellus*), have been documented to harbor West Nile virus infection rates similar to some corvids (crows, jays, and ravens). For 130 ruffed grouse tested in 2000, all distant from known West Nile virus epicenters, 21 percent tested positive. This was remarkably similar to American crows (*Corvus brachyrhynchos*) and blue jays (*Cyanocitta cristata*) (23 percent for each species), species with known susceptibility to West Nile virus (Bernard *et al.* 2001, p. 681). The IPCC

(2007, p. 51) suggests that the distribution of some disease vectors, such as mosquitos (*Culex* spp.) that carry West Nile virus, may change as a result of climate change. Mosquitoes are also known to transmit the reticuloendotheliosis virus (Bohls *et al.* 2006b, p. 193). However, we have no specific information suggesting that West Nile virus or any known disease may become problematic for the lesser prairie-chicken as a result of climate change.

Although parasites and diseases have the potential to influence population dynamics, the incidence of disease or parasite infestations in regulating populations of the lesser prairie-chicken is unknown. The Lesser Prairie-Chicken Interstate Working Group (Mote *et al.* 1999, p. 12) concluded that, while density-dependent transmission of disease was unlikely to have a significant effect on lesser prairie-chicken populations, a disease that was transmitted independently of density could have drastic effects. Further research is needed to establish whether parasites limit prairie grouse populations. Peterson (2004, p. 35) urged natural resource decisionmakers to be aware that macro- and micro-parasites cannot be safely ignored as populations of species such as the lesser prairie-chicken become smaller, more fragmented, and increasingly vulnerable to the effects of disease. A recent analysis of the degree of threat to prairie grouse from parasites and infectious disease concluded that microparasitic infections that cause high mortality across a broad range of galliform (wildfowl species such as turkeys and grouse) hosts have the potential to extirpate small, isolated prairie grouse populations (Peterson 2004, p. 35).

Some degree of impact from parasites and disease is a naturally occurring phenomenon for most wildlife species and is one element of compensatory mortality (the phenomenon that various causes of mortality in wildlife tend to balance each other, allowing the total mortality rate to remain constant) that operates among many species. However, there is no information that indicates parasites or disease are causing, or contributing to, the decline of any lesser prairie-chicken populations, and, at this time, we have no basis for concluding that disease or parasite loads are a threat to any lesser prairie-chicken populations. Consequently, we do not consider disease or parasite infections to be a significant factor in the decline of the lesser prairie-chicken. However, should populations continue to decline or become more isolated by fragmentation, even small changes in habitat abundance or quality could have a more significant influence on the impact of parasites and diseases to the lesser prairie-chicken.

Hunting and Other Forms of Recreational, Educational, or Scientific Use

In the late 19th century, lesser prairie-chickens were subject to market hunting (Jackson and DeArment 1963, p. 733; Fleharty 1995, pp. 38–45; Jensen *et al.* 2000, p. 170). Harvest throughout the species' estimated historical range has been regulated since approximately the turn of the 20th century (Crawford 1980, pp. 3–4). Currently, the lesser prairie-chicken is classified as a game species in Kansas, New Mexico, Oklahoma, and Texas, although authorized harvest is allowed only in Kansas. The lesser prairie-chicken has been listed as a threatened species in Colorado, eliminating harvest of the species under the State's Nongame and Endangered or Threatened Species Conservation Act since 1973. In March of 2009, Texas adopted a temporary, indefinite suspension of their current 2-day season until lesser prairie-chicken populations recover to huntable levels. Previously in Texas, lesser prairie-chicken harvest was not allowed except on properties with an approved wildlife management plan specifically addressing the lesser prairie-chicken. When both Kansas and Texas allowed lesser prairie-chicken harvest, the total annual harvest for both States was fewer than 1,000 birds annually.

In New Mexico, the lesser prairie-chicken was legally hunted until 1996 (Hunt 2004, p. 39). The annual harvest in the 1960s averaged about 1,000 birds, but harvest declined to only 130 birds in 1979. Harvest rebounded a few years later peaking in 1987 and 1988 when average harvest was about 4,000 birds (Hunt 2004, p. 39). Harvest subsequently declined through the early 1990s.

In Kansas, the current bag limit is one lesser prairie-chicken daily south of Interstate 70 and two lesser prairie-chickens north of Interstate 70. The season typically begins in early November and runs through the end of December in southwestern Kansas. In the northwestern portion of the State, the season typically extends through the end of January. During the 2006 season, hunters in Kansas expended 2,020 hunter-days and harvested approximately 340 lesser prairie-chickens. In 2010, 2,863 hunter-days were expended and an estimated 633 lesser prairie-chickens were harvested in Kansas (Pitman 2012a). Given the low number of lesser prairie-chickens harvested per year in Kansas relative to the population size of lesser prairie-chickens, the statewide harvest is probably insignificant at the population level. There are no recent records of unauthorized harvest of lesser prairie-chickens in Kansas (Pitman 2012b).

Two primary hypotheses exist regarding the influence of hunting on harvested populations—hunting mortality is either additive to other sources of mortality or nonhunting mortality compensates for hunting mortality, up to some threshold level. The compensatory hypothesis essentially implies that harvest by hunting removes only surplus individuals, and individuals that escape hunting mortality will have a higher survival rate until the next reproductive season. Both Hunt and Best (2004, p. 93) and Giesen (1998, p. 11) do not believe hunting has an additive mortality on lesser prairie-chickens, although, in the past, hunting during periods of low population cycles may have accelerated declines (Taylor and Guthery 1980b, p. 2). However, because most remaining lesser prairie-chicken populations are now very small and isolated, and because they naturally exhibit a clumped distribution on the landscape, they are likely vulnerable to local extirpations through many mechanisms, including harvest by humans. Braun *et al.* (1994, p. 435) called for definitive experiments that evaluate the extent to which hunting is additive at different harvest rates and in different patch sizes. They suggested conservative harvest regimes for small or fragmented grouse populations because fragmentation likely decreases the resilience of populations to harvest. Sufficient information to determine the rate of localized harvest pressure is unavailable and, therefore, the Service cannot determine whether such harvest contributes to local population declines. We do not consider hunting to be a threat to the species at this time. However, as populations of lesser prairie-chickens become smaller and more isolated by habitat fragmentation, their resiliency to the influence of hunting pressure will decline, likely increasing the degree of threat that hunting may pose to the species.

An additional activity that has the potential to negatively affect individual breeding aggregations of lesser prairie-chickens is the growing occurrence of public and guided bird watching tours of leks during the breeding season. The site-specific impact of recreational observations of lesser prairie-chicken at leks is currently unknown but daily human disturbance could reduce mating activities, possibly leading to a

reduction in total production. However, disturbance effects are likely to be minimal at the population level if disturbance is avoided by observers remaining in vehicles or blinds until lesser prairie-chickens naturally disperse from the lek and observations are confined to a limited number of days and leks. Solitary leks comprising fewer than ten males are most likely to be affected by repeated recreational disturbance. Suminski (1977, p. 70) strongly encouraged avoidance of activities that could disrupt nesting activities. Research is needed to quantify this potential threat to local populations of lesser prairie-chickens.

Research activities, such as roadside surveys and flush counts, that generally tend to rely on passive sampling rather than active handling of the birds are not likely to substantially impact the lesser prairie-chicken. When birds are flushed, some increased energy expenditure or exposure to predation may occur, but the impacts are anticipated to be minor and of short duration. Studies that involve handling of adults, chicks and eggs, particularly those involving the use of radio transmitters, also may cause increased energy expenditure, predation exposure or otherwise impact individual birds. However such studies typically occur at a relatively small, localized scale and are not likely to cause a direct impact to the population as a whole. Such studies are usually of short duration, lasting no more than a few years.

In summary, it is possible that harvest of lesser prairie-chickens through sport hunting might be contributing to a decline of some populations, but the best available information does not show whether this is actually occurring and we have no basis on which to estimate whether hunting is contributing to decline in some areas. However, as populations continue to decline and become more fragmented, the influence of sport harvest likely will increase and could become a threat in the future. Public viewing of leks tends to be limited, primarily due to a general lack of public knowledge of lek locations and difficulty accessing leks located on private lands. Observations by bird watchers are likely to be very limited in extent and bird watchers, as a group, generally tend to minimize disturbance to birds as they conduct their activities. We expect the range States will continue to conduct annual lek counts, which contributes to a temporary disturbance when the birds are flushed during attempts to count birds attending the leks. However these disturbances are intermittent and do not occur repeatedly throughout the lekking period. Research on lesser prairie-chickens may result in some capture and handling of the species. Capture-induced stress may occur and could lead to isolated instances of mortality or injury to individual birds. But such research is not widespread and likely does not cause significant population-level impacts. Research is not anticipated to result in loss of habitat and is therefore not likely to lead to impacts from habitat fragmentation. We are not aware of any other forms of utilization that are negatively impacting lesser prairie-chicken populations. There is currently no known, imminent threat of take attributed to collection or illegal harvest for this species, consequently, we conclude that overutilization at current population and harvest levels does not pose a threat to the species.

Other Factors

A number of other factors, although they do not directly contribute to habitat loss or fragmentation, can influence the survival of the lesser prairie-chicken. These factors, in combination with habitat loss and fragmentation, are likely to negatively influence the persistence of the species.

Nest Parasitism and Competition by Exotic Species

Ring-necked pheasants (*Phasianus colchicus*) are nonnative species that overlap the estimated occupied range of the lesser prairie-chicken in Kansas and portions of Colorado, Oklahoma, Texas (Johnsgard 1979, p. 121), and New Mexico (Allen 1950, p. 106). Hen pheasants have been documented to lay eggs in the nests of several bird species, including lesser prairie-chicken and greater prairie-chicken (Hagen *et al.* 2002, pp. 522–524; Vance and Westemeier 1979, p. 223; Kimmel 1987, p. 257; Westemeier *et al.* 1989, pp. 640–641; Westemeier *et al.* 1998, 857–858). Consequences of nest parasitism vary, and may include abandonment of the host nest, reduction in number of host eggs, lower hatching success, and parasitic broods (Kimmel 1987, p. 255). Because pheasant eggs hatch in about 23 days, the potential exists for lesser prairie-chicken hens to cease incubation, begin brooding, and abandon the nest soon after the first pheasant egg hatches. Nests of greater prairie-chickens parasitized by pheasants have been shown to have lower egg success and higher abandonment than unparasitized nests, suggesting that recruitment and abundance may be impacted (Westemeier *et al.* 1998, pp. 860–861). Predation rates also may increase with incidence of nest parasitism (Vance and Westemeier 1979, p. 224). Further consequences are hypothesized to include the imprinting of the pheasant young from the parasitized nest to the host species, and later attempts by male pheasants to court females of the host species (Kimmel 1987, pp. 256–257). Male pheasants have been observed disrupting the breeding behavior of greater prairie-chickens on leks (Sharp 1957, pp. 242–243; Follen 1966, pp. 16–17; Vance and Westemeier 1979, p. 222). In addition, pheasant displays toward female prairie-chickens almost always cause the female to leave the lek (Vance and Westemeier 1979, p. 222). Thus, an attempt by a male pheasant to display on a prairie-chicken lek could disrupt the normal courtship activities of prairie-chickens.

Few published accounts of lesser prairie-chicken nest parasitism by pheasants exist (Hagen *et al.* 2002, pp. 522–524), although biologists from KPWD, ODWC, Sutton Center, TPWD, and the Oklahoma Cooperative Fish and Wildlife Research Unit have given more than 10 unpublished accounts of such occurrences. Westemeier *et al.* (1998, p. 858) documented statistically that for a small, isolated population of greater prairie-chickens in Illinois, nest parasitism by pheasants significantly reduced the hatchability of nests. They concluded that, in areas with high pheasant populations, the survival of isolated, remnant flocks of prairie-chicken may be enhanced by management intervention to reduce nest parasitism by pheasants (Westemeier *et al.* 1998, p. 861). While Hagen *et al.* (2002, p. 523) documented a rate of only 4 percent parasitism (3 of 75 nests) of lesser prairie-chicken nests in Kansas, the sample size was small and may not reflect actual impacts across larger time and geographic scales, and precipitation gradients. Competition with and parasitism by pheasants may be a potential factor that could negatively affect vulnerable lesser prairie-chicken populations at the local level, particularly if remaining native rangelands become increasingly fragmented (Hagen *et al.* 2002, p. 524). More research is needed to understand and quantify impacts of pheasants on lesser prairie-chicken populations range wide.

Hybridization

The sympatric (overlapping) occupation of habitat and leks by greater prairie-chickens and lesser prairie-chickens in a small 250,000 ha (617,000 ac) portion of central and northwestern Kansas may pose a potential, but limited threat to the species in that region.

Hybridization between the two species could lead to introgression (infiltration of the genes of one species into the gene pool of another through repeated backcrossing) and reduced reproductive potential. Hybrid crosses between greater and lesser prairie-chickens have been produced in captivity and the first generation of offspring are fertile; however, mating of second-generation hybrids produced a clutch of 26 eggs, but only 11 eggs were fertile and only four of those eggs hatched (Crawford 1978, p. 592). All four of those chicks died within one week of unknown causes.

Prior to EuroAmerican settlement of the Great Plains, the distributions of the greater and lesser prairie-chicken likely did not overlap, although it is impossible to precisely determine their presettlement distribution patterns (Johnsgard and Wood 1968, p. 174). Following human settlement and initial cultivation of the prairies, the distribution of the greater and lesser prairie-chicken expanded, at least until the amount of cultivation was so extensive that some populations could not persist due to inadequate amounts of native grassland intermingled with cultivation (Johnsgard and Wood 1968, p. 177). As indicated by Sharpe (1968, pp. 51, 174), the historical occurrence of lesser prairie-chickens in Nebraska was considered be the result of a short-lived range expansion facilitated by human settlement and cultivation of grain crops. As their ranges expanded, some overlap of lesser and greater prairie-chickens occurred, primarily in northwestern Kansas and southwestern Nebraska. Where the two species came into contact, some natural hybridization likely occurred but the frequency is unknown. As the range of the lesser prairie-chicken shrank in response to expanding conversion of the prairie, the ranges of lesser and greater prairie-chickens ceased to overlap, at least until recently. Habitat restoration in northwestern Kansas, assisted by successful planting of native grassland CRP since 1985, likely facilitated the co-occupation of portions of their ranges. The ranges of greater and lesser prairie-chickens now overlap within a seven county region in Kansas (Bain and Farley 2002, p. 684).

In this seven county area, Bain and Farley (2002, p. 684) observed 12 birds from nine mixed leks containing both greater and lesser prairie-chickens that appeared to be hybrids. These birds displayed external characteristics, courtship behaviors and vocalizations that were intermediate between the two species but they were unable to confirm that these birds were actually hybrids (Bain and Farley 2002, pp. 684–686).

Currently, the incidence of hybridization between greater prairie-chickens and lesser prairie-chickens appears very low, less than 1 percent (309 individuals) of the estimated total population (MacDonald *et al.* 2012, p. 21). The occurrence of hybridization also is restricted to a small portion, about 250,000 ha (617,000 ac), of the overall current range (Bain and Farley 2002, p. 684). Although the density of leks within the area north of the Arkansas River in Kansas are high, the density of mixed leks is much lower (MacDonald *et al.* 2012, p. 21). These populations are largely dependent on fragmented tracts of CRP lands, and lesser prairie-chicken populations may continue to expand within this region depending on implementation of CRP projects and stochastic environmental factors. Should greater prairie-chicken populations in this region expand, increasing the extent of overlap in their distributions, the incidence of hybridization also may increase. Currently we are unable to predict how the incidence of hybridization may change into the future. Additionally, the zone of hybridization may decrease in size or cease to exist entirely if the extent of cropland or suitable habitat changes in response to CRP. The zone of overlap could increase with time if the lesser prairie-chicken occupied range shifts northward, particularly in light of climate changes that may occur within the next 100 years. If the zone of overlap expands, the extent of hybridization may increase.

