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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 20, 32, 54, 73, 95, and 110

[NRC–2015–0122]

RIN 3150–AJ61

#### Formatting and Non-Substantive Corrections to Authority Citations; Corrections

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) published a final rule in the *Federal Register* on September 9, 2015, that amended its regulations to better adhere to the Office of Federal Register's (OFR) guidance for formatting authority citations. In addition, the final rule corrected typographical errors and made other non-substantive corrections to the NRC's authority citations. The final rule contained incorrect punctuation and spacing, one incorrect reference, and omitted two references. This document makes additional corrections to NRC's authority citations.

**DATES:** This rule is effective on September 30, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2015–0122 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0122. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

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**FOR FURTHER INFORMATION CONTACT:** Cindy Bladley, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3280, email: [Cindy.Bladley@nrc.gov](mailto:Cindy.Bladley@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Discussion

The NRC published a final rule in the *Federal Register* on September 9, 2015 (80 FR 54223), that amended its regulations to better adhere to the OFR's guidance for formatting authority citations. In addition, the final rule corrected typographical errors and made other non-substantive corrections to the NRC's authority citations. The final rule inadvertently included incorrect punctuation and spacing in the authority citations for parts 54, 95, and 110 of Title 10 of the *Code of Federal Regulations* (10 CFR).

The final rule also included an incorrect reference in the authority citation for 10 CFR part 73. In a final rule published on May 20, 2013 (78 FR 29520), the NRC moved the advance notification provisions to governors of affected states for shipments of spent nuclear fuel through their affected states from 10 CFR 73.37(f) to 10 CFR 73.37(b)(2). There was no conforming change made to the authority citation for 10 CFR part 73, which still referenced 10 CFR 73.37(f). In a final rule published on November 10, 2014 (79 FR 66598), the NRC corrected this reference by changing it to 10 CFR 73.37(b)(2) in the authority citation for 10 CFR part 73. The September 9, 2015, final rule inadvertently reversed the previous correction. This document

restores the authority citation for 10 CFR part 73 to reference 10 CFR 73.37(b)(2) rather than 10 CFR 73.37(f).

In addition, the final rule did not include a reference to Section 229 of the Atomic Energy Act (42 U.S.C. 2278a) in the authority citation for 10 CFR part 73. In a final rule published on October 14, 2009, the NRC amended its regulations to authorize the imposition of federal criminal penalties on those who introduce weapons or explosives without authorization into specified classes of facilities subject to NRC regulatory authority (74 FR 52667). The authority for this amendment derived from Section 654 of the Energy Policy Act of 2005 (EPAct), codified at 42 U.S.C. 2278a. The September 9, 2015, final rule converted citations to the EPAct to their corresponding citations in the United States Code, but did not include a reference to 42 U.S.C. 2278a. This document adds this reference to the 10 CFR part 73 authority citation.

Lastly, the final rule did not include a reference to Section 170H of the Atomic Energy Act (42 U.S.C. 2210h) in the authority citations for 10 CFR parts 20 and 32. In a final rule published on November 8, 2006, the NRC amended its regulations to implement the National Source Tracking System for certain sealed sources as required by Section 651(d) of the EPAct (71 FR 65686). In the 2006 final rule, the authority citations for 10 CFR parts 20 and 32 both referenced the entirety of the EPAct as authority, but these references were changed to specific references to Section 651(e) of the EPAct in a final rule published on October 1, 2007 (72 FR 55864), effectively removing the references to Section 651(d). The September 9, 2015, final rule did not restore this reference (codified at 42 U.S.C. 2210h). This document adds this reference to the authority citations for 10 CFR parts 20 and 32.

##### II. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(B), the NRC finds good cause to waive notice and opportunity for comment on the amendments because it will have no substantive impact and is

of a minor and administrative nature. Specifically, these amendments are to correct punctuation and spacing and incorrect and omitted references in authority citations. These amendments do not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC. Furthermore, for these reasons, the NRC finds, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this rule effective upon publication of this document.

#### List of Subjects

##### 10 CFR Part 20

Byproduct material, Criminal penalties, Hazardous waste, Licensed material, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

##### 10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

##### 10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

##### 10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Incorporation by reference, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

##### 10 CFR Part 95

Classified information, Criminal penalties, Penalties, Reporting and recordkeeping requirements, Security measures.