Currently, we have no information on how these apparent hybrid individuals interact and compete in breeding on the lek. If the second generation hybrids truly are not viable, as reported by Crawford (1978, p. 592), the risk of introgression, should they be successful in competing for mates, is low. However, the fertility of first and second generation hybrid individuals has not been rigorously tested. Theoretically, natural isolating mechanisms, such as appearance, vocalization and courtship behavior would serve to minimize the incidence of hybridization. However, as discussed in the ''Taxonomy'' section, speciation in lesser and greater prairie-chickens may be incomplete and natural isolating mechanisms may not operate effectively. Noise from human developments that may mask vocalizations in lesser prairie-chickens, as previously discussed in the section on influence of noise, also may impact the ability of females to detect differences in vocalizations between lesser prairie-chickens and their hybrids. Additionally, low population density may increase the susceptibility of lesser prairie-chickens to hybridization, primarily within the zone of overlap, and could exacerbate the potentially negative effects of hybridization. Hybridization is a particularly important issue for species that are rare and both fragmentation and habitat modification are significant factors that can contribute to increased rates of hybridization in some species (Rhymer and Simberloff 1996, pp. 83, 103; Allendorf *et al.* 2001, p. 613).

Presently, the immediate and long-term influence of hybridization on the species is unknown, although Johnsgard (2002, p. 32) did not consider current levels of hybridization to be genetically significant. Similarly, Johnson (2008, pp. 170–171) estimated that the rate of gene flow between lesser and greater prairie chickens was very low. Because the current extent, both numerically and areally, of hybridization appears very small, we currently do not consider hybridization to be a threat. Interbreeding on the mixed leks could result in some wasted reproductive effort but significant demographic effects are not expected at current levels. However, continued monitoring and additional investigation of hybridization between greater and lesser prairie-chickens is encouraged. Should the zone of overlap continue to expand, hybridization could become a threat with a significant impact on the lesser prairie-chicken.

Genetic Risks, Small Population Size and Lek Mating System

Anthropogenic habitat deterioration and fragmentation, as previously discussed in this rule, not only drives range contractions and population extinctions but also may have significant genetic and, thus, evolutionary consequences for the surviving populations. Genetic risks, such as reduced reproductive success, are an important concern for lesser prairie-chickens, particularly considering the extensive reduction in abundance and occupied range that has occurred since EuroAmerican settlement of the Great Plains, and such risks often impact species well before they are driven to extinction (Spielman *et al.* 2004, p. 15264; Frankham 2005, pp. 134–135). Although we lack precise estimates of lesser prairie-chicken abundance and distribution prior to human settlement, we can infer from the estimates provided in the literature (previously discussed in section on Historical Range and Distribution) that populations were considerably larger and more widely distributed than they

are at present. Typically, these larger populations have more genetic diversity and are less vulnerable to extinction than smaller populations (Frankham 1996, pp. 1503–1507; Spielman *et al.* 2004, p. 15261; Frankham 2005, p. 132; Willi *et al.* 2006, entire).

As surviving populations become more isolated due to fragmentation and habitat loss, the movement of genetic information (gene flow) between those populations declines, leading to loss of genetic diversity and variability. Pruett *et al.* (2009b, p. 258) concluded that lesser prairie-chicken populations were historically connected, as evidenced by the lack of morphological variation across the range and availability of genetic information which suggests that the populations were contiguous and gene flow occurred among the extant populations. Considering increased levels of fragmentation can constrain dispersal in lesser prairie-chickens, low levels of dispersal may contribute to increased relatedness in both males and females at some lek sites. However, an analysis of genetic data collected in the early 2000s from Colorado, Kansas, New Mexico and Oklahoma did not indicate that population declines and habitat fragmentation apparent at that time had created any barriers to lesser prairie-chicken dispersal (Hagen *et al.* 2010, p. 35).

A number of harmful effects, such as reduced reproductive success or disease resistance, can have a genetic link and, over time, the loss of genetic variation and diversity allows these deleterious effects to become more prevalent as population sizes decline or isolation increases. Inbreeding occurs when the number of mates from which to choose become limited, increasing relatedness among individuals and contributing to a reduction in genetic variability. Inbreeding can reduce reproductive fitness and survival and increase extinction risk (Spielman *et al.* 2004, pp. 15261, 15263; Frankham 2005, pp. 132–133, 136). Other genetic factors such as mutation and genetic drift (change in the genetic composition of a population due to chance events) also can influence genetic diversity and may contribute to increased extinction risk over long time spans. A loss of genetic diversity also may reduce the ability of individuals and populations to respond, or adapt, to changing environmental conditions, potentially impacting long-term stability and viability (Willi *et al.* 2006, pp. 447–450; Hughes *et al.* 2008, pp. 615–617, 620; Frankham 2005, p. 135). As populations decline, they become more sensitive to random demographic, environmental, and catastrophic (non-genetic) events. Factors such as drought, disease or predation can exert a more substantial influence over small populations. Even small populations that are growing can succumb to random changes in birth or survival rates that may drive a population to extinction. The small, fragmented lesser prairie-chicken populations that currently exist over portions of the estimated occupied range have an increased likelihood that such harmful effects already may be, or soon will be, occurring.

These genetic risks, and their suite of associated harmful effects, may be amplified by the lek mating system characteristic of prairie grouse (Corman 2011, pp. 34–35). When male prairie chickens select a site for displaying, several factors such as high visibility, good auditory projection, and a lack of ambient noise are known to influence selection of lek sites by prairie chickens, and these same factors likely help aid females in locating the mating grounds (Gregory *et al.* 2011, p. 29). Johnsgard (2002, p. 129) stressed that the mating system used by prairie grouse works most effectively when populations are dense enough to provide the visual and acoustic stimuli necessary to attract prebreeding females to the lek. Once established, the lek must then be large enough to assure that the matings will be performed by the most physically and genetically fit males. Lek breeding, where relatively few males sire offspring, tends to promote inbreeding (Bouzat and Johnson 2004, p. 503).

Therefore, as populations decline, several events begin to exert influence on the viability of the affected population. As populations decline, and the number of males attending a particular lek decline, the probability that a lek will persistence also declines (Sandercock et al. 2012, p. 11). Females may have difficulty locating leks as the number of leks decline. Females also may not be attracted to an existing lek as male lek attendance declines and the corresponding collective visual and auditory display diminishes. Relatedly, as the number of male birds attending a particular lek declines, females will have fewer and fewer choices from which to select a mate, reducing the likelihood that females will select the most fit male. Because male lesser prairie-chickens have high site fidelity and consistently return to a particular lek site (Copelin 1963, pp. 29–30; Hoffman 1963, p. 731; Campbell 1972, pp. 698–699), the same dominant, but perhaps less fit, male may conduct the majority of the matings. As this continues over several successive years, the potential for inbreeding becomes more prevalent and the risk of impacts from harmful genetic effects rises. Although an obvious oversimplification of the process, the likelihood that lesser prairie-chickens will experience detrimental genetic effects, such as inbreeding, is high and will only increase as population sizes decline and become more fragmented over time. The potential for possible genetic effects is amplified by the lek mating system, where mating is performed by relatively few males (highly male skewed) (Oyler-McCance *et al.* 2010, p. 121).

However, the tendency of female lesser prairie-chickens and other prairie grouse to typically nest near a lek other than the one on which they mated is an innate mechanism that can help enhance genetic mixing and reduce the potential for of inbreeding to occur. Bouzat and Johnson (2004, p. 504) believed that site fidelity in female lesser prairie-chickens was lower than that for males and may help ensure low relatedness in reproductive females at leks.

Johnson (2008, p. 171) reported that gene flow is currently restricted between lesser prairie-chicken populations in New Mexico and those in Oklahoma and expressed concern that genetic variability may decline due to reduced population sizes. Hagen *et al.* (2010, p. 34) also reported that the New Mexico population was significantly different from populations in other States due to a lack of gene flow. An isolated population of lesser prairie-chicken in New Mexico and southwest Texas was reported to have lost genetic diversity due to separation from the main population, and this separation may have occurred since the 1800s (Corman 2011, p. 114).

These findings are not unexpected given information on lesser prairie-chicken movements. Pruett *et al.* (2009b, p. 258) report findings by the Sutton Center that lesser prairie-chickens in Oklahoma were observed to move as much as 20 to 30 km (12 to 19 mi), but the extant lesser prairie-chicken populations in New Mexico and Oklahoma are separated by more than 200 km (124 mi). Given the limited movements of individual lesser prairie-chickens and the distance between these two populations, Pruett *et al.* (2009b, p. 258) considered interaction between these populations to be highly unlikely. Johnson (2008, p. 171) speculated that the observed estimate of gene flow between the New Mexico and Oklahoma populations could be due to effects of recent genetic drift as habitat fragmentation and isolation developed between the New Mexico and Oklahoma populations. Corman (2011, p. 116) stated that prolonged separation by an

isolated population in southwest Texas and eastern New Mexico may have contributed to reduced variability in mitochondrial Deoxyribonucleic acid (mtDNA, genetic material). Further examination of the viability of existing lesser prairie-chicken populations will be needed to thoroughly describe the effects of small population size and isolation on persistence of the lesser prairie-chicken.

Dispersal is an important demographic factor that contributes to genetically viable populations (Johnson 2003, p. 62). Fragmentation that restricts dispersal capabilities can have dramatic impacts on the level of genetic variability and thus evolutionary potential of surviving populations (Johnson 2003, p. 62). Populations, such as the lesser prairie-chicken, that have undergone large decreases in population size are likely to lose genetic variation (Nei et al. 1975, Maruyama and Fuerst 1985). Resistance to disease and ability of populations to respond to environmental disturbances may also decrease with the loss of genetic variation (Lacy 1997).

We have determined that genetic risks related to small population size and the lek mating system, while not a significant concern at current population levels, could begin to substantially impact lesser prairie-chickens in the future, should populations continue to decline or become more isolated by habitat fragmentation. The population in Deaf Smith County, Texas is already showing signs of inbreeding due to isolation (see discussion in section on Conservation Genetics). Additionally, genetic examination of the northeast Texas population revealed a dependence upon gene flow from Oklahoma and Kansas to maintain adequate levels of genetic diversity. If this gene flow is disrupted by habitat fragmentation, the northeast Texas population also could be impacted by the effects of inbreeding. Considering Corman (2011, pp. 49–50) observed that both the Deaf Smith and the Gray-Donley County populations were intermediate between the New Mexico-southwest Texas population and lesser prairie-chicken populations throughout the remainder of the range, existing and anticipated genetic impacts to these populations would further isolate the New Mexico-southwest Texas population from the rest of the range. Further isolation could impact the viability of the New Mexico-southwest Texas population. Continued loss of genetic variation may negatively impact the long-term viability of some lesser prairie-chicken populations.

Surface Water Impoundments

Dams have been constructed on streams within the range of the lesser prairie-chicken to produce impoundments for flood control, water supply, and other purposes. The impounded waters flood not only affected stream segments and riparian areas, but also adjacent areas of grassland and shrubland habitats that potentially provided usable space for lesser prairie-chickens. Although lesser prairie-chickens may make use of free-standing water, as is retained in surface impoundments, its availability is not critical for survival of the birds (Giesen 1998, p. 4).

The historical range of the lesser prairie-chicken contains approximately 25 large impoundments with a surface area greater than 1,618 ha (4,000 ac), the largest 20 of these (and their normal surface acreage) are listed from largest to smallest in Table 5, below.

TABLE 5—IMPOUNDMENTS WITH SURFACE ACREAGE GREATER THAN 1,618 HA (4,000 AC) WITHIN THE HISTORICAL RANGE OF THE LESSER PRAIRIE-CHICKEN

Impoundment	Surface acreage	State
John Martin Reservoir	8,302 ha (20,515 ac)	Colorado.
O. H. Ivie Lake	7,749 ha (19,149 ac)	Texas.
Lake Meredith	6,641 ha (16,411 ac)	Texas.
Lake Kemp	6,309 ha (15,590 ac)	Texas.
Lake Arrowhead	6,057 ha (14,969 ac)	Texas.
E. V. Spence Reservoir	6,050 ha (14,950 ac)	Texas.
Hubbard Creek Reservoir	6,038 ha (14,922 ac)	Texas.
Twin Buttes Reservoir	3,965 ha (9,800 ac)	Texas.
Cheney Reservoir	3,859 ha (9,537 ac)	Kansas.
Wilson Lake	3,642 ha (9,000 ac)	Kansas.
Foss Lake	3,561 ha (8,800 ac)	Oklahoma.
Great Salt Plains Lake	3,516 ha (8,690 ac)	Oklahoma.
Ute Reservoir	3,318 ha (8,200 ac)	New Mexico.
Canton Lake	3,201 ha (7,910 ac)	Oklahoma.
J. B. Thomas Reservoir	2,947 ha (7,282 ac)	Texas.
Cedar Bluff Reservoir	2,779 ha (6,869 ac)	Kansas.
Lake Brownwood	2,626 ha (6,490 ac)	Texas.
Tom Steed Lake	2,590 ha (6,400 ac)	Oklahoma.
Lake Altus-Lugert	2,533 ha (6,260 ac)	Oklahoma.
Lake Kickapoo	2,439 ha (6,028 ac)	Texas.
Total	88,129 ha (217,772 ac).	

(**Sources:** Kansas Water Office 2012, New Mexico State Parks 2012, Texas Parks and Wildlife Department 2012, Texas State Historical Association 2012, U.S. Army Corps of Engineers 2012, U.S. Bureau of Reclamation 2012.)

In addition, the historical range of the lesser prairie-chicken contains many smaller impoundments, such as municipal reservoirs and upstream flood control projects. For example, beginning in the mid-1900s, the USDA constructed hundreds of small impoundments (floodwater retarding structures) within the historical range of the lesser prairie-chicken, through the Watershed Protection and Flood Prevention Program. The program was implemented to its greatest extent in Oklahoma (Oklahoma Conservation Commission 2005), and, within the portion of the lesser prairie-chicken's historical range in that State, the USDA constructed 574 floodwater retarding structures, totaling 6,070 ha (15,001 ac) (Elsener 2012). Similarly, within the portion of the lesser prairie-chicken's

historical range in Texas, the USDA constructed 276 floodwater retarding structures, totaling 8,293 surface acres (Bednarz 2012). In Kansas, considerably fewer floodwater retarding structures were constructed within the historical range, totaling 857 ha (2,118 ac) (Gross 2012). Even fewer such structures were constructed in Colorado and New Mexico.

Cumulatively, the total area of historical lesser prairie-chicken range lost due to construction of large, medium, and small impoundments is about 98,413 ha (243,184 ac), or roughly 0.2 percent of the historical range, and is much less than the amount of habitat lost or degraded by other factors discussed in this rule (e.g., conversion of rangeland to cropland and overgrazing). The Service expects a large majority of existing reservoirs to be maintained over the long term. Therefore, these structures will continue to displace former areas of lesser prairie-chicken habitat, as well as fragment surrounding lands as habitat for the lesser prairie-chicken, but the overall habitat loss is relatively minor. Because extensive new dam construction is not anticipated within the lesser prairie-chicken's range, the Service considers it unlikely that reservoir construction will significantly impact lesser prairie-chickens in the future.

In summary, several other natural or manmade factors are affecting the continued existence of the lesser prairie-chicken. Parasitism of lesser prairie-chicken nests by pheasants and hybridization with greater prairie chickens have been documented but the incidence is low. The impact is not significant at current levels. Hybridization is occurring in a small portion of the estimated occupied range but the immediate and long-term influence of hybridization on the species is unknown. The incidence of hybridization is low, typically about 1 percent of the estimated total population. However, should the zone of overlap between lesser and greater prairie-chickens expand, hybridization could become a more significant stressor in the future. As lesser prairie-chicken populations decline, number of potential genetic factors associated with reduced population size may begin to become more prevalent, particularly as populations become more isolated. Although genetic risks related to small population size and the lek mating system are not a significant concern at current population levels, they could begin to substantially impact lesser prairie-chickens in the future, Although past construction of surface water impoundments within the historical range have eliminated potential habitat, and continue to displace former areas of lesser prairie-chicken habitat, including small areas within the estimated occupied range, construction of large impoundments has slowed considerably over the past several decades. Habitat losses from reservoir construction are small, constituting roughly 0.2 percent of the historical range. However, considering low population density can increase the susceptibility of lesser prairie-chicken to possible genetic effects and increase the negative effects of hybridization, nest parasitism, and competition, we consider the effects of these natural and manmade factors to be a threat to the lesser prairie-chicken.

Adequacy of Existing Regulatory Mechanisms

Regulatory mechanisms, such as Federal, state, and local land use regulations or laws, may provide protection from some threats provided those regulations and laws are not discretionary and are enforceable.

In 1973, the lesser prairie-chicken was listed as a threatened species in Colorado under the State's Nongame and Endangered or Threatened Species Conservation Act. While this designation prohibits unauthorized take, possession, and transport, that adequately protects the species from direct purposeful mortality by humans, no protections are provided for destruction or alteration of lesser prairie-chicken habitat. In the remaining States, the lesser prairie-chicken is classified as a game species, although the legal harvest is now closed in New Mexico, Oklahoma, and Texas. Accordingly, the State conservation agencies have the authority to regulate possession of the lesser prairie-chicken, set hunting seasons, and issue citations for poaching. For example, Texas Statute (Parks and Wildlife Code Section 64.003) prohibits the destruction of nests or eggs of game birds such as the lesser prairie-chicken. These authorities provide lesser prairie-chickens with protection from direct mortality caused by hunting and prohibit some forms of unauthorized take, and have been adequate to address any concerns of overhunting, as evidenced by the fact that these states have closed harvest in response to low population levels. Alternatively, these authorities do not provide protection for destruction or alteration of the species' habitat.

In July of 1997, the NMDGF received a formal request to commence an investigation into the status of the lesser prairie-chicken within New Mexico. This request began the process for potential listing of the lesser prairie-chicken under New Mexico's Wildlife Conservation Act. In 1999, the recommendation to list the lesser prairie-chicken as a threatened species under the Wildlife Conservation Act was withdrawn until more information was collected from landowners, lessees, and land resource managers who may be affected by the listing or who may have information pertinent to the investigation. In late 2006, the New Mexico State Game Commission determined that the lesser prairie-chicken would not be State-listed in New Mexico. New Mexico's Wildlife Conservation Act, under which the lesser prairie-chicken could have been listed, offers little opportunity to prevent otherwise lawful activities.

Regardless of each State's listing status, most occupied lesser prairie-chicken habitat throughout its estimated occupied range occurs on private land (Taylor and Guthery 1980b, p. 6), where State conservation agencies have little authority to protect or direct management of the species' habitat. All five States in the estimated occupied range have incorporated the lesser prairie-chicken as a species of conservation concern and management priority in their respective State Wildlife Action Plans. While identification of the lesser prairie-chicken as a species of conservation concern does help heighten public awareness, this designation provides no protection from direct take or habitat destruction or alteration.

Some States, such as Oklahoma, have laws and regulations that address use of State school lands, primarily based on maximizing financial return from operation of these lands. However, the scattered nature of these lands and requirement to maximize financial returns minimize the likelihood that these lands will be managed to reduce degradation and fragmentation of habitat and ensure the conservation of the species.

Lesser prairie-chickens 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. The lesser prairie-chicken has an International Union for Conservation of Nature (IUCN) Red List Category of ''vulnerable'' (BirdLife International 2008), and NatureServe currently ranks the lesser prairie-chicken as G3—Vulnerable (NatureServe 2011, entire). The lesser prairie-chicken also 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.'' However, none of these designations provide any regulatory protection.

There are six National Grasslands located within the estimated historical range of the lesser prairie-chicken. Two of the six, the Comanche National Grassland in Colorado and the Cimarron National Grassland in Kansas, occur within the estimated occupied range. The remaining four occur within or adjacent to counties that are occupied with lesser prairie-chickens, but the National Grasslands themselves are not within the delineation of the estimated occupied range. The National Grasslands are managed by the USFS, have been under Federal ownership since the late 1930s, and were officially designated as National Grasslands in 1960. The Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands are administered by the Cibola National Forest. The Kiowa National Grassland covers 55,659 ha (137,537 ac) and is located within Mora, Harding, Union, and Colfax Counties, New Mexico. The Rita Blanca National Grassland covers 37,631 ha (92,989 ac) and is located within Dallam County, Texas, and Cimarron County, Oklahoma. The Black Kettle National Grassland covers 12,661 ha (31,286 ac) and is located within Roger Mills County, Oklahoma, and Hemphill County, Texas. The McClellan Creek National Grassland covers 586 ha (1,449 ac) and is located in Gray County, Texas. No breeding populations of lesser prairie-chickens are known to occur on these holdings.

The Comanche and Cimarron National Grasslands are under the administration of the Pike and San Isabel National Forest. The Comanche National Grassland covers 179,586 ha (443,765 ac) and is located within Baca, Las Animas, and Otero Counties, Colorado. The Cimarron National Grassland covers 43,777 ha (108,175 ac) and is located in Morton and Stevens Counties, Kansas. Both of these areas are known to support breeding lesser prairie-chickens. The National Forest Management Act of 1976 and the associated planning rule in effect at the time of planning initiation are the principal law and regulation governing the planning and management of National Forests and National Grasslands by the USFS.

Planning for the Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands was well underway when the 2008 National Forest System Land Management Planning Rule was enjoined on June 30, 2009, by the United States District Court for the Northern District of California (*Citizens for Better Forestry v. United States Department of Agriculture,* 632 F. Supp. 2d 968 (N.D. Cal. June 30, 2009)). A new planning rule was finalized in 2012 (77 FR 67059) and became effective on May 9, 2012. The transition provisions of the 2012 planning rule (36 CFR 219.17(b)(3)) allow those National Forest System lands that had initiated plan development, plan amendments, or plan revisions prior to May 9, 2012, to continue using the provisions of the prior planning regulation. The Cibola National Forest and Grasslands used the guidance of the 2012 Planning Rule transition language allowing the provisions of the 1982 Planning Rule, including the requirement to prepare an Environmental Impact Statement, to complete the new plan for these National Grasslands. The management strategies for management of these National Grasslands provide a strategic, outcome-oriented, programmatic framework for future activities and will be implemented at the District level through the application of certain Desired Conditions, Objectives, Standards, and Guidelines. The Environmental Impact Statement highlights that the new plan will allow for enhancement of lesser prairie-chicken habitat by moving vegetation types toward the species' desired vegetation structures and species composition, in addition to reducing mortality caused by fence collision. As explained above, the transition provisions (36 CFR 219.17(b)(3)) of the 2012 planning rule allow the use of the provisions of the 1982 planning rule, including the requirement that management indicator species be identified as part of the plan. Management indicator species serve multiple functions in forest planning: Focusing management direction developed in the alternatives, providing a means to analyze effects on biological diversity, and serving as a reliable feedback mechanism during plan implementation. The latter often is accomplished by monitoring population trends in relationship to habitat changes. Although suitable habitat is present, no breeding populations of lesser prairie-chickens are known from the Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands. Consequently, the lesser prairie-chicken is not designated as a management indicator species in the plan. Instead the lesser prairie-chicken is included on the Regional Forester's sensitive species list and as an At-Risk species.

In 2008, a new National Forest System Land Management Planning Rule (36 CFR Part 219) took effect and was used to guide the development of a Land and Resource Management Plan for the Comanche and Cimarron National Grasslands. That plan was one of the first plans developed and released under the 2008 planning rule. The predecisional review version of the Cimarron and Comanche National Grasslands Land Management Plan was made available to the public on October 17, 2008. The lesser prairie-chicken was included as a species-of-concern in accordance with guidance available in the existing planning rule (USFS 2008, p. 35). As defined in the 2008 planning rule, species-of-concern are species for which the Responsible Official determines that management actions may be necessary to prevent listing under the Endangered Species Act (36 CFR 219.16). Identification of the lesser prairie-chicken as a species-of-concern in the Cimarron and Comanche National Grasslands Land Management Plan led to inclusion of planning objectives targeting improvement of the species' habitat, as described below.

The Comanche and Cimarron National Grasslands currently manage the Comanche Lesser Prairie-chicken Habitat Zoological Area, now designated as a Colorado Natural Area, which encompasses an area of 4,118 ha (10,177 ac) that is managed to benefit the lesser prairie-chicken. Current conditions on this area include existing oil and gas leases, two-track roads, utility corridors, and livestock grazing. Wildfires on the area have been suppressed over the last 30 years. The area provides a special viewing area for the lesser prairie-chicken, which has been closed to protect lekking activities. The 1984 plan specifies that the condition of the area should meet the special habitat needs of the lesser prairie-chicken, specifically protection of leks from all surface disturbance, protection of nesting habitat from surface disturbance during the nesting period (April 15 to June 30) and limiting forage use by livestock and wild herbivores to no more than 40 percent.

The USFS contracted with lesser prairie-chicken experts to prepare the lesser prairie-chicken technical conservation assessment, which is a succinct evaluation of species of potential viability concern, (Robb and Schroeder 2005, entire). The conservation assessment addresses the biology, ecology, conservation, and management of the species throughout its range, but it primarily focuses on Colorado and Kansas (Forest Service Region 2) (Robb and Schroeder 2005, p.

7). Species conservation assessments produced as part of the Species Conservation Project are designed to provide land managers, biologists, and the public with a thorough discussion of the biology, ecology, conservation, and management of the lesser prairie-chicken based on existing scientific knowledge and to provide the ecological background upon which management should be based, focusing on the consequences of changes in the environment that result from management (Robb and Schroeder 2005, p. 7). This conservation assessment for the lesser prairie-chicken was completed in 2005 and affirmed the need for the USFS to retain sensitive species status designation for the lesser prairie-chicken. The criteria evaluated for inclusion on the sensitive species list include distribution, dispersal capability, abundance, population trend, habitat trend, habitat vulnerability or modification, and life history and demographics. The sensitive species recommendation form for the lesser prairie-chicken states that the species clearly warrants sensitive species designation because habitat loss, fragmentation and degradation are still significant risk factors on both USFS and surrounding private lands. Management activities on the National Grasslands throughout the range of the lesser prairie-chicken may be guided by the technical conservation assessment; however, the document only provides summaries of existing scientific knowledge, discussion of broad implications of that knowledge, and outlines of information needs. The technical conservation assessment does not seek to develop specific prescriptions for management of populations and habitats. Instead, it is intended to provide the ecological background upon which management should be based and focuses on the consequences of changes in the environment that result from management (i.e., management implications). This document can be found at *http://www.fs.fed.us/r2/projects/scp/assessments/lesserprairiechicken.pdf*.

The other primary Federal surface ownership of lands occupied by the lesser prairie-chicken is administered by the BLM in New Mexico. In New Mexico, roughly 41 percent of the known historical and most of the estimated occupied lesser prairie-chicken range occurs on BLM land. The BLM currently manages approximately 342,969 surface ha (847,491 ac) within lesser prairie-chicken range in eastern New Mexico. They also oversee another 120,529 ha (297,832 ac) of Federal minerals below private surface ownership. The core of currently occupied lesser prairie-chicken habitat in New Mexico is within the Roswell BLM Resource Area. However, the Carlsbad BLM Resource Area comprised much of the historical southern periphery of the species' range in New Mexico.

The BLM established the 23,278-ha (57,522-ac) Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern (ACEC) upon completion of the RMPA in 2008; the purpose of the ACEC is to maintain and enhance habitat for the lesser prairie-chicken and the dunes sagebrush lizard (*Sceloporus arenicolus*) (BLM 2008, p. 1). The management goal for the ACEC is to protect the biological qualities of the area, with emphasis on the preservation of the shinnery oak-dune community to enhance the biodiversity of the ecosystem, particularly habitats for the lesser prairie-chicken and the dunes sagebrush lizard. The ACEC not only includes 20,943 ha (51,751 ac) public land surface acres, in addition to State trust land and private land, but also includes 18,981 ha (46,902 ac) of Federal mineral estate (BLM 2008, p. 30). Upon designation, the ACEC was closed to future oil and gas leasing, and existing leases would be developed in accordance with prescriptions applicable to the Core Management Area as described below (BLM 2008, p. 30). Additional management prescriptions for the ACEC include designation as a right-of-way exclusion area, vegetation management to meet the stated management goal of the area, and limiting the area to existing roads and trails for off-highway vehicle use (BLM 2008, p. 31). All acres of the ACEC have been closed to grazing through relinquishment of the permits except for one 1393 ha (3,442 ac) allotment.

The BLM's amended RMPA (BLM 2008, pp. 5–31) provides some limited protections for the lesser prairie-chicken in New Mexico by reducing the number of drilling locations, decreasing the size of well pads, reducing the number and length of roads, reducing the number of powerlines and pipelines, and implementing best management practices for development and reclamation. Implementation of these protective measures, particularly curtailment of new mineral leases, would be greatest in the Core Management Area and the Primary Population Area habitat management units (BLM 2008, pp. 9–11). The Core Management and Primary Population Areas are located in the core of the lesser prairie-chicken estimated occupied range in New Mexico. The effect of these best management practices on the status of the lesser prairie-chicken is unknown, particularly considering about 33,184 ha (82,000 ac) have already been leased in those areas (BLM 2008, p. 8). The effectiveness of the amended RMPA is hampered by a lack of explicit measures designed to improve the status of the lesser prairie-chicken, limited certainty that resources will be available to carry out the management plan, limited regulatory or procedural mechanisms in place to carry out the efforts, lack of monitoring efforts, and provision for exceptions to the best management practices under certain conditions, which could negate the benefit of the conservation measures.

The amended RMPA stipulates that implementation of measures designed to protect the lesser prairie-chicken and dunes sagebrush lizard may not allow approval of all spacing unit locations or full development of a lease (BLM 2008, p. 8). In addition, the RMPA prohibits drilling and exploration in lesser prairie-chicken habitat between March 1 and June 15 of each year (BLM 2008, p. 8). No new mineral leases will be issued on approximately 32 percent of Federal mineral acreage within the RMPA planning area (BLM 2008, p. 8), although some exceptions are allowed on a case-by-case basis (BLM 2008, pp. 9–11). Within the Core Management Area and Primary Population Area, new leases will be restricted in occupied and suitable habitat; however, if there is an overall increase in reclaimed to disturbed acres over a 5-year period, new leases in these areas will be allowed (BLM 2008, p. 11). Considering Hunt and Best (2004, p. 92) concluded that petroleum development at intensive levels likely is not compatible with populations of lesser prairie-chicken, additional development in the Core Management Area and Primary Population Area habitat management units may hinder long-term conservation of the species in New Mexico. The RMPA allows lease applicants to voluntarily participate in a power line removal credit to encourage removal of idle power lines (BLM 2008, pp. 2–41). In the southernmost habitat management units, the Sparse and Scattered Population Area and the Isolated Population Area, where lesser prairie-chickens are now far less common than in previous decades (Hunt and Best 2004), new leases will not be allowed within 2.4 km (1.5 mi) of a lek (BLM 2008, p. 11).

The overall ineffectiveness of certain imposed energy development stipulations near leks for the purpose of

protecting grouse on Federal lands has been confirmed for sage grouse. Holloran (2005, p. 57) and Naugle *et al.* (2006a, p. 3) documented that sage grouse avoid energy development (coalbed methane) not only in breeding and nesting habitats, but also in wintering habitats. They assert that current best management practices in use by Federal land management agencies that place timing stipulations or limit surface occupancy near greater sage-grouse leks result in a human footprint that far exceeds the tolerance limits of sage grouse. Ultimately, they recommended that effective conservation strategies for grouse must limit the cumulative impact of habitat disturbance, modification, and destruction in all habitats and at all times of the year (Holloran 2005, p. 58; Naugle *et al.* 2006b, p. 12). Additional research on the effect of petroleum development on lesser prairie-chicken is needed. However, available information on the lesser prairie-chicken (Suminski 1977, p. 70; Hagen *et al.* 2004, pp. 74–75; Hunt and Best 2004, p. 92; Pitman *et al.* 2005, pp. 1267–1268) indicates that the effect of petroleum development is often detrimental, particularly during the breeding season.