##### 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Incorporation by reference, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear

power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 20, 32, 54, 73, 95, and 110.

#### PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

- 1. The authority citation for part 20 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 53, 63, 65, 81, 103, 104, 161, 170H, 182, 186, 223, 234, 274, 1701 (42 U.S.C. 2014, 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2210h, 2232, 2236, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Low-Level Radioactive Waste Policy Amendments Act of 1985, sec. 2 (42 U.S.C. 2021b); 44 U.S.C. 3504 note.

#### PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

- 2. The authority citation for part 32 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 81, 161, 170H, 181, 182, 183, 223, 234, 274 (42 U.S.C. 2111, 2201, 2210h, 2231, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

#### PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

- 3. The authority citation for part 54 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2136, 2137, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); 44 U.S.C. 3504 note.

Section 54.17 also issued under E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

#### PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

- 4. The authority citation for part 73 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202

(42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

#### PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

- 5. The authority citation for part 95 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, as amended, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

#### PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

- 6. The authority citation for part 110 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124, 126, 127, 128, 129, 133, 134, 161, 170H, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2071, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160c, 2160d, 2201, 2210h, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 *et seq.*

Dated at Rockville, Maryland, this 23rd day of September, 2015.

For the Nuclear Regulatory Commission.

**Cindy Bladey,**

*Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2015–24603 Filed 9–29–15; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 11 and 121**

[Docket No.: FAA-2014-0205; Amdt. Nos. 11-57 and 121-373]

RIN 2120-AK17

**Disclosure of Seat Dimensions To Facilitate Use of Child Safety Seats on Airplanes During Passenger-Carrying Operations****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This final rule requires air carriers conducting domestic, flag, and supplemental operations to make available on their Web sites information to enable passengers to determine which child restraint system can be used on airplanes in these operations. Specifically, this final rule requires air carriers to make available on their Web sites the width of the narrowest and widest passenger seats in each class of service for each make, model and series of airplane used in passenger-carrying operations.

**DATES:** This rule is effective October 30, 2015. Compliance with this rule is required February 29, 2016.

**ADDRESSES:** For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How To Obtain Additional Information” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Catherine Burnett, Flight Standards Service, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8166; email [catherine.burnett@faa.gov](mailto:catherine.burnett@faa.gov). For legal questions concerning this action, contact Sara L. Mikolop, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3073; email [sara.mikolop@faa.gov](mailto:sara.mikolop@faa.gov).

**SUPPLEMENTARY INFORMATION:****Authority for This Rulemaking**

Section 412 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112-95)<sup>1</sup> (the Act) required the

FAA to conduct rulemaking “[T]o require each air carrier operating under part 121 of title 14, Code of Federal Regulations, to post on the Internet Web site of the air carrier the maximum dimensions of a child safety seat that can be used on each aircraft operated by the air carrier to enable passengers to determine which child safety seats can be used on those aircraft.”<sup>2</sup> This rulemaking is promulgated under the scope of the authority in section 412 of the Act.

In addition to the authority found in the Act, the FAA has authority under Title 49 of the United States Code (49 U.S.C.) to issue rules on aviation safety. Section 106 of Subtitle I describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is consistent with the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

**I. Overview of the Final Rule**

Existing regulations regarding the use of a child restraint system (CRS) on airplanes operating under part 121 are found in 14 CFR 121.311. In accordance with § 121.311, no certificate holder<sup>3</sup> conducting operations under part 121 may prohibit a child from using an approved CRS when the child’s caregiver<sup>4</sup> purchases a ticket for the child.

The FAA strongly encourages the use of an FAA-approved CRS on aircraft.<sup>5</sup> However, in a small number of cases, an approved CRS may not fit in a particular airplane seat because the CRS exceeds the dimensions of the airplane seat.

<sup>2</sup> Section 412 of Public Law 112-95 uses the term “child safety seat.” However, the FAA uses the term “child restraint system” to describe an approved seat or device used to restrain children on aircraft. Thus, for consistency with existing FAA regulations, this final rule uses the term child restraint system (CRS), rather than child safety seat.

<sup>3</sup> The FAA notes that Public Law 112-95 uses the term “air carrier.” FAA regulations use terms such as “certificate holders”, “operators”, and “air carriers” to describe a person who undertakes directly by lease, or other arrangement, to engage in air transportation. This final rule uses the term “air carrier” to refer to these persons.

<sup>4</sup> Section 121.311 uses the term “parent, guardian, or designated attendant” to refer to the person traveling with, and providing care for, the child. For ease of reference the FAA has used “caregiver” throughout this final rule to refer to these persons.

<sup>5</sup> See [http://www.faa.gov/passengers/fly\\_children/crs/](http://www.faa.gov/passengers/fly_children/crs/) (visited March 26, 2015).

Accordingly, the FAA has issued guidance to facilitate the use of a CRS on airplanes in situations when a caregiver purchased a ticket for the child but the approved CRS that the caregiver wishes to use does not fit in a particular seat on the airplane.<sup>6 7</sup> Although the FAA has provided guidance to air carriers regarding how to accommodate a CRS, this rulemaking would give caregivers additional information on whether an FAA-approved CRS will fit on the airplane on which they expect to travel.

This rule requires air carriers operating under 14 CFR part 121 that have Web sites to post on their Web sites information regarding airplane seat dimensions. The FAA notes, however, that this rule does not require an air carrier that does not have a Web site to establish a Web site to satisfy the information disclosure requirements of this final rule.

Specifically, affected air carriers must post the width of the narrowest and widest passenger seats in each class of service for each airplane make, model and series operated in passenger-carrying operations. By requiring air carriers to make this information available, the agency expects caregivers to have more information about whether a specific CRS can be used on the airplane on which they expect to travel.

The FAA emphasizes that this rule includes an information disclosure requirement only. It does not create any new operational requirements for air carriers or flight attendants; it does not change any existing provisions regarding the use of a CRS on board airplanes or existing regulations regarding passengers under the age of 2 traveling on board airplanes with or without the use of a CRS; and, it does not require an air carrier to identify the specific airplane that it will use on a given flight.

This final rulemaking is minimal cost and is estimated to be \$372,600 over a ten-year period (\$271,800 present value).

<sup>6</sup> Advisory Circular (AC) 120-87B, Use of Child Restraint Systems on Aircraft (September 17, 2010). The agency has revised and updated this AC. The revised and updated AC, published with this final rule, is identified as AC 120-87C. All ACs can be found at [http://www.faa.gov/regulations\\_policies/advisory\\_circulars/](http://www.faa.gov/regulations_policies/advisory_circulars/).

<sup>7</sup> Information For Operators (InFO) 11007 Regulatory Requirements Regarding Accommodation of Child Restraint Systems—Update (March 10, 2011) is available at [http://www.faa.gov/other\\_visit/aviation\\_industry/airline\\_operators/airline\\_safety/info/all\\_infos/](http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/).

<sup>1</sup> Codified as a preceding note to 49 U.S.C. 42301, 126 Stat. 89.

## II. Background

### A. Existing Requirements

Existing requirements regarding CRS use in part 121 operations are found in 14 CFR 121.311. Section 121.311(c)(2) generally states that no air carrier may prohibit a child, if requested by the child's caregiver, from occupying a CRS furnished by the child's caregiver provided that the following conditions are satisfied: The child holds a ticket for an approved seat or a seat is made available by the air carrier for the child's use; the child is accompanied by a caregiver; and, the CRS is appropriately labeled and secured. (Certificate holders are encouraged to allow the use of an empty seat to accommodate a CRS; however, they are not required to allow non-ticketed children to occupy empty passenger seats, even if the child uses a CRS.)

Under § 121.311(c)(3), however, air carriers may determine the most appropriate passenger seat location for a CRS based on safe operating practices. In assessing the most appropriate location for a CRS, an air carrier must consider a number of factors. For example, the CRS must be installed in a forward-facing airplane seat in accordance with the provisions of § 121.311. This includes placing the CRS in the appropriate forward or aft-facing direction as indicated on the label for the size of the child. A window seat is the preferred location; however, other locations may be acceptable, provided the CRS does not block the egress of any passenger, including the child's caregiver, to the aisle used to evacuate the airplane.