Because only about 4 percent of the species' overall range occurs on Federal lands, the Service recognizes that the lesser prairie-chicken cannot be fully recovered on Federal lands alone. However, no laws or regulations currently protect lesser prairie-chicken habitat on private land, aside from State harvest restrictions. Therefore, the Service views decisions regarding the management and leasing of Federal lands and minerals within existing lesser prairie-chicken range as important to the future conservation and persistence of the species.

Since 2004, the construction of commercial wind energy projects near and within estimated occupied lesser prairie-chicken habitat has raised concerns about the potential negative effects such projects may have on the species, if constructed at large scales in occupied range. As discussed previously, a rapid expansion of transmission lines and associated wind energy development throughout large portions of occupied lesser prairie-chicken range is occurring. Because most wind development activities are privately funded and are occurring on private land, wind energy siting, development, and operation falls outside the purview of the National Environmental Policy Act of 1969 (NEPA) and, within the range of the lesser prairie-chicken, other Federal conservation statues and regulatory processes. As a result, Federal law and policy does not generally regulate the wind development activities in regard to the lesser prairie-chicken.

The current lack of regulatory oversight and public notice requirements for the construction of wind generation and related transmission facilities is a concern. Specifically, the Service is unaware of any state or Federal mechanisms that require potential wind energy producers to disclose the location, size, and anticipated construction date for pending projects on non-Federal lands or require analysis under the provisions of the NEPA. Lacking the ability to obtain pertinent siting information or analyze alternative siting locations, neither the Service nor State conservation agencies currently have the ability to accurately influence the size or timing of wind generation construction activities within occupied lesser prairie-chicken habitat.

In summary, most occupied lesser prairie-chicken habitat occurs on private land, where State conservation agencies currently have little authority to protect lesser prairie-chicken or facilitate and monitor management of lesser prairie-chicken habitat beyond regulating recreational harvest. Because most lesser prairie-chicken habitat destruction and modification on private land occurs through otherwise lawful activities such as agricultural conversion, livestock grazing, energy development, and fire exclusion, few (if any) regulatory mechanisms are in place to substantially alter human land uses at a sufficient scale to protect lesser prairie-chicken populations and their habitat. While almost no regulatory protection is in place for the species, regulatory incentives, in the form of county, state, and national legislative actions, have been created to facilitate the expansion of activities that result in fragmentation of occupied lesser prairie-chicken habitat, such as that resulting from oil, gas, and wind energy development. For the remaining 4 percent of occupied habitat currently under Federal management, habitat quality depends primarily on factors related to multiple use mandates, such as livestock grazing and oil, gas, and wind power development activities. Because prior leasing commitments and management decisions on the majority of occupied parcels of Federal land offer little flexibility for reversal, any new regulatory protection for uncommitted land units are important and will take time to achieve substantial benefits for the species in the long term.

We note that the existing regulatory mechanisms at the Federal and State level have not been sufficient to halt the decline of the species. Further, the best available information does not show any existing regulatory mechanisms at the local level that address the identified threats to the species. In spite of the existing regulatory mechanisms, the current and projected threat from the loss and fragmentation of lesser prairie-chicken habitat and range is still ongoing. The existing regulatory mechanisms have not been effective at removing all of the impacts to lesser prairie-chickens and their habitat.

Determination

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 (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

As required by the Act, we considered the five factors in assessing whether the lesser prairie-chicken meets the definition of an endangered or a threatened species. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the lesser prairie-chicken. Based on our review of the best available scientific and commercial information, we find the lesser prairie-chicken is likely to become in danger of extinction in the foreseeable future and, therefore, meets the definition of a threatened species.

The life history and ecology of the lesser prairie-chicken make it exceptionally vulnerable to changes on the landscape, especially at its currently reduced numbers. As discussed above, this vulnerability to habitat impacts results from the species' lek breeding system, which requires males and females to be able to hear and see each other over relatively wide distances; the need for large patches of habitat that include several types of microhabitats; and the behavioral avoidance of vertical structures. Specifically, the lesser prairie-chicken's behavioral avoidance of vertical structures causes its habitat to be more functionally fragmented than another species' habitat would be. For example, a snake likely would continue

to use habitat underneath a wind turbine, but the lesser prairie-chicken's predator avoidance behavior causes it to avoid a large area (estimated to be 1 mile) around a tall vertical object. The habitat within that 1.6-km (1-mi) buffer continues to be otherwise suitable for lesser prairie-chickens, but the entire area is avoided because of the vertical structure. As a result, the impact of any individual fragmenting feature is of higher magnitude than the physical footprint of that structure would suggest it should be.

The ongoing and future impacts of cumulative habitat loss and fragmentation to the lesser prairie-chicken are widespread and of high magnitude. Most importantly, the probable future negative impacts to the species and its habitat are the result of conversion of grasslands to agricultural uses; encroachment by invasive, woody plants; wind energy development; petroleum production; roads; and presence of manmade vertical structures, including towers, utility lines, fences, turbines, wells, and buildings. The historical and current impact of these fragmenting factors has reduced the status of the species to the point that individual populations are vulnerable to extirpation as a result of stochastic events such as extreme weather events. Additionally, these populations are more vulnerable to the effects of climate change, disease, and predation than they would have been at historical population levels. These threats are currently impacting lesser prairie-chickens throughout their range and, as detailed individually above, are projected to increase in severity into the foreseeable future.

The range of the lesser prairie-chicken has been reduced by an estimated 84 percent since pre-European settlement. The vulnerability of lesser prairie-chickens to changes on the landscape is magnified compared to historical times due to the species' reduced population numbers, prevalence of isolated populations, and reduced range. There are few areas of large patches of unfragmented, suitable grassland remaining. Based on our analysis presented earlier, approximately 98.96 percent of the remaining suitable habitat patches were less than 486 ha (1,200 ac) in size. In addition, 99.97 percent of the remaining suitable habitat patches were less than 6,475 ha (16,000 ac) in size. In order to thrive and colonize unoccupied areas, lesser prairie-chickens require large patches of functionally unfragmented habitat that include a variety of microhabitats needed to support lekking, nesting, brood rearing, feeding for young, and feeding for adults, among other things. Habitat patches that do not contain all of these microhabitats may support population persistence but may not support thriving populations that can produce surplus males capable of colonizing new areas or recolonizing previously extirpated areas.

The species has a reduced population size and faces ongoing habitat loss and degradation. The species will lack sufficient redundancy and resiliency to ensure its viability from present and future threats. As a result, the status of the species has been reduced to the point that individual populations are vulnerable to extirpation due to a variety of stochastic events (e.g., drought, winter storms). These extirpations are especially significant because, in many places, there are no nearby, connected populations with robust numbers that can rescue the extirpated populations (i.e., be a source for recolonization). Stochastic events will not affect all populations equally such all of the remaining populations are not likely to be extirpated at once; however, without intervention, population numbers will continue to decline and the range of the species will continue to contract.

There are numerous ongoing conservation efforts throughout the range of the species that are working to reduce or remove many of the threats affecting the lesser prairie-chicken. However, those existing efforts are largely focused on just one or two of the threats that the lesser prairie-chicken is facing, and, in total, those efforts largely do not address two of the more significant threats to the lesser prairie-chicken into the future, namely oil and gas development and wind energy development. Additionally, despite those ongoing efforts, the status of the species has continued to decline, presumably as a result of the effects of drought. The WAFWA recently finalized their rangewide plan, a landmark conservation effort that is intended to address, in part, those threat sources that are not covered elsewhere. While we have determined that the rangewide plan will provide a net conservation benefit to the species, the positive benefits of that effort are expected to occur in the future rather than now at the time of listing.

In summary, because of the reduction in the numbers and range of lesser prairie-chickens resulting from cumulative ongoing habitat fragmentation, combined with the lack of sufficient redundancy and resiliency of current populations, we conclude that the lesser prairie-chicken is currently at risk of extinction or is likely to be in danger of extinction in the foreseeable future.

We must then assess whether the species is in danger of extinction now (i.e., an endangered species) or is likely to become in danger of extinction in the foreseeable future (i.e., a threatened species). In assessing the status of the lesser prairie-chicken, we applied the general understanding of ''in danger of extinction'' as discussed in the December 22, 2010, memo to the polar bear listing determination file, ''Supplemental Explanation for the Legal Basis of the Department's May 15, 2008, Determination of Threatened Status for the Polar Bear,'' signed by then Acting Director Dan Ashe (hereafter referred to as Polar Bear Memo). As discussed in the Polar Bear Memo, a key statutory difference between an endangered species and a threatened species is the timing of when a species may be in danger of extinction (i.e., currently on the brink of extinction), either now (endangered species) or in the foreseeable future (threatened species).

As discussed in the Polar Bear Memo, because of the fact-specific nature of listing determinations, there is no single metric for determining if a species is ''in danger of extinction'' now. Nonetheless, the practice of the Service over the past four decades has been consistent. Species that the Service has determined to be in danger of extinction now, and therefore appropriately listed as an endangered species, generally fall into four basic categories:

(1) Species facing a catastrophic threat from which the risk of extinction is imminent and certain.

(2) Narrowly restricted endemics that, as a result of their limited range or population size are vulnerable to extinction from elevated threats.

(3) Species formally more widespread that have been reduced to such critically low numbers or restricted ranges that they are at a high risk of extinction due to threats that would not otherwise imperil the species.

(4) Species with still relatively widespread distribution that have nevertheless suffered ongoing major reductions in their numbers, range, or both, as a result of factors that have not been abated.

The best scientific and commercial data available indicate that the lesser prairie-chicken could fit into the fourth category. However, as noted in the Polar Bear Memo, threatened species share some characteristics with this category of endangered species where the recent decline in population, range, or both, is to a less severe extent. The Polar Bear Memo indicates that ''[w]hether a

species in this situation is ultimately an endangered species or threatened species depends on the specific life history and ecology of the species, the natures of the threats, and population numbers and trends.'' The Polar Bear Memo provides examples of species that suffered fairly substantial declines in numbers or range and were appropriately listed as threatened because the species as a whole was not in danger of extinction, although the Service could foresee the species reaching the brink of extinction.

As discussed above, the foreseeable future refers to the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. For the lesser prairie-chicken, information about the primary ongoing and future threats is reasonably well-known and reliable. Thus, we used the best scientific and commercial data available to analyze and identify the primary ongoing and future threats to the lesser prairie-chicken. As discussed in the Polar Bear Memo, species like the lesser prairie-chicken that have suffered ongoing, major reductions in numbers or range (or both) due to factors that have not been abated may be classified as threatened species if some populations appear stable, which would indicate that the entity as a whole was not in danger of extinction now (i.e., not an endangered species). In the case of the lesser prairie-chicken, the best available information indicates that, while there have been major range reductions (84 percent) as a result of factors that have not been abated (cumulative habitat fragmentation and drought), there are sufficient stable populations such that the species is not on the brink of extinction. Specifically, in the Short-Grass/CRP mosaic ecoregion of northwestern Kansas, the lesser prairie-chicken has reoccupied parts of its former range after landowners enrolled in CRP, creating large blocks of high-quality habitat beneficial to the species. This population is considered relatively secure in the near term, as it is primarily comprised of CRP lands that are in 10- to 15-year contracts. Further, lesser prairie-chicken populations are spread over a large geographical area, and the current range of the species includes populations that represent the known diversity of ecological settings for the lesser prairie-chicken. As a result, it is unlikely that a single stochastic event (e.g., drought, winter storm) will affect all known extant populations equally or simultaneously; therefore, it would require several stochastic events over a number of years to bring the lesser prairie-chicken to the brink of extinction due to those factors alone. In addition, the current and ongoing threats of conversion of grasslands to agricultural uses; encroachment by invasive, woody plants; wind energy development; and petroleum production are not likely to impact all remaining populations significantly in the near term because these activities either move slowly across the landscape or take several years to plan and implement. These threats are also less likely to significantly impact the Kansas lesser prairie-chicken population in the near term because of its relative security (e.g., land use is unlikely to change through the term of the CRP contracts), as described above. Therefore, there are sufficient populations to allow the lesser prairie-chicken to persist into the near future, it is not in danger of extinction throughout all of its range now. However, because of the nature of the ongoing threats to the species, the Service can foresee the species reaching the brink of extinction, and the species, therefore, appropriately meets the definition of a threatened species (i.e., likely to become in danger of extinction in the foreseeable future).

In conclusion, as described above, the lesser prairie-chicken has experienced significant reductions in range and population numbers, is especially vulnerable to impacts due to its life history and ecology, and is subject to significant current and future threats. We conclude that there are sufficient populations to allow the species to persist into the near future. Therefore, after a review of the best available scientific information as it relates to the status of the species and the five listing factors, we find the lesser prairie-chicken is likely to become in danger of extinction in the foreseeable future throughout its range. Therefore, we are listing the lesser prairie-chicken as a threatened species.

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 often results in public awareness and facilitates 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 protection required by Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Recovery Planning

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 soon after a species is listed, preparation of a draft and final recovery plan, and periodic revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgently needed recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that, when implemented, 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 (comprised of species experts, Federal and State agencies, nongovernment 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 Oklahoma Ecological Services 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, Tribal and nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research and monitoring, captive propagation and

reintroduction, and outreach and education. Although land acquisition is an example of a type of recovery action, 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. Consequently, recovery of these species will require cooperative conservation efforts involving private, State, and possibly Tribal lands.

Once 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, under section 6 of the Act, the States of Colorado, Kansas, New Mexico, Oklahoma, and Texas will be eligible for Federal funds to implement management actions that promote the protection and recovery of the lesser prairie-chicken. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the lesser prairie-chicken. 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**).

Federal Agency Consultation

Section 7(a) of the Act, as amended, 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) 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 adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some examples of Federal agency actions within the species' habitat that may require conference or consultation, or both, as described in the preceding paragraph include landscape-altering activities on Federal lands; provision of Federal funds to State and private entities through Service programs, such as the PFW Program, State Wildlife Grant Program, and Federal Aid in Wildlife Restoration program; construction and operation of communication, radio, and similar towers by the Federal Communications Commission or Federal Aviation Administration; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; construction and management of petroleum pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways by the Federal Highway Administration; implementation of certain USDA agricultural assistance programs; Federal grant, loan, and insurance programs; Federal habitat restoration programs such as EQIP; and development of Federal minerals, such as oil and gas.

Prohibitions and Exceptions

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. The Act is implemented through regulations found in the Code of Federal Regulations (CFR). When a species is listed as endangered, certain actions are prohibited under section 9 of the Act, as specified in 50 CFR 17.21. These prohibitions, which will be discussed further below, include, among others, take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; and shipment in interstate or foreign commerce in the course of a commercial activity.

The Act does not specify particular prohibitions, or exceptions to those prohibitions, for threatened species. Instead, under section 4(d) of the Act, the Secretary of the Interior was given the discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species, any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service has developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the Act that apply to most threatened species. Under 50 CFR 17.32, permits may be issued to allow persons to engage in otherwise prohibited acts. Alternately, for threatened species, the Service may develop specific prohibitions and exceptions that are tailored to the specific conservation needs of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into a special rule under section 4(d) of the Act, but the 4(d) special rule will also include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31. Elsewhere in today's **Federal Register**, we published a final 4(d) special rule that provides measures that are necessary and advisable to provide for the conservation of the lesser prairie-chicken.