### B. Public Information and Guidance Material

The FAA encourages the use of an approved CRS on airplanes and has committed to educate and inform passengers, air carriers and crewmembers regarding CRS use on airplanes in order to increase their use on airplanes. Accordingly, the FAA provides information on its Web site for caregivers traveling with children on the use of a CRS on airplanes. The public information and guidance material are intended to be useful to caregivers in support of the agency's commitment regarding CRS use. For example, the FAA has previously addressed the issue of "CRS fit" in airplane seats on the FAA Web site by informing caregivers that a CRS with a maximum width of 16 inches should fit in most airplane seats.<sup>8</sup>

<sup>8</sup> <http://www.faa.gov/passengers/media/childsafety.pdf> (visited July 8, 2015).

Additionally, on November 3, 2005, the FAA published Advisory Circular (AC) 120–87, Use of Child Restraint Systems on Aircraft, to serve as a resource during development, implementation, and revision of an air carrier's standard operating procedures and training programs regarding CRS use. The FAA has since published two amended versions of the AC. AC 120–87A was published on December 1, 2006 and AC 120–87B was published on September 17, 2010. The AC provides information on placement of a CRS on airplanes that may be considered by air carriers as they develop policies regarding seat locations for CRS use on a specific airplane. The AC also explains how placement of a CRS in an aisle seat or in a seat forward or aft of an emergency exit row may affect egress during an evacuation. Further, the AC emphasizes the carrier's discretion in identifying the most appropriate forward-facing passenger seat location for a CRS but explains that prohibiting the use of a CRS by a ticketed child, when there are seats where the CRS could be used safely, is not consistent with § 121.311. The FAA will publish updated AC 120–87C with this final rule to address the seat dimension disclosure requirements of this final rule.

The FAA also published Information for Operators (InFO) 11007, Regulatory Requirements Regarding Accommodation of Child Restraint Systems—Update, to clarify regulations regarding CRS accommodation and to provide information for a CRS with a detachable base. As with AC 120–87, InFO 11007 provides examples of CRS design variations and lists possible solutions for accommodation. For example, a CRS with a base that is too wide to fit properly in a seat with rigid armrests could be moved to a seat with moveable armrests that can be raised to accommodate the CRS, and an aft-facing CRS that cannot be installed properly, because of minimal pitch (distance between rows of seats), can be moved to a bulkhead seat or a seat in a row with additional pitch. The FAA will publish an updated InFO so that it remains consistent with the requirements of this final rule.

### C. Summary of the Notice of Proposed Rulemaking (NPRM)

Section 412 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95) (the Act) required the FAA to conduct rulemaking "[T]o require each air carrier operating under part 121 of title 14, Code of Federal Regulations, to post on the Internet Web site of the air carrier the maximum dimensions of a child safety seat that

can be used on each aircraft operated by the air carrier to enable passengers to determine which child safety seats can be used on those aircraft." To fulfill the requirements of the Act, the FAA proposed to require air carriers operating under part 121 to make available on their Web sites the width of the widest passenger seat in each class of service for each make, model and series of airplane used in passenger-carrying operations (79 FR 18212, April 1, 2014). The agency intended the proposed revisions to part 121 to provide greater information to caregivers to help them determine whether a particular CRS will fit in an airplane seat. This proposal would not have affected existing regulations regarding the use of a CRS on board airplanes or a passenger under the age of 2 traveling onboard airplanes with or without the use of a CRS. The NPRM provided a public comment period of 90 days, which ended on June 30, 2014.

### D. General Overview of Comments

The FAA received ten comments. Commenters included three individuals, Airlines for America (A4A), the American Automobile Association (AAA), the Association of Flight Attendants (AFA), Baby B'Air, Consumers Union, the National Transportation Safety Board (NTSB) and Spirit Airlines (Spirit). All of the commenters generally supported the proposed changes; however, some suggested changes, as addressed in the section of the document entitled, "Discussion of Public Comments and Final Rule."

The FAA received comments on the following general issue areas related to the proposal:

- Disclosure of the width of the narrowest seat in addition to the proposal to disclose the width of the widest seat in each class of service;
- Disclosure of the width of the narrowest seat in lieu of the proposal to disclose the width of the widest seat in each class of service;
- Disclosure of seat pitch in addition to the proposal to disclose seat width;
- Airplane equipment changes that result in seat measurements different from the measurements relied upon for a seat previously purchased;
- Definition of "seat width"; and
- Commonality of seat dimensions (within the same class of service) among an air carrier's airplanes within the same make, model and series.

Several commenters addressed issues outside of the scope of this rulemaking. These issues included discussion of a requirement for all passengers including infants to be properly secured in their

own seats with an approved safety restraint.

### III. Discussion of Public Comments and Final Rule

This rulemaking satisfies the rulemaking requirement of section 412 of the Act by making more information available to allow caregivers to make a determination regarding CRS fit prior to a flight. In the NPRM, the agency proposed to require air carriers conducting passenger operations under part 121 to disclose on their Web sites the width of the widest passenger seat in each class of service for each airplane make, model and series within the air carrier's fleet. The proposal was limited in its applicability to part 121 air carriers conducting passenger-carrying operations because all-cargo operations have generally been excluded from part 121 requirements pertaining to passengers.<sup>9</sup> See 14 CFR 121.583. The agency notes that the proposed information disclosure requirement would supplement existing regulations that allow the use of an approved CRS and FAA guidance to caregivers regarding CRS fit in airplane seats.

The final rule differs from the proposal in two respects. First, whereas the proposal required disclosure of only the widest seat in each class of service, the final rule requires disclosure of both the widest and the narrowest seats in each class of service. Second, the final rule clarifies the measurement of seat width. The agency addresses these modifications in more detail in the discussions entitled "Disclosure of width of the widest and narrowest seats in each class of service" and "Definition of seat width" respectively.

#### A. Airplane Passenger Seat Dimensions

Although section 412 of the Act refers to the maximum dimensions of child safety seats that can be used on each aircraft the operator uses, the FAA proposed an alternate approach in the NPRM in order to implement the statute's goal to enable a passenger to determine which CRS can be used on an airplane. The FAA does not believe that it is practical for each air carrier to provide the maximum dimensions of one or many CRSs the carrier does not possess or to which the carrier does not have ready access. In contrast, air carriers have ready access to the

airplanes they operate and information regarding those aircraft.

Therefore, the agency proposed to require air carriers to provide seat dimension data to fulfill the intent of the statutory requirement for rulemaking. Seat dimension data provides information equivalent to CRS dimension data that can be used to assist caregivers in making a determination as to whether a CRS will fit in a passenger seat on the airplane on which they expect to travel.

The agency did not receive any comments objecting to the proposal to provide seat dimension information and A4A specifically supported it. Accordingly, in the final rule, the FAA has maintained the NPRM approach to providing seat dimension information.

#### B. Disclosure of Seat Dimensions for Each Class of Service for Each Make, Model and Series of Airplane Used for Passenger-Carrying Operations

In the NPRM, the agency proposed to amend § 121.311 by adding a requirement for air carriers to disclose seat dimension information for each class of service for each airplane make, model and series that a certificate holder uses in passenger-carrying operations.

*Class of service*—Spirit noted that while it has only one class of service, within that class it offers wider seats at a higher price. Spirit's concern is that publishing the dimensions of these higher-priced seats could mislead passengers, causing them to believe that the higher priced seats are available without paying an additional fee.

The FAA appreciates Spirit's comments but has determined that class of service is the most relevant break point for information disclosure as it remains the prevailing concept used to distinguish seat products, including the seat size variations and amenities that are associated with those products. It has also been the agency's longstanding policy that CRS accommodation need only be made within the same class of service as the ticket holder's class of service in order to comply with § 121.311(c)(2). See AC 120–87. Thus, disclosure of seat dimension information for each class of service correlates to the existing air carrier obligations for CRS accommodation. The DOT defines "class of service" to mean seating in the same cabin class such as First, Business, or Economy class, or in the same seating zone if the carrier has more than one seating product in the same cabin such as Economy and Premium Economy class.

The agency recognizes, however, that there may be seat product concepts that

are analogous to the distinction in classes of service for purposes of CRS accommodation and that they may be relevant to the assessment of CRS accommodation. The agency will address these analogous seat product concepts and their relevance to CRS accommodation in revised CRS guidance material published with this final rule (AC 120–87C).

The purpose of this final rule is to facilitate CRS use on airplanes through disclosure of seat dimensions. Consistent with this goal, the agency encourages air carriers to provide any additional information to their customers that would further facilitate CRS use on airplanes.