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 17.32 for threatened species. 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. We anticipate that we would receive requests for all three types of permits, particularly as they relate to development of wind power facilities or implementation of safe harbor agreements. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the Field Supervisor at the address in the **FOR FURTHER INFORMATION CONTACT** section.

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 the newly listed species. 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 unauthorized destruction or alteration of the species' occupied habitat, as described in this rule. Such activities could include, but are not limited to, the removal of native shrub or herbaceous vegetation by any means for any infrastructure construction project or direct conversion of native shrub or herbaceous vegetation to another land use.

(3) Actions that would result in the long-term (e.g., greater than 3 years) alteration of preferred vegetative characteristics of lesser prairie-chicken habitat, as described in this rule, particularly those actions that would cause a reduction or loss in the native invertebrate community within those habitats. Such activities could include, but are not limited to, inappropriate livestock grazing, the application of herbicides or insecticides, and seeding of nonnative plant species that would compete with native vegetation for water, nutrients, and space.

(4) Actions that would result in lesser prairie-chicken 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; motorized and nonmotorized recreational use; and activities such as well drilling, operation, and maintenance, which would entail significant human presence, noise, and infrastructure.

(5) Actions, intentional or otherwise, that would result in the destruction of eggs or active nests or cause mortality or injury to chicks, juveniles, or adult lesser prairie-chickens.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat Designation for Lesser Prairie-Chicken

Background

Critical habitat is defined in section 3 of the Act as:

(i) 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:

(I) Essential to the conservation of the species, and

(II) Which may require special management considerations or protection; and

(ii) 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 using all methods and procedures deemed 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 relieved otherwise, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) of the Act through the requirement that Federal agencies insure, 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 alter 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. Instead, 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 applicant 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 geographical 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 are the elements of physical or biological features that are the specific components that provide for a species' life-history processes, and 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 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. 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 a critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its current occupied range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. 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 are determining which areas we should designate 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 published 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.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, 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, considering additional scientific information may become available in the future. 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, 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 a species is determined to be an endangered or threatened species. 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 the 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 operative threat to lesser prairie-chickens attributed to unauthorized collection or vandalism, and identification and mapping of critical habitat is not expected to initiate any such threat. Thus, we conclude designating critical habitat for the lesser prairie-chicken is not expected to create or increase the degree of threat to the species due to taking.

Conservation of lesser prairie-chickens and their essential habitats will focus on, among other things, habitat management, protection, and restoration, which will be aided by knowledge of habitat locations and the physical or biological features of the habitat. 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. We conclude that the designation of critical habitat for the lesser prairie-chicken will benefit the species by serving to focus conservation efforts on the restoration and maintenance of ecosystem functions within those areas considered essential for achieving its recovery and long-term viability. Other potential benefits include: (1) Triggering consultation under section 7(a)(2) of the Act in new areas for actions in which there may be a Federal nexus where consultation would not otherwise occur because, for example, the area 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 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 benefit, we find that designation of critical habitat is prudent for the lesser prairie-chicken.

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 following publication of a final listing rule to publish a final critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas 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 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, and 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 are currently unable to identify critical habitat for the lesser prairie-chicken because important information on the geographical area occupied by the species, the physical and biological habitat features that are essential to the conservation of the species, and the unoccupied areas that are essential to the conservation of the species is not known at this time. A specific shortcoming of the currently available information is the lack of data about: (1) The specific physical and biological features essential to the conservation of the species; (2) how much habitat may ultimately be needed to conserve the species; (3) where the habitat patches occur that have the best chance of rehabilitation; and (4) where linkages between current and future populations may occur. Additionally, while we have reasonable general information about habitat features in areas occupied by lesser prairie-chickens, we do not know what specific features, or combinations of features, are needed to ensure persistence of stable, secure populations.

Several conservation actions are currently underway that will help inform this process and reduce some of the current uncertainty. Incorporation of the information from these conservation actions will give us a better

understanding of the species' biological requirements and what areas are needed to support the conservation of the species.

The five State conservation agencies within the occupied range of the lesser prairie-chicken, through coordination with the Western Association of Fish and Wildlife Agencies Grassland Initiative, were funded to develop a rangewide survey sampling framework and to implement aerial surveys in 2012 and 2013. The rangewide plan commits to continued rangewide population monitoring of the lesser prairie-chicken, including annual use of the aerial survey methodology used in 2012 and 2013 (Van Pelt *et al.* 2013, p. 122). Ongoing implementation of these aerial surveys is important, as they may enable biologists to determine location of leks that are too distant from public roads to be detected during standard survey efforts. Our critical habitat determination will benefit from this additional information and allow us to consider the most recent and best science in making our critical habitat determination.

Similarly, all five State conservation agencies within the occupied range of the lesser prairie-chicken have partnered with the Service and Playa Lakes Joint Venture, using funding from the DOE and the Western Governors' Association, to develop a decision support system that assists in evaluation of lesser prairie-chicken habitat, assists industry with nonregulatory siting decisions, and facilitates targeting of conservation activities for the species. The first iteration of that product went online in September 2011 (*http://kars.ku.edu/geodata/maps/sgpchat/*). This decision support system is still being refined, and a second iteration of the product, under oversight of the Western Association of Fish and Wildlife Agencies, went online during the fall of 2013. Further iterations will provide additional information that will help improve evaluation of lesser prairie-chicken habitat. The Steering Committee of the Great Plains Landscape Conservation Cooperative has made completion of Phase II one of their highest priorities for the next 18 months. The Lesser Prairie-chicken Interstate Working Group will be identifying the research and data needs for moving Phase II forward. Outputs derived from this decision support tool will help us more precisely identify the location and distribution of features essential to the conservation of the lesser prairie-chicken.

Therefore, we have concluded that critical habitat is not determinable for the lesser prairie-chicken at this time because we lack information on the precise area occupied by the species and on the physical and biological habitat features that are essential to the conservation of the species. Also, since the unoccupied areas that are essential to the conservation of the species are not known at this time, we lack information to assess the impacts of the potential critical habitat designation.

Required Determinations

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).

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.

By letter dated April 19, 2011, we contacted known tribal governments throughout the historical range of the lesser prairie-chicken. We sought their input on our development of a proposed rule to list the lesser prairie-chicken and encouraged them to contact the Oklahoma Ecological Services Field Office if any portion of our request was unclear or to request additional information. We did not receive any comments regarding this request. We continued to keep tribal governments informed by providing notifications of each new or reopened public comment period and specifically requesting their input. We did not receive any requests or comments as a result of our request.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov,* or upon request from the Field Supervisor, Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Prairie-chicken, lesser'' in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Prairie-chicken, lesser.	*Tympanuchus pallidicinctus.*	U.S.A. (CO, KS, NM, OK, TX).	Entire	T	831	NA	17.41 (d)
*	*	*	*	*	*		*

* * * * *

Dated: March 21, 2014.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–07302 Filed 4–9–14; 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; Special Rule for the Lesser Prairie-Chicken; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0071: 4500030113]

RIN 1018–AY21

Endangered and Threatened Wildlife and Plants; Special Rule for the Lesser Prairie-Chicken

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, finalize a special rule under authority of section 4(d) of the Endangered Species Act of 1973, as amended (Act), that provides measures that are necessary and advisable to provide for the conservation of the lesser prairie-chicken (*Tympanuchus pallidicinctus*).

DATES: This rule is effective May 12, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2012–0071 and at *https://www.fws.gov/southwest/es/LPC.html.* Comments and materials we received are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; telephone 918–581–7458; facsimile 918–581–7467.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, Field Supervisor, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; telephone 918–581–7458; facsimile 918–581–7467. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On December 11, 2012, we published in the **Federal Register** a proposed rule to list the lesser prairie-chicken as a threatened species under the Act (77 FR 73828). On May 6, 2013, we published in the **Federal Register** a proposed special rule under section 4(d) of the Act (16 U.S.C. 1531 et seq.) for the lesser prairie-chicken (78 FR 26302), and we accepted public comments on our proposal for 45 days, ending June 20, 2013. On December 11, 2013, we proposed to revise the special rule (78 FR 75306), and we accepted public comments on that revised proposal for 30 days, ending January 10, 2014. On January 29, 2014, we reopened the public comment period on the proposed revised special rule for 2 weeks, ending February 12, 2014 (79 FR 4652). Elsewhere in today's **Federal Register**, we published a final rule to list the lesser prairie-chicken as a threatened species. Please see the final listing rule for additional information concerning previous Federal actions for the lesser prairie-chicken.

Background

This document discusses only those topics directly relevant to the special rule under section 4(d) of the Act for the lesser prairie-chicken (which we refer to as the ''4(d) special rule'' in this document). For more information on the lesser prairie-chicken and its habitat, please refer to the final listing rule published elsewhere in today's **Federal Register**, which is also available online at *http://www.regulations.gov* (at Docket No. FWS–R2–ES–2012–0071) or from the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

As discussed in the final listing rule, the primary factors supporting the threatened species status for the lesser prairie-chicken are the impacts of cumulative habitat loss and fragmentation. These impacts are the result of conversion of grasslands to agricultural uses; encroachment by invasive, woody plants; wind energy development; petroleum production; and presence of roads and manmade vertical structures, including towers, utility lines, fences, turbines, wells, and buildings.

The Act does not specify particular prohibitions, or exceptions to those prohibitions, for threatened species. Instead, under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as [s]he deems necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation, with respect to any threatened species, any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the Act that apply to most threatened species. Alternately, for other threatened species, the Service may develop specific prohibitions and exceptions that are tailored to the specific conservation needs of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into a special rule under section 4(d) of the Act, but the 4(d) special rule will also include provisions that are tailored to the specific conservation needs of the threatened species.

In recognition of conservation efforts that provide for conservation and management of the lesser prairie-chicken and its habitat in a manner consistent with the purposes of the Act, we are finalizing a 4(d) special rule which outlines the prohibitions, and exceptions to those prohibitions, necessary and advisable for the conservation of the lesser prairie-chicken.

Summary of Changes From the Revised Proposed Rule

Based on information we received in public comments (see Summary of Comments and Recommendations), we revised the provisions of the 4(d) special rule to provide greater clarity around the activities that are covered by this rule.

Provisions of the 4(d) Special Rule for the Lesser Prairie-Chicken

Under section 4(d) of the Act, the Secretary may publish a special rule that modifies the standard protections for threatened species with special measures tailored to the conservation of the species that are determined to be necessary and advisable. Under this 4(d) special rule, the Service provides that all of the prohibitions under 50 CFR 17.31 and 17.32 will apply to the lesser prairie-chicken, except as noted below. This 4(d) special rule will not remove or alter in any way the consultation requirements under section 7 of the Act.

Lesser Prairie-Chicken Range-Wide Conservation Plan

The final 4(d) special rule provides that take incidental to activities conducted by a participant enrolled in, and operating in compliance with, the Lesser Prairie-Chicken Interstate Working Group's Lesser Prairie-Chicken Range-Wide Conservation Plan (rangewide plan) will not be prohibited. The Service has included this provision in the final 4(d) special rule in recognition of the significant conservation planning efforts of the five State wildlife agencies within the range of the lesser prairie-chicken.

Description of the Rangewide Plan

The rangewide plan is a voluntary conservation strategy that establishes a mitigation framework which is administered by the Western Association of Fish and Wildlife Agencies (WAFWA) for the purpose of allowing plan participants the opportunity to mitigate any unavoidable impacts of a particular activity on the lesser prairie-chicken and provides financial incentives to landowners who voluntarily participate and manage their property for the benefit of the lesser prairie-chicken. More specifically, the rangewide plan:

(1) Identifies rangewide ecoregional goals for the lesser prairie-chicken.

(2) Identifies desired habitat amounts and conditions to achieve the population goals.

(3) Uses a decision support tool that identifies focal areas and connectivity zones where lesser prairie-chicken conservation actions will be emphasized to produce the habitat conditions required to conserve the species at sustainable levels.

(4) Enhances programs and cooperative efforts to encourage and expand voluntary landowner cooperation in the development and maintenance of the desired habitat conditions.

(5) Promotes agreements designed to avoid and minimize impacts to lesser prairie-chicken habitat from various development activities and, where avoidance is not possible, mitigate impacts.

(6) Establishes a mitigation framework administered by WAFWA that could be used by any entity to offset impacts to lesser prairie-chicken habitat with offsite mitigation.

(7) Identifies research needs and implements monitoring.

(8) Develops an adaptive management framework that will incorporate monitoring and new information into future adjustments to the conservation strategy to maximize benefits to the lesser prairie-chicken.

(9) Addresses input and suggestions from agencies, organizations, landowners, industries, other stakeholders, and the general public on the conservation plan for the lesser prairie-chicken.

The rangewide plan identifies rangewide and ecoregional population goals for the lesser prairie-chicken and the amount and condition of habitat desired to achieve those population goals, including focal areas and connectivity zones where much of the conservation would be targeted. The rangewide population goal, based on an annual spring average over a 10-year time frame, is set at 67,000 birds. The rangewide plan identifies four ecoregions as described by McDonald *et al.* (2012, p. 7): The Shinnery Oak Prairie Region (eastern New Mexico and southwest Texas panhandle), the Sand Sagebrush Prairie Region (southeastern Colorado, southwestern Kansas, and western Oklahoma panhandle), the Mixed Grass Prairie Region (northeastern Texas panhandle, western Oklahoma, and south central Kansas), and the Short Grass/CRP Mosaic region (northwestern Kansas). The ecoregional specific goals have been set at 8,000 birds in the Shinnery Oak Prairie Region, 10,000 birds for the Sand Sagebrush Prairie Region, 24,000 birds in the Mixed Grass Prairie Region, and 25,000 the Short Grass/CRP Mosaic region. These ecoregional goals and the overall rangewide population goal may be adjusted after the first 10 years of implementation using principles of adaptive management.

The rangewide plan incorporates a focal area strategy as a mechanism to identify and target the population and habitat goals established by the plan. This focal area strategy is intended to direct conservation efforts into high-priority areas and facilitate creation of large blocks of quality habitat, in contrast to untargeted conservation efforts spread across larger areas that typically result in smaller, less contiguous blocks of appropriately managed habitat. These focal areas typically have the following characteristics: Average focal area size is at least 20,234 hectares (ha) (50,000 acres (ac)); at least 70 percent of habitat within each focal area is high quality; and focal area has enhanced connectivity, with each focal area generally located no more than 32 kilometers (km) (20 miles (mi)) apart and connected by delineated zones between neighboring focal areas that provide suitable habitat and allow for movement between the focal areas. Citing Hagen *et al.* (in review), the rangewide plan describes quality lesser prairie-chicken habitat as habitats generally considered to have vegetation conditions that support greater than 35 percent canopy cover of grasses, shrubs, and forbs, consisting of greater than 50 percent composition of preferred species of shrubs and grasses, and have the appropriate structure to provide intermixed nesting and brooding habitat. The corridors connecting the focal areas also generally have certain characteristics: Habitat within the identified corridors consists of at least 40 percent good to high quality habitat; distances between existing habitat patches are no more than 3.2 km (2 mi) apart; corridor widths are at least 8 km (5 mi); and habitat contains few, if any, barriers to lesser prairie-chicken movement. The lack of an identified connection between focal areas in the Shinnery Oak Prairie Region with focal areas in the remaining regions is the obvious exception to the identified focal area guidelines. The Shinnery Oak Prairie Region is separated from the other regions by a distance of over 300 km (200 mi) of unfavorable land uses and very little suitable lesser prairie-chicken habitat.

Table 1 identifies the covered activities, arranged by industry, under the rangewide plan. While the covered activities are arranged by industry for convenience, any of the activities may be conducted by any enrolled participant.

TABLE 1—ACTIVITIES COVERED UNDER THE LESSER PRAIRIE-CHICKEN RANGE-WIDE CONSERVATION PLAN

Oil and Gas Activities
Seismic and Land Surveying.
Construction.
Drilling, Completion, and Workovers (Re-Completion).
Operations and Maintenance.
Plugging and Remediation.
Agricultural Activities
Brush Management.
Building and Maintaining Fences and Livestock Structures.
Grazing.