*Airplane substitutions and airplane equipment (passenger seats)*—Two commenters (NTSB and AAA) expressed concern about airplane substitutions and the absence of a requirement for air carriers to disclose the make, model and series for each flight. NTSB noted that the NPRM does not address situations in which an air carrier makes an airplane substitution and the substitution airplane has different types of seats with measurements that differ from the measurements relied upon for a seat previously purchased for the intended use of a CRS. AAA suggested that the FAA should require air carriers to provide a list of potential planes used for particular routes, as this could provide consumers with information more relevant and useful in planning travel. Consumers Union recommended that air carriers should identify the airplane that will be used for each segment of a flight, whether that segment is operated by the air carrier with which the consumer is dealing directly, or by some other air carrier with which the first air carrier has a code-sharing or other partnership arrangement.

In related comments, A4A and Spirit disagreed with FAA's information about the commonality of seat dimensions among an air carrier's airplanes of the same make, model and series. A4A stated, "The widths of the widest and narrowest passenger seats may vary within a given aircraft series and operated by the same carrier depending on the particular model of seats installed on the aircraft." Similarly, Spirit commented that its 29 Airbus A319–100 airplanes are equipped with different seat models that differ in width.

The information disclosure requirements in this final rule balance the directive to facilitate CRS use and the necessary operational flexibility that air carriers must have to substitute

<sup>9</sup>Part 121 passenger-carrying operations are defined in § 110.2 to mean "any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in §§ 121.583(a) or 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers."

airplanes as they determine appropriate. Currently, there is no requirement for air carriers to disclose in advance of a flight, the specific airplane that will be used for that flight, and such a requirement is outside of the scope of this rulemaking. Without such a requirement, additional seat information disclosure requirements applicable to each specific airplane in an air carrier's fleet would not further facilitate CRS use.

While the agency agrees with comments indicating that not every airplane of the same make, model and series used by a particular air carrier may be equipped with the same seat model, and that some may differ in size, after further review of airplanes used by affected air carriers, the FAA determined that in many cases, there is commonality in seat dimensions for airplanes of the same make, model, and series operated by an air carrier. Therefore, this final rule leverages the commonality that does exist among aircraft seats to provide caregivers with the most helpful information regarding CRS fit.

Additionally, in the example cited by Spirit where there may be varying models of seats on a particular make, model and series of aircraft, Spirit would still only have to post two measurements. In Spirit's example, the make is Airbus, the model is 319 and the series is 100. If, hypothetically, there were three or four different models of seats with varying widths on their entire A-319-100 fleet, in order to comply with the requirements of this final rule, Spirit would only have to post the dimensions of the narrowest seat and the widest seat in each class of service for their entire fleet of A-319-100s.

Accordingly, the final rule retains the proposed requirement to disclose seat information for each class of service for each airplane make, model, and series operated by the air carrier in passenger carrying operations.

### *C. Disclosure of Width of the Widest and Narrowest Seats in Each Class of Service*

In the NPRM, the agency proposed to require air carriers to disclose the width of the widest passenger seat in each class of service because width is the predominant limiting seat dimension for CRS use on airplanes. Also, if a caregiver knew the width dimension of the widest seat for a particular class of service on an airplane, and if the CRS the caregiver intended to use on the flight fits within that dimension, then the caregiver would be able to expect that at least one seat in the class of service for which the caregiver and

child were ticketed would accommodate the CRS.

The agency also sought comment on alternative proposals pertaining to the disclosure of seat width. Specifically, the agency asked whether disclosure of only the narrowest seat in each class of service or disclosure of both narrowest seat and the widest seat in each class of service would be more effective in facilitating CRS use.

Two commenters (an individual and Spirit) recommended that the FAA modify the proposal by requiring air carriers to disclose the dimensions of the narrowest seat in each class of service rather than the widest. An individual commenter noted that if a CRS will fit in the narrowest seat in a particular class of service, it will fit in all seats in that class. Spirit offered a similar argument and added that disclosure of the widest seat in each class of service would lead to passenger confusion about the availability of the widest seats.

Four commenters (A4A, AFA, NTSB and Consumers Union) recommended modifying the proposal by requiring air carriers to disclose the widths of both the narrowest and widest seats in each class of service because such a requirement would further the goal of providing the most useful information to caregivers.