TABLE 1—ACTIVITIES COVERED UNDER THE LESSER PRAIRIE-CHICKEN RANGE-WIDE CONSERVATION PLAN—Continued

Water/windmill.
Disturbance Practices.
Crop Production.
Wind Power, Cell and Radio Towers, and Power Line Activities
Construction.
Operations and Maintenance.
Decommissioning and Remediation.
Road Activities
Construction.
Operations and Maintenance.
Decommissioning and Remediation.
General Activities
Off-highway Vehicle (OHV) Activity.
General Construction.
Hunter Harvest (incidental to legal hunting of greater prairie-chickens where the ranges of the two species overlap).
Other Land Management (such as prescribed burns, game and predator management, and remediation of impacted habitat back to baseline conditions).

The mitigation framework used in the rangewide plan incentivizes avoidance and minimization of impacts to lesser prairie-chicken habitat. The metrics system within this framework provides a pathway to mitigate for all impacts to habitat through a biologically based system that incorporates space, time, and habitat quality. It also implements an offset-to-impact mitigation ratio of 2-to-1 to ensure that offsets are greater than impacts, resulting in a net conservation benefit for the lesser prairie-chicken. Mitigation fees will be split between permanent conservation efforts (25 percent) and short-term management contracts (75 percent) that will shift on the landscape over time within the action area identified in the rangewide plan. Mitigation dollars will be offered to landowners within the lesser prairie-chicken range for voluntarily implementing conservation practices that benefit the species. Landowner payments will be calculated based on the landowner's acreage and its location and habitat quality. To incentivize conservation in the best places for lesser prairie-chickens, landowners in high-priority locations with optimal habitat will be paid 125 percent of the standard cost of implementing the needed conservation practice, as defined by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS).

The rangewide plan incorporates principles of adaptive management in several circumstances. The primary reason for using adaptive management in the rangewide plan is to allow for changes in the conservation measures that may be necessary to reach the stated population goals. The mitigation and conservation activities implemented under the rangewide plan will be monitored to identify whether they are producing the required results. Some of the factors that will be evaluated regularly under the rangewide plan include estimates of lesser prairie-chicken population size, progress toward habitat goals, conservation practice costs, avoidance of high priority conservation areas, and management prescriptions. Using this information, every 5 years, a science subcommittee under WAFWA will conduct a rigorous review to assess, among other things, the progress toward achieving the stated population and habitat goals of the rangewide plan. New standards will be considered (1) for conservation practices that have not maintained lesser prairie-chicken habitat quality in at least 3 of 5 years where maintenance of habitat quality was the desired outcome, and (2) for practices that have not resulted in at least a measurable level of improvement in lesser prairie-chicken habitat quality where such improvements were the desired outcome.

Evaluation of the Rangewide Plan

On May 6, 2013 (78 FR 26302), the Service proposed a 4(d) special rule for the lesser prairie-chicken that stated incidental take of the lesser prairie-chicken would not be considered a violation of section 9 of the Act if the take results from implementation of a comprehensive lesser prairie-chicken conservation program that:

(A) Was developed by or in coordination with the State agency or agencies, or their agent(s), responsible for the management and conservation of fish and wildlife within the affected State(s);

(B) Has a clear mechanism for enrollment of participating landowners; and

(C) Was determined by the Service to provide a net conservation benefit to the lesser prairie chicken, in consideration of the following:

(1) Comprehensively addresses all of the threats affecting the lesser prairie-chicken within the program area;

(2) Establishes objective, measurable biological goals and objectives for population and habitat necessary to ensure a net conservation benefit, and provides the mechanisms by which those goals and objectives will be achieved;

(3) Includes the administrative and funding mechanisms necessary for effectively implementing all elements of the program, including enrollment of participating landowners, monitoring of program activities, and enforcement of program requirements;

(4) Employs an adaptive management strategy to ensure future program adaptation as necessary and appropriate; and

(5) Includes appropriate monitoring of effectiveness and compliance.

(D) Is periodically reviewed by the Service as meeting the objective for which it was originally established.

In working with the Lesser Prairie-Chicken Interstate Working Group, we later reviewed the rangewide plan in light of the criteria that were published in the May 6, 2013, proposed 4(d) special rule. The plan includes a strategy to address threats to the lesser prairie-chicken throughout its range, establishes measurable biological goals

and objectives for population and habitat, provides the framework to achieve those goals and objectives, demonstrates the administrative and financial mechanisms necessary for successful implementation, and includes adequate monitoring and adaptive management provisions. Furthermore, we understand all permanent habitat offset units will meet the Service's conservation banking standards, including: (1) Real estate assurance in the form of a perpetual conservation easement grant held by a qualified third party and recorded in the county in which the offset unit is located (or other equivalent appropriate land protection instrument); (2) development of a land management plan that includes an adaptive management strategy and identifies all tasks and associated costs necessary to operate, manage, monitor, and report on the habitat offset unit; (3) a long-term funding mechanism (i.e., endowment) adequately sized to fund all tasks identified in the land management plan, to be held by an entity qualified to manage and disburse such funds; and (4) all other measures required under Service mitigation policies. In addition, credits may not be generated on habitat offset units from Federal funds such as cost share and easement programs that provide landowners with funding for habitat improvements and improved land use practices (e.g., the U.S. Department of Agriculture's Conservation Reserve Program, the Service's Partners for Wildlife Program).

For these reasons, on October 23, 2013, the Service announced our endorsement of the rangewide plan as a comprehensive conservation program that reflects a sound conservation design and strategy that, when implemented, will provide a net conservation benefit to the lesser prairie-chicken. Ultimately, the rangewide plan is one that, when implemented, will address the conservation needs of the lesser prairie-chicken.

Accordingly, on December 11, 2013, we published in the **Federal Register** (78 FR 75306) a revised proposed 4(d) special rule to specifically exempt from the prohibitions of section 9 of the Act take that occurs on privately owned, State, or county land from activities that are conducted by a participant enrolled in, and operating in compliance with, the Lesser Prairie-Chicken Interstate Working Group's Lesser Prairie-Chicken Range-Wide Conservation Plan, as endorsed by the U.S. Fish and Wildlife Service.

The Service included this provision of the 4(d) special rule to encourage participants of the Service-endorsed rangewide plan to improve habitat conditions and the status of the species across its entire range. The Service has determined that the rangewide plan is expected to provide a net conservation benefit to the lesser prairie-chicken population. Conservation, as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the] Act are no longer necessary.'' Through adaptive management, the rangewide plan will also be periodically reviewed by WAFWA and the Service to ensure it continues to provide a net conservation benefit to the lesser prairie-chicken. As a result of this adaptive management provision, the Service expects that rangewide conservation actions will provide for the conservation of the lesser prairie-chicken.

Agricultural Activities Conducted in Accordance With NRCS's Lesser Prairie-Chicken Initiative and Related NRCS Lesser Prairie-Chicken Conservation Activities

This final 4(d) special rule provides that take of the lesser prairie-chicken will not be prohibited provided the take is incidental to the conditioned conservation practices that are carried out in accordance with a conservation plan developed by NRCS in connection with NRCS's Lesser Prairie-Chicken Initiative (LPCI) and related NRCS activities focused on lesser prairie-chicken conservation consistent with the provisions of the November 22, 2013, conference opinion that was developed in coordination with the Service. Conditioned conservation practices are NRCS standard conservation practices to which the Service and NRCS have added specific requirements in the form of conservation measures so that when the measure is followed, impacts to the lesser prairie-chicken will be avoided or minimized.

The LPCI and related NRCS activities provide financial and technical assistance to participating landowners to implement practices beneficial to the lesser prairie-chicken that also contribute to the sustainability of landowners' agricultural operations. Conservation practices, such as brush management, prescribed grazing, range planting, prescribed burning, and restoration of rare and declining habitats, are used to treat upland wildlife habitat concerns identified as limiting factors for the lesser prairie-chicken during the conservation planning process. This conservation initiative promotes implementation of specific conservation practices to manage, enhance, and expand lesser prairie-chicken habitats within the context of sustainable ranching.

The vast majority of lesser prairie-chicken habitat occurs on privately owned and operated lands across the five-State range; therefore, the voluntary actions of private landowners are key to maintaining, enhancing, restoring, and reconnecting habitat for the species. The overall goal of the LPCI is to increase lesser prairie-chicken abundance and distribution through habitat improvements by addressing local and landscape-level threats. Over the long term, the Service and NRCS anticipate that the LPCI will facilitate the expansion of lesser prairie-chicken range into suitable portions of the historic range as habitat conditions improve and threats are reduced or eliminated.

Conference procedures under section 7 of the Act are required only when a Federal agency (action agency) proposes an activity that is likely to jeopardize the continued existence of a species that has been proposed for listing under the Act or when the proposed activity is likely to destroy or adversely modify proposed critical habitat. However, conference procedures may also be used to assist an action agency in planning a proposed action so that potential conflicts may be identified and resolved early in the planning process. During the conference, the Service may provide recommendations on ways to avoid or minimize adverse effects of the proposed action. The conclusions reached during a conference and any subsequent recommendations are then provided to the action agency in a conference report.

The Service issued a conference report to NRCS in connection with the NRCS's LPCI on June 30, 2011 (*http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044884.pdf*), in which the Service determined that the proposed action, which incorporates the procedures, practice standards, and conservation measures of the LPCI, is not likely to jeopardize the continued existence of the lesser prairie-chicken. On November 22, 2013, the Service issued a conference opinion for the NRCS's LPCI and associated procedures, conservation practices, and conservation measures (*https://www.fws.gov/southwest/es/Documents/R2ES/LPC_NRCS_CO_FINAL_22Nov2013.pdf*).

The November 22, 2013, conference opinion builds upon, refines, and

updates the 2011 conference report in several ways, including the addition of 4 conservation practices to the 23 evaluated in the conference report, the establishment of a new method of determining when the conservation measures are to be applied, an estimate of incidental take, and an associated incidental take statement that covers take of lesser prairie-chicken by cooperators who implement the described conservation practices and measures.

In the November 22, 2013, conference opinion, the Service states that implementation of the NRCS conservation practices and their associated conservation measures described in the conference opinion are anticipated to result in a positive population response by the species by reducing or eliminating adverse effects. Furthermore, the Service states that overwhelming conservation benefits of implementation of the proposed action within selected priority areas, maintenance of existing habitat, and enhancement of marginal habitat will outweigh short-term negative impacts to individual lesser prairie-chickens. Implementation of the LPCI is expected to result in management of more of the threats that adversely affect populations, more habitat under the appropriate management prescriptions, and the development and dissemination of more information on the compatibility of sustainable ranching operations and the persistence of this species across the landscape. Through the conference opinion, the Service ultimately finds that effective implementation of conservation practice standards and associated conservation measures for the LPCI are anticipated to result in a positive population response by the species as threats are reduced, most notably in addressing habitat fragmentation and improvement of habitat conditions across the landscape.

Therefore, this provision of the 4(d) special rule for conservation practices associated with NRCS's LPCI and related NRCS activities focused on lesser prairie-chicken conservation will promote conservation of the species by encouraging landowners and ranchers to continue managing the remaining landscape in ways that meet the needs of their operation while simultaneously providing suitable habitat for the lesser prairie-chicken. By reducing threats to the species including habitat fragmentation and by promoting the improvement of habitat conditions across the species' landscape, the LPCI and related NRCS activities focused on lesser prairie-chicken conservation are expected to provide for the conservation of the lesser prairie-chicken.

Continuation of Routine Agricultural Practices on Existing Cultivated Lands

This final 4(d) special rule provides that take of the lesser prairie-chicken will not be prohibited provided the take is incidental to activities that are conducted during the continuation of routine agricultural practices, as specified below, on cultivated lands that are in row crop, seed-drilled untilled crop, hay, or forage production. These lands must meet the definition of cropland as defined in 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the 5 years preceding the proposed routine agricultural practice that may otherwise result in take. Thus, this provision does not include take coverage for any new conversion of grasslands into agriculture.

Lesser prairie-chickens are known to travel from native rangeland and Conservation Reserve Program lands (CRP), which provide cover types that support lesser prairie-chicken nesting and brood rearing, to forage within cultivated fields supporting small grains, alfalfa, and hay production. Lesser prairie-chickens are also known to maintain lek sites up to ½ mile (0.8 kilometers) from rangelands and CRP fields within these cultivated areas, and they may be present during farming operations. Thus, existing cultivated lands, although not a native habitat type, may provide food resources for lesser prairie-chickens. These existing cultivated lands are compatible with the conservation of the lesser prairie-chicken.

Routine agricultural activities covered by this provision include:

(1) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands.

(2) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as buildings, irrigation conveyance structures, fences, and roads.

(3) Use of chemicals in direct support of cultivated agriculture when done in accordance with label recommendations.

Similar to the discussion above for conservation practices carried out in coordination with NRCS, this provision of the 4(d) special rule for agricultural activities will promote conservation of the species by encouraging landowners and farmers to continue managing the remaining landscape in ways that meet the needs of their agricultural operations while simultaneously providing food resources for the lesser prairie-chicken. In addition to providing food sources during the species' life cycle, existing cultivated agricultural land may promote conservation of the species by discouraging inappropriate agricultural practices that are incompatible with the lesser prairie-chicken's habitat needs within the landscape.

Determination

Section 4(d) of the Act states that ''the Secretary shall issue such regulations as [s]he deems necessary and advisable to provide for the conservation'' of species listed as a threatened species. Conservation is defined in the Act to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the] Act are no longer necessary.'' Additionally, section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1) [of the Act].''

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, the Secretary may find that it is necessary and advisable not to include a taking prohibition, or to include a limited taking prohibition. See *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* and 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988), the rule need not address all the threats to the species. As noted by Congress when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. [S]he may, for example, permit taking, but not importation of such species,'' or [s]he may choose to forbid both taking and importation but allow the transportation of such species, as long as the measures will ''serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Section 9 prohibitions make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export,

ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as an endangered species, without written authorization. It also is illegal under section 9(a)(1) of the Act to possess, sell, deliver, carry, transport, or ship any such wildlife that is taken illegally. Prohibited actions consistent with section 9 of the Act are outlined for threatened species in 50 CFR 17.31(a) and (b). This 4(d) special rule provides that all of the prohibitions in 50 CFR 17.31(a) and (b) will apply to the lesser prairie-chicken, except in three instances.

First, none of the provisions in 50 CFR 17.31 apply to conservation practices that are conducted by a participant enrolled in, and operating in compliance with, the Lesser Prairie-Chicken Interstate Working Group's Lesser Prairie-Chicken Range-Wide Conservation Plan. The plan reflects a sound conservation design and strategy and is expected to provide a net conservation benefit for the lesser prairie-chicken. Actions in the rangewide plan will ultimately contribute to the conservation of the species. Conservation is defined in section 3(3) of the Act as ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the] Act are no longer necessary.'' As a result of this provision, the Service expects that the conservation actions will provide for the conservation of the lesser prairie-chicken.

Second, none of the provisions in 50 CFR 17.31 apply to the conditioned conservation practices that are carried out in accordance with a conservation plan developed by the NRCS in connection with the LPCI or any NRCS assistance consistent with the November 22, 2013, conference opinion. According to the final listing rule, the primary factors supporting the threatened species status for the lesser prairie-chicken are the impacts of cumulative habitat loss and fragmentation. Allowing the continuation of agricultural operations consistent with these criteria encourages landowners to continue managing the remaining landscape in ways that meet the needs of their operation while simultaneously providing suitable habitat for the lesser prairie-chicken. Implementation of conservation practice standards and associated conservation measures for the LPCI are anticipated to result in a positive population response by the species as threats are reduced, most notably in addressing habitat fragmentation and improvement of habitat conditions across the landscape. Therefore, conservation practices carried out consistent with the LPCI and November 22, 2013, conference opinion will ultimately contribute to the conservation of the species.