A4A suggested that disclosure of dimensions of only the widest seat on an aircraft could lead caregivers to mistakenly assume that their CRS will fit in their reserved seat if it is smaller than the dimensions of the widest seat available, and that such misunderstandings could lead to airplane boarding delays. A4A also noted that disclosure of only the widest seat could discourage caregivers from using a CRS based on concern that they may not be assigned to that widest seat. Further, A4A commented that provision of the widths of both the narrowest and widest seats in each class of service provides caregivers a more complete picture of the dimensions of the entire seat class, enabling them to make more informed decisions pertaining to CRS use.

AFA commented that requiring disclosure of both dimensions would more effectively achieve the statutory intent of facilitating CRS use. AFA did not support disclosure of only the widest seat in each class of service.

NTSB commented that providing the width for both the narrowest and widest seats in each class of service for seats in which a CRS could be installed would give caregivers more useful information. NTSB explained that this additional information could enable the caregiver

to work with the air carrier to determine the most suitable seat assignment. NTSB also commented that providing the dimensions of the narrowest seats could help CRS manufacturers to develop or identify a CRS that can fit in any air carrier seat, thereby assisting caregivers in procuring a CRS suitable for air travel.

Consumers Union generally supports a requirement to disclose seat dimension information, but added that a better approach would be to require disclosure of all the dimensions of all available seats on an airplane to enable the consumer to select an appropriate seat from all available seats.

While the FAA recognizes that other seat dimensions may limit CRS fit on some occasions, seat width remains the predominant limiting dimension for CRS use in an airplane seat and thus remains the focus of this rulemaking. However, upon further consideration of the proposal and review of comments, the FAA agrees with comments regarding the benefits of disclosure of the width of both the narrowest and widest seat in each class of service for each airplane make, model and series. Disclosure of the widths of both the narrowest and widest seats in each class of service would be more effective in achieving the statutory intent of facilitating CRS use. Thus, the final rule requires each air carrier to make available on its Web site the width of both the narrowest and widest passenger seats in each class of service, for each airplane make, model, and series used in passenger-carrying operations under part 121. Disclosure of the width of the narrowest and widest seats in each class of service will enable caregivers to better determine if the CRS they provide for their child will fit in the airplane on which they expect to travel and thus will encourage more widespread use of a CRS in air transportation.

Finally, NTSB commented that "[I]nformation should only be provided for seats in which an approved CRS would be allowed to be installed." The NTSB noted that CRS use is typically not permitted in exit rows and aisle seats so as not to affect emergency egress. The FAA agrees with the intent of the NTSB comment and recognizes the importance of information about potential limitations on CRS use.

Some air carriers currently publish information regarding regulatory restrictions or approved operating procedures that limit CRS use in specific airplane locations (e.g. exit rows, seats that are not forward facing,

aisle seats).<sup>10</sup> In the updated guidance material published with this final rule (AC 120–87C), the agency encourages all air carriers to provide passengers with such information. The agency emphasizes that under § 121.311(c) and as further explained in AC 120–87C (and previous editions of this AC), the FAA permits air carriers to determine the most appropriate passenger seat location for a CRS, consistent with safe operating practices. Although some limits on CRS location may be aircraft-specific and thus consistently applied across aircraft of the same make, model and series, in other cases, the air carrier determination regarding CRS location may be operation-specific. Air carriers must retain the operational flexibility to adjust their procedures regarding CRS placement and make real-time determinations regarding CRS placement as necessary to comply with safe operating practices. Thus given the necessity for air carriers to retain the flexibility to determine appropriate seat locations for CRS use, the suggested modification to the requirement for seat information on the air carrier's Web site would not further facilitate CRS use and result in an unnecessary burden.

#### *D. Definition of Seat Width*

A4A stated that the NPRM did not define seat width and suggests that the FAA include a definition of “seat width” in the final rule to avoid confusion. A4A recommended that seat width should be measured as the distance between the inside of the seat arm rests.

Although the NPRM preamble identified seat width as the distance between arm rests, to ensure clarity, the amendment to § 121.311 will include a definition of seat width applicable to seat dimension disclosure requirements. Consistent with the A4A comment and the NPRM preamble, the definition will specify that seat width is the distance between the inside of the seat arm rests.