Finally, none of the provisions in 50 CFR 17.31 apply to actions that result from activities associated with the continuation of routine agricultural practices, as specified above, on existing cultivated lands that are in row crop, seed-drilled untilled crop, hay, or forage production. These lands must meet the definition of cropland as defined in 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the previous 5 years. This provision of the 4(d) special rule for agricultural activities will promote conservation of the species by encouraging landowners and farmers to continue managing the remaining landscape in ways that meet the needs of their operation while simultaneously providing habitat and food resources for the lesser prairie-chicken.

Based on the rationale explained above, the provisions included in the 4(d) special rule are necessary and advisable to provide for the conservation of the lesser prairie-chicken. Nothing in this 4(d) special rule changes in any way the recovery planning provisions of section 4(f) of the Act or the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the lesser prairie-chicken.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed 4(d) special rule for the lesser prairie-chicken during four comment periods: May 6 to June 20, 2013; July 9 to August 8, 2013; December 11, 2013, to January 10, 2014; and January 29 to February 12, 2014. We also contacted appropriate Federal, Tribal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed listing rule, proposed 4(d) special rule, draft rangewide conservation plan, and final rangewide conservation plan during the respective comment periods.

Over the course of the four comment periods, we received approximately 56,450 comment submissions. Of these, approximately 56,150 were form letters. All substantive information provided during these comment periods has either been incorporated directly into this final rule or is addressed below. Comments from State agencies are grouped separately.

Comments From States

(1) *Comment:* In order to ensure proper assessment of recovery goals and habitat quality, the Service should not endorse or approve any other plans, permits, or tools that do not follow the same metrics contained in the rangewide plan.

Our Response: In accordance with section 10 of the Act, the Service must process any permit application associated with a habitat conservation plan (HCP). The HCP may include metrics that differ from the rangewide plan as long as the HCP meets the issuance criteria. If the issuance criteria in section 10 of the Act are met, then the Service must issue the permit.

Additionally, we recognize that there may be numerous alternatives to, or variations of, the rangewide plan that could provide a net conservation benefit to the species. Regarding the possibility of the Service endorsing other plans or tools, the Service will assess each of those as submitted for our review and will evaluate each on the fact-specific metrics contained in that plan.

(2) *Comment:* The NRCS provision of the 4(d) special rule should be expanded to include all actions that are consistent with LPCI.

Our Response: It is our intention that this provision would apply to any conservation practices consistent with LPCI as well as related NRCS activities focused on lesser prairie-chicken conservation consistent with the provisions of the November 22, 2013, conference opinion that was developed in coordination with the Service. We have revised the NRCS provision of the 4(d) special rule to clarify that the provision includes all activities that are carried out in accordance with a conservation plan providing for lesser prairie-chicken conservation developed by NRCS in coordination with the Service.

(3) *Comment:* The 4(d) special rule should more generally cover all grazing and ranching practices. Landowners who are managing lands appropriately should not have to sign on to a government plan to receive protections.

Our Response: We have determined that properly managed grazing is consistent with conservation of the lesser prairie-chicken. However, improperly managed grazing can impact lesser prairie-chickens or render their habitats uninhabitable. By covering landowners participating in the rangewide plan and NRCS programs in the final 4(d) special rule, we have ensured that grazing is being conducted

in a manner compatible with the conservation of the lesser prairie-chicken. The rangewide plan and NRCS provisions of the 4(d) special rule address grazing and ranching. Additionally, individuals previously enrolled in one of the candidate conservation agreements with assurances (CCAAs), who are implementing their plans accordingly, have incidental take coverage through the incidental take permit associated with the CCAA. Individuals who did not choose to participate in the CCAAs and who do not wish to participate in the rangewide plan or other Federal conservation programs may pursue a traditional HCP and associated incidental take permit for their activities.

(4) *Comment:* The requirement that lands must have been cultivated in the last 5 years is an unnecessary limitation on the cultivated lands provision. The provision should cover lands that have been cultivated in the last 10 years, or that have never been cultivated.

Our Response: The intention of this provision is to allow for continued agricultural practices on existing cultivated lands, not to allow for new conversion of grasslands to cultivation. Existing cultivated lands are of low value to lesser prairie-chickens, although they may provide food resources for lesser prairie-chickens at some times. Conversely, lands that have not been cultivated in 5 years or more may have developed habitat qualities that are of higher value to lesser prairie-chickens; therefore, the amount of take caused by conversion back to cultivation may not be insignificant. Generally speaking, lands that are in continuing agricultural use would not be rested or remain fallow for more than 4 to 5 years; thus we believe the 5-year limitation best supports the intent of this provision.

(5) *Comment:* Limitations on cultivation practices (e.g., starting in the center of a field, use of flush bars) are not ''normal'' farming practice. This provision needs reconsideration and clarification.

Our Response: Upon further review, we have determined that these limitations were unnecessary. They were intended to limit the level of take that would occur on lands subject to routine, continuing agricultural practices; however, since we already determined that the take associated with those routine practices would be limited generally, we have determined that the limitations are unnecessary and revised the cultivated lands provision accordingly.

(6) *Comment:* The cultivated lands provision should specifically note that use of chemicals on cultivated lands is allowed.

Our Response: Use of chemicals as a routine agricultural practice is covered under the cultivated lands provision. We have revised the text of the rule to be more precise on this issue.

(7) *Comment:* The 4(d) special rule should include a provision to cover activities consistent with the Conservation Reserve Program (CRP) and incidental take for landowners choosing to remove their lands from CRP practices.

Our Response: The Service anticipates that incidental take of lesser prairie-chicken associated with CRP activities, including returning lands enrolled in CRP to cropland after CRP contract expiration, will be addressed through section 7 of the Act. In January 2013, the Farm Services Agency engaged the Service in a collaborative effort to develop a conference opinion to address CRP implementation on lands occurring within the range of the lesser prairie-chicken. The conference opinion is intended to evaluate the cumulative landscape-level effects of CRP implementation on the lesser prairie-chicken, prescribe conservation measures to avoid or minimize any adverse effects of CRP implementation, and, if appropriate, provide incidental take coverage to CRP participants who adhere to the conditions in the conservation opinion.

Public Comments

(8) *Comment:* The 4(d) special rule should not preclude or interfere with the Service's ability to issue section 10 incidental take permits.

Our Response: Nothing in the 4(d) special rule precludes the Service from continuing to issues permits under the traditional incidental take permitting tools (e.g., HCPs, safe harbor agreements (SHAs)).

(9) *Comment:* The Service has failed to comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.).

Our Response: We have determined that environmental assessments and environmental impact statements, as defined under the authority of NEPA, need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). As documented in the Service's Endangered Species Listing Handbook (Service 1994), it is the position of the Service that rules promulgated under section 4(d) of the Act concurrently with listing of the species fall under the same rationale as outlined in the October 25, 1983, determination; thus preparation of an environmental assessment for the 4(d) special rule for the lesser prairie-chicken is not required.

(10) *Comment:* A rule promulgated pursuant to section 4(d) of the Act must ''provide for the conservation'' of a species. The Service is inappropriately relying on a net conservation benefit standard in developing this 4(d) special rule. A rule with a net conservation benefit is not the same as a rule promulgated for the conservation of the species.

Our Response: The Service believes that a net conservation benefit standard is ''necessary and advisable for the conservation'' of the lesser prairie-chicken. A net conservation benefit standard allows for the Service to evaluate the conservation action and determine whether, overall, the action provides for the conservation of the species. In other words, the action may have some negative effects to the species but in combination with the positive effects, the positive outweighs the negative providing for the conservation of the species overall or a net conservation benefit.

(11) *Comment:* The Service has failed to complete a section 7 consultation on the 4(d) special rule.

Our Response: Section 7 consultation on the development of a rule to list a species under the Act is not required. Under the Act, we are to base listing decisions on the best available scientific and commercial information. If a species warrants listing under the Act based on a review of the best available scientific and commercial information, the Service must list the species, if not precluded by other higher priority listing actions. In other words, the Service does not have discretion to not list a species in consideration of other information, including the results of a section 7 analysis. This 4(d) special rule is being promulgated concurrent with the listing of the species, and by extension, is therefore also not subject to section 7 consultation requirements.

(12) *Comment:* This Service has not coordinated adequately with local governments.

Our Response: We have coordinated extensively with the public, local governments, industry, academia, and other Federal agencies. Specifically, in accordance with the Act and Service policies and guidelines, we published legal notices and provided notice to affected counties. Additionally, we requested written comments from the

public on the proposed listing of the lesser prairie-chicken and proposed 4(d) special rule during four comment periods: May 6 to June 20, 2013; July 9 to August 8, 2013; December 11, 2013, to January 10, 2014; and January 29 to February 12, 2014.

(13) *Comment:* The Service must clarify to which version of the rangewide plan the 4(d) special rule refers.

Our Response: By using the phrase ''as endorsed by the U.S. Fish and Wildlife Service'' to describe the rangewide plan, this final 4(d) special rule provides that take incidental to activities conducted by participants enrolled in the October 2013 version of WAFWA's ''Lesser Prairie-Chicken Range-Wide Conservation Plan'' is not prohibited. The October 2013 version of the rangewide plan was made, and remains, available on *http//www.regulations.gov* under Docket No. FWS–R2–ES–2012–0071 as a supporting material for our January 29, 2014, **Federal Register** publication (79 FR 4652).

(14) *Comment:* The rangewide plan does not contain an effective strategy to achieve its goals and therefore will not support conservation of the lesser prairie-chicken.

Our Response: As stated in the October 23, 2013, endorsement letter, the Service believes the rangewide plan reflects a sound conservation design and strategy that, when implemented, will provide a net conservation benefit to the lesser prairie-chicken. To the extent that there may be uncertainty as to the effectiveness of the strategy, the plan contains adaptive management provisions that allow flexibility in its implementation over time to ensure that the plan results in improvement of the status of the species towards the habitat and population goals therein.

(15) *Comment:* Several commenters offered alternative plans and mitigation strategies to the one in the rangewide plan.

Our Response: We recognize that there may be numerous alternatives to, or variations of, the rangewide plan that could provide a net conservation benefit to the species. However, as discussed above, we have determined that the endorsed rangewide plan provides a net conservation benefit to the species and is an appropriate provision of this 4(d) special rule. Regarding the possibility of the Service endorsing other plans or tools, the Service will assess each of those as submitted for our review and will evaluate each on the fact-specific metrics contained in that plan.

(16) *Comment:* The Service has inappropriately relied on the draft criteria from its May 6, 2013, proposed 4(d) special rule (78 FR 26302) to evaluate the rangewide plan. These criteria were never finalized and relying on them is contrary to the Administrative Procedure Act.

Our Response: On May 6, 2013, the Service proposed criteria that could be used to evaluate whether a planning effort resulted in a net conservation benefit to the lesser prairie-chicken (78 FR 26302). We evaluated the rangewide plan against these criteria and determined that the rangewide plan would provide a net conservation benefit to the species. In our December 11, 2013, revised proposed rule (78 FR 75306), we revised the proposed 4(d) special rule to be specific to the rangewide plan and published our analysis of net conservation benefit. In total, we requested written comments from the public on the proposed 4(d) special rule during four comment periods: May 6 to June 20, 2013; July 9 to August 8, 2013; December 11, 2013, to January 10, 2014; and January 29 to February 12, 2014. Given that both the criteria and our analysis of the rangewide plan under the criteria have been made available for public notice and comment, we believe our actions comply with the requirements of the Administrative Procedure Act (5 U.S.C. subchapter II), and we rely on this analysis in our final rule.

(17) *Comment:* What will the process be for WAFWA to make future adjustments or modifications to the rangewide plan? If the rangewide plan is revised, will activities conducted under the plan continue to be covered by the provisions of the 4(d) special rule?

Our Response: The rangewide plan includes an adaptive management provision that allows for adjustments based on new information. Changes are expected to the rangewide plan, as needed, according to that process. Given that the endorsed plan includes adaptive management and that changes were contemplated as part of the implementation of the plan, as long as the new changes are incorporated into the plan, then the 4(d) special rule will continue to cover the activities of enrolled participants. Significant modifications to the rangewide plan that are outside the bounds of the adaptive management provisions of the plan would require additional review by the Service and may require revision of the 4(d) special rule.

(18) *Comment:* The rangewide plan will not result in conservation of the species because participation in the plan is voluntary. Enrollment, payment of mitigation fees, implementation of conservation practices, and implementation of avoidance, minimization, and mitigation measures are all voluntary.

Our Response: Each participant who chooses to enroll in the rangewide plan will sign a certificate of participation. This certificate of participation will outline either the specific avoidance, minimization, and mitigation measures (for impact participants) or conservation practices (for offset participants) that each participant has agreed to implement on his or her lands. The activities identified in each of these certificates of participation are not voluntary. In summary, while enrollment in the rangewide plan is indeed voluntary, implementation of conservation measures is not voluntary once enrolled.

(19) *Comment:* Conservation banking, consistent with the Service's conservation banking guidance, is the only mitigation solution that can achieve a net conservation benefit to the species with certainty and long-term accountability.

Our Response: Conservation banking is a tool that can provide a net conservation benefit to a species by reducing the threat of fragmentation and habitat loss through perpetual conservation. However, it is not the only tool available that can achieve a net conservation benefit to the species with certainty and long-term accountability. Given the specific biology, life history, and threats facing a species, many other tools may also be appropriate to offset negative impacts and provide a net conservation benefit. For example, our experience has shown that HCPs can provide a net conservation benefit, and not all HCPs include conservation banking. This is a species-specific determination based on the threats acting on that species.

(20) *Comment:* Conservation of lesser prairie-chickens cannot be achieved through term or temporary mitigation. Short-term offsets in the form of 5-year contracts are not effective mitigation for permanent impacts.

Our Response: The rangewide plan is designed to deliver permanent mitigation for permanent impacts, but, in some cases, the impacts will be offset through the use of short-term (5–10 year) contracts. Each acre of impact will be offset by 2 acres of offset, due to the 2-to-1 offset-to-impact ratio in the rangewide plan. These offset acres are secured through contracts between WAFWA and landowners. Some of the contracts (up to 75 percent) will be short-term contracts. When a contract for a short-term offset unit is due to expire, the need to mitigate the original

impact does not go away. Rather, WAFWA will offer to extend the contract, and if the landowner does not wish to extend, WAFWA will find a new land base to apply those offset contracts. In this way, WAFWA will maintain the necessary amount of offset units over time, resulting in permanent mitigation for permanent impacts.

For example, Participant A is an impact participant who has been assessed 500 acres of impact on his or her enrolled property. WAFWA will need to secure 1,000 offset acres (due to the 2:1 offset-to-impact ratio) for the impacts from Participant A. Participant B enrolls 1,000 acres as offset through a short-term 5-year contract (i.e., until the end of 2020). In 2020, Participant B chooses not to renew the contract. WAFWA must then find a new 1,000 acres of offset to cover the original 500 acres of impact from Participant A. Participant C signs an agreement for 1,000 acres for a 10-year contract, which shifts the offset of Participant A's impact from Participant B to Participant C. This scenario would repeat itself, as presented in the rangewide plan, in perpetuity, thus achieving permanent, but not static, mitigation.

(21) *Comment:* It is not appropriate to use short-term contracts for restoration because restoration of lesser prairie-chicken habitat may take many years to be achieved.

Our Response: The rangewide plan recognizes that short-term contracts may not immediately realize the benefits of restoration practices. Because of this recognition, contracts for participants employing restoration practices require a minimum 10-year term. Furthermore, the calculation of offset credits is based on habitat quality, which is evaluated annually. Thus, generation of offset credits on lands under restoration contract is determined based on annual habitat quality and does not overestimate the contribution of lands that are still in an improvement phase. In other words, lands that are in an improvement phase do not count fully toward tallies of offset acreage.

(22) *Comment:* In reference to WAFWA and the rangewide plan, the Federal Government cannot delegate regulatory authority over American citizens to a foreign government or multinational organization, nor can the Federal Government commandeer State agencies in an attempt to regulate the conduct of American citizens.

Our Response: The Service is not attempting to use the rangwide plan to regulate the public, nor are we attempting to use the rangewide plan as a vehicle to commandeer State agencies. The rangewide plan is a voluntary agreement between WAFWA and the participants and is being administered voluntarily by WAFWA, not under Service regulation. The plan can provide an alternative to the need to seek an incidental take permit from the Service in some situations, but is not in itself regulatory.

(23) *Comment:* How does WAFWA intend to enforce the rangewide plan?

Our Response: As discussed in the rangewide plan, WAFWA will conduct compliance monitoring to confirm adherence to the rangewide plan. Any participant who does not comply with the agreed-upon avoidance and minimization measures that are appropriate for their impacts in their signed certificate will receive a notice of non-compliance from the rangewide plan administrators. This notice will include a detailed list of measures that the participant must address and a reasonable timeline in which to address them. If, during the duration of the agreement, the participant receives a total of three notices of noncompliance and fails to address those measures within the allotted timeframe, it will constitute grounds for the termination of participation and rangewide plan coverage. Participants enrolled on both sides of the framework (i.e., impacts and offsets) have incentive to remain enrolled in the plan. Participants enrolled on the impact side, if terminated, will forfeit any enrollment or mitigation fees paid and will be then subject to the full take prohibitions of the Act. Participants enrolled on the offset side, if terminated, will forego any incentive payments and will also then be subject to the full take prohibitions of the Act.

(24) *Comment:* The rangewide plan provision of the 4(d) special rule represents a radical departure from the Service's historical mitigation policies and sets a questionable precedent for future conservation efforts.

Our Response: Section 4(d) of the Act provides an opportunity for the Service to tailor the necessary conservation measures to a threatened species. We have concluded that the mitigation framework in the rangewide plan is an appropriate tool to use as a part of the conservation strategy for the lesser prairie-chicken.

(25) *Comment:* The population goals and conservation strategy in the rangewide plan do not take into account the results of the 2013 lesser prairie-chicken population surveys.

Our Response: The rangewide plan was in the final stages of approval when the 2013 survey results were released; thus the final results are not fully incorporated into the plan. However, the adaptive management process in the plan allows for future consideration of the 2013 survey data, survey data from subsequent years, and any other relevant scientific information that may become available over time.

(26) *Comment:* The confidentiality provisions found in the rangewide plan are not appropriate or implementable. The confidentiality provisions will not allow outside parties to monitor the implementation of the plan. Further, the provisions cannot be implemented as written due to requirements under the Freedom of Information Act (FOIA; 5 U.S.C. 552, as amended).

Our Response: As discussed in the rangewide plan, WAFWA will allow access to confidential and sensitive business information only to the relevant State fish and wildlife agency, the Service, employees or agents of WAFWA, and the participant that provided the information. WAFWA will use a password-protected database to maintain this information so that it can be viewed for relevant monitoring purposes but not downloaded, possessed, or distributed. This provision was developed with full recognition of the FOIA requirements of Federal agencies, thus the careful controls on the content of materials shared with the Service.

While this system may make monitoring of implementation by outside entities challenging, it is a necessary provision given the preponderance of private lands within the range of the lesser prairie-chicken. This information, limited as it may be, can be more useful than we would have been able to gather otherwise from private landowners. Finally, one of the most important pieces of information to monitor is the overall status of the species in response to rangewide plan, which will continue to occur through aerial surveys, the results of which will be shared widely.

(27) *Comment:* How were the population goals for the lesser prairie-chicken in the rangewide plan developed?

Our Response: As discussed in the rangewide plan, a science team under WAFWA's Interstate Working Group was tasked with developing the population goals. The science team reviewed the available population information and analyses, and recommended a rangewide population goal of 67,000 birds as an annual spring average over a 10 year-time frame. The science team felt that this goal was both attainable and sustainable considering that the rangewide population had been above this level as recently as 2006.

This goal was determined to meet the following population objectives:

- Increase populations to ensure a sustainable, long-term population within each of the four delineated ecoregions for the next 10 years of the rangewide plan's implementation;
- Maintain and expand the current distribution of the lesser prairie-chicken across its estimated occupied range; and
- Maintain higher population sizes in areas where lesser prairie-chickens currently occur and are stable.

(28) *Comment:* The population goals for the lesser-prairie chicken in the rangewide plan are too low.

Our Response: The rangewide plan includes a rangewide population goal of 67,000 birds as an annual spring average over a 10-year time frame. This means that over the course of 10 years, the average of the population estimates for each of those 10 years must be at least 67,000. In practice, this means the population estimate needs to stabilize at or above 67,000 birds, not merely reach it once. Use of a 10-year average as a goal provides a good indicator of the stability of the population over time because the population numbers can vary widely from one year to the next naturally based on climatic conditions. The Service believes the strategy in the rangewide plan, including the population goals, will provide a net conservation benefit to the species. The adaptive management provisions in the rangewide plan allow the population goals to be revised if new science or implementation monitoring determines that the goals are not sufficient to support conservation of the lesser prairie-chicken.

(29) *Comment:* The rangewide plan has a duration of 30 years. What happens at the end of that period? Can the plan be renewed? Will the participants need to pursue alternative coverage for incidental take at that time?

Our Response: The endorsed rangewide plan has a 30-year term. The rangewide plan notes that ''at the end of the term, the [rangewide plan] Administrator may apply to the [Service] to renew the [rangewide plan] and any associated permits or [certificates of participation]. The [rangewide plan] Administrator will apply for a renewal at least 30 days prior to the expiration of the [rangewide plan]. The [rangewide plan] Administrator and Participants may continue the activities authorized by the [rangewide plan] until the Service acts on the application for renewal. If approved, any assurances and permit language agreed to at the time of the renewal request will be honored by the [Service]. The [Service] may also deny renewal of the [rangewide plan] or have the option of terminating it.'' In the event that the rangewide plan is not renewed, at the time of the rangewide plan's expiration, participants in the plan would no longer be exempt from the general take prohibition of 50 CFR 17.31 and 50 CFR 17.32.

(30) *Comment:* The 4(d) special rule should be revised to include periodic review of the performance of the rangewide plan by the Service and the ability to modify or revoke the rangewide plan provision of the 4(d) special rule if the implementation of the rangewide plan is not achieving its conservation goals.

Our Response: The Service believes that the rangewide plan establishes appropriate measures to evaluate whether the conservation efforts are proceeding as planned. Those measures include establishing committees that will monitor the implementation effort, of which the Service will be a member. Further, the Service has the discretion to revise or remove the 4(d) special rule at any time if it is determined that the rangewide plan is no longer meeting the intent of the regulation.

(31) *Comment:* Harvest of native grass hay crop should be specifically covered under the 4(d) special rule.

Our Response: The Service believes that a blanket provision under the 4(d) special rule for native grass hay crop would not support the conservation of the lesser prairie-chicken. Areas of native grass can and do support the life-history needs of the lesser prairie-chicken. Unmitigated harvest of these areas is likely to result in continued range reductions and decline in the status of the species. As a result, this activity is better addressed through the rangewide plan, an incidental take permit, or another mechanism designed to offset the threats from these activities through compensatory mitigation.

(32) *Comment:* The Service should reassess the definition of cultivated lands to further clarify or expand it to include ''seed-drilled untilled crop.''

Our Response: We have clarified the description of cultivated lands in this final 4(d) special rule and preamble to specifically include seed-drilled untilled crop production (e.g., wheat).

(33) *Comment:* The Service should clarify what it means by ''cultivated . . . within the previous 5 years.''

Our Response: When referring to lands that have been cultivated with the previous 5 years, the Service intends that the cultivated lands provision should only apply to lands that have been cultivated within the 5 years prior to the action occurring that may otherwise result in take of the lesser prairie-chicken. For example, if a landowner wished to cultivate lands in 2020, those lands must have been cultivated at some point between 2015 and 2020 in order to be covered by this 4(d) special rule. This results in a ''rolling'' 5-year time period for applicability of this 4(d) special rule.

(34) *Comment:* The Service should clarify which activities are allowed under the cultivated lands provision.

Our Response: The Service intends that all routine activities in support of existing agricultural practices within the footprint of existing developments are allowed under this provision, including actual management of cultivated lands and maintenance of infrastructure to support the agricultural practices. The text of the rule has been revised to clarify this.

(35) *Comment:* Comments were submitted both for and against inclusion of provisions in the 4(d) special rule for:

- Criteria that would allow approval of plans completed in the future;
- Direct hunting of lesser prairie-chickens;
- Continued enrollment in candidate conservation agreements with assurances (CCAAs); and
- Incidental take when in accordance with applicable State law for education or scientific purpose, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

Our Response: We solicited and considered public comment on the inclusion of these provisions. We have determined that it is not necessary to include such provisions in the final 4(d) special rule, as the suite of provisions currently included in the 4(d) rule, in combination with other ongoing conservation efforts, appropriately supports the conservation of the species.

(36) *Comment:* The Service should include provisions in the 4(d) special rule for any other comprehensive plans that provide a net conservation benefit to the lesser prairie-chicken, similar to WAFWA's rangewide plan.

Our Response: There are several other comprehensive plans in development that may be determined in the future to support conservation of the lesser prairie-chicken; however, these efforts are not far enough along in the development process to be considered under the 4(d) special rule at this time.

(37) *Comment:* The 4(d) special rule should include provisions allowing incidental take of lesser prairie-chickens as a result of development and operation of oil and gas production and wind energy generation facilities.

Incidental take from these operations does not present a risk to the species.

Our Response: The 4(d) special rule includes provisions for development and operation of oil and gas production and wind energy generation through the mitigation framework in the rangewide plan. The Service does not believe that blanket provisions under a 4(d) special rule for these sectors would support conservation of the species. These activities are two of the primary threats to the lesser prairie-chicken into the future (see the final listing rule published elsewhere in today's **Federal Register**), and continued unmitigated impacts are likely to result in an additional decline in the status of the species. As a result, these sectors are better addressed through the rangewide plan, an incidental take permit, or another mechanism designed to offset the threats from these activities through compensatory mitigation.

(38) *Comment:* A provision should be developed in the 4(d) special rule that would serve to exempt or ''grandfather'' projects that are pending or otherwise in progress.

Our Response: While we recognize that the period following the listing of a species can be challenging with regards to incidental take coverage, we do not believe that such a blanket provision would support the conservation of the lesser prairie-chicken. The rangewide plan provision of the 4(d) special rule provides a mechanism for exempting take for many ongoing activities, and WAFWA is actively enrolling participants as of the time of listing.

Required Determinations

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 of 1969, 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). It is the position of the Service that rules promulgated under section 4(d) of the Act concurrently with listing of the species fall under the same rationale as outlined in the October 25, 1983, determination.

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.

By letter dated April 19, 2011, we contacted known tribal governments throughout the historical range of the lesser prairie-chicken. We sought their input on our development of a proposed rule to list the lesser prairie-chicken and encouraged them to contact the Oklahoma Ecological Services Field Office if any portion of our request was unclear or to request additional information. We did not receive any comments regarding this request. We continued to keep tribal governments informed by providing notifications of each new or reopened public comment period, including those specifically pertaining to the 4(d) special rule, and requesting their input. We did not receive any requests or comments as a result of our request.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2012–0071 or upon request from the Field Supervisor, Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.41 by adding paragraph (d) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(d) Lesser prairie-chicken (*Tympanuchus pallidicinctus*). (1) *Prohibitions.* Except as noted in paragraphs (d)(2)(i) through (iii) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the lesser prairie-chicken.

(2) *Exemptions from prohibitions.* Incidental take of the lesser prairie-chicken will not be considered a violation of section 9 of the Act if the take occurs:

(i) On privately owned, State, or county land from activities that are conducted by a participant enrolled in, and operating in compliance with, the Lesser Prairie-Chicken Interstate Working Group's Lesser Prairie-Chicken Range-Wide Conservation Plan, as endorsed by the U.S. Fish and Wildlife Service.

(ii) On privately owned agricultural land from the following conditioned conservation practices that are carried out in accordance with a conservation plan providing for lesser prairie-chicken conservation developed by the U.S. Department of Agriculture's Natural Resources Conservation Service in coordination with the U.S. Fish and Wildlife Service:

(A) Upland wildlife habitat management;

(B) Prescribed grazing;

(C) Restoration and management of rare and declining habitats;

(D) Access control;

(E) Forage harvest management;

(F) Prescribed burning;

(G) Brush management;

(H) Firebreaks;

(I) Cover crops;

(J) Critical area planting;

(K) Forage and biomass planting;

(L) Range planting;

(M) Watering facilities;

(N) Spring development;

(O) Pumping plants;

(P) Water wells;

(Q) Pipelines;

(R) Grade stabilization structures;

(S) Fences;
(T) Obstruction removal;
(U) Herbaceous weed control;
(V) Ponds;
(W) Tree and shrub planting;
(X) Heavy use protection;
(Y) Woody residue treatment;
(Z) Well decommissioning;
(AA) Conservation cover.

(iii) As a result of the continuation of routine agricultural practices, as specified below, on cultivated lands that are in row crop, seed-drilled untilled crop, hay, or forage production that meet the definition of cropland at 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the 5 years preceding the proposed routine agricultural practice that may otherwise result in take. Activities covered by this provision include:

(A) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands in cultivation.

(B) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as buildings, irrigation conveyance structures, fences, and roads.

(C) Use of chemicals in direct support of cultivated agriculture when done in accordance with label recommendations.

* * * * *

Dated: March 23, 2014.

Daniel M. Ashe,

Director, U. S. Fish and Wildlife Service.

[FR Doc. 2014–07298 Filed 4–9–14; 8:45 am]

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FEDERAL REGISTER

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Part IV

The President

Proclamation 9101—National Equal Pay Day, 2014

Federal Register
Vol. 79, No. 69
Thursday, April 10, 2014

Presidential Documents

Title 3—

The President

Proclamation 9101 of April 7, 2014

National Equal Pay Day, 2014

By the President of the United States of America

A Proclamation

Throughout our Nation's history, brave women have torn down barriers so their daughters might one day enjoy the same rights, same chances, and same freedoms as their sons. Despite tremendous progress, too many women are entering the workforce to find their mothers' and grandmothers' victories undermined by the unrealized promise of equal pay for equal work. On National Equal Pay Day, we mark how far into the new year women would have to work to earn the same as men did in the previous year, and we recommit to making equal pay a reality.

Women make up nearly half of our Nation's workforce and are primary breadwinners in 4 in 10 American households with children under age 18. Yet from boardrooms to classrooms to factory floors, their talent and hard work are not reflected on the payroll. Today, women still make only 77 cents to every man's dollar, and the pay gap is even wider for women of color. Over her lifetime, the average American woman can expect to lose hundreds of thousands of dollars to the earnings gap, a significant blow to both women and their families. In an increasingly competitive global marketplace, we must use all of America's talent to its fullest potential—because when women succeed, America succeeds.

More than half a century after President John F. Kennedy signed the Equal Pay Act, my Administration remains devoted to improving our equal pay laws and closing the pay gap between women and men. From signing the Lilly Ledbetter Fair Pay Act to establishing the Equal Pay Task Force, I have strengthened pay discrimination protections and cracked down on violations of equal pay laws. And I will continue to push the Congress to step up and pass the Paycheck Fairness Act, because this fight will not be over until our sisters, our mothers, and our daughters can earn a living equal to their efforts.

The time has passed for us to recognize that what determines success should not be our gender, but rather our talent, our drive, and the strength of our contributions. So, today, let us breathe new life into our founding ideals. Let us march toward a day when, in the land of liberty and opportunity, there are no limits on our daughters' dreams and no glass ceilings on the value of their work.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 8, 2014, as National Equal Pay Day. I call upon all Americans to recognize the full value of women's skills and their significant contributions to the labor force, acknowledge the injustice of wage inequality, and join efforts to achieve equal pay.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

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