#### *E. Seat Pitch*

In the NPRM, the FAA considered requiring disclosure of seat pitch (distance between rows of seats); however the agency determined that the predominant passenger seat dimension that limits CRS use is the width of the passenger seat.

Three commenters—NTSB, Consumers Union and AAA—recommended that the FAA require disclosure of seat pitch in addition to seat width, as seat pitch may be the

limiting dimension in situations involving a rear-facing CRS. The agency acknowledges that in some circumstances, seat pitch can affect the use of a CRS that must be used in an aft-facing position, but using pitch to determine CRS fit is complex and minimally effective without additional detail.

Air carriers may be able to provide the distance between rows of passenger seats or “pitch” and some air carriers currently do so. However, as stated in the NPRM, a rear-facing CRS does not have an equivalent measurement to “pitch” as it does to “width.” In order to be installed properly, an aft-facing CRS must be installed in an aircraft seat on an angle. An aft-facing CRS has an installed level indicator (typically a moving ball or needle that must stay between two lines) that indicates when the CRS is properly oriented in the airplane seat. Therefore, although seat pitch can affect whether there is enough room to properly use an aft-facing CRS, it is only part of the triangular equation with several variables which makes it difficult for seat pitch data to provide meaningful information to a caregiver. (The agency notes that one way to accommodate an aft-facing CRS that does not fit in a row because of seat pitch, is for the air carrier to move the CRS to a seat in a bulkhead row where pitch is not typically an issue.)

Based on the foregoing and consistent with the proposal, the final rule does not require air carriers to provide information regarding seat pitch.

#### *F. Disclosure of Seat Dimensions on Air Carrier Web Sites*

Consistent with the requirement for rulemaking in section 412 of the Act, the agency proposed to require air carriers that have Web sites to disclose on those Web sites certain seat dimension data. The final rule includes this disclosure requirement.

In the NPRM, the FAA noted that a number of air carriers currently conducting passenger-carrying operations already provide seat dimension information on their Web sites. For example, some air carriers currently provide both the pitch and width for the passenger seats in each class of service. The agency expects, however, that the information disclosure proposed in the NPRM and included in this final rule will increase the instances in which caregivers are able to assess whether a CRS will fit on an airplane make, model, and series on which they expect to travel.

Air carriers may use existing information pages on their Web sites that already provide information

regarding airplane cabin interior dimensions and CRSs to list the width of the widest and narrowest seats for each class of service on each airplane make, model, and series in their fleets.

The only time an air carrier would need to update its Web site after initial implementation would be when a new airplane make, model, or series is introduced to the air carrier's fleet, or when the air carrier replaces the widest or narrowest seats installed on an existing airplane make, model, or series with wider or narrower seats.

Consumers Union stated that it is insufficient to require seat dimension information to be disclosed only on air carrier Web sites and recommended making such information available “[E]verywhere a consumer might purchase a ticket or change a flight.” While the FAA appreciates the intent behind this comment, this rule is promulgated under the authority of section 412 of the Act, which requires the FAA to initiate rulemaking to require air carriers conducting part 121 operations to make certain information available on those air carriers' Web sites. Therefore, as proposed, the final rule will require seat information disclosure on the air carrier's Web site only.

#### *G. Passenger Seat Requirements*

Three commenters—Consumers Union, NTSB, and AFA—suggested that the ultimate goal should be to mandate that all passengers including infants be properly secured in their own seats with approved safety restraints. Consumers Union added that as an interim step, air carriers should facilitate and encourage CRS use by offering seats at no cost or a drastically reduced cost for infants and toddlers under the age of two.

The FAA appreciates the intent of these comments and strongly encourages the use of a CRS on airplanes through multiple outreach efforts. However, this comment recommends changes to current passenger seating requirements that are outside of the scope of the information disclosure NPRM that preceded this final rule.

#### *H. Miscellaneous*

The FAA proposed a conforming change to 14 CFR 121.583 to make clear that the requirement applies in passenger-carrying operations only. The FAA did not receive any comments on this proposed conforming change and has included it in the final rule.

#### *I. Part 11 Amendment*

The FAA submitted a request for Office of Management and Budget

<sup>10</sup> 14 CFR 121.585(b) prohibits CRS use in exit rows and 14 CFR 121.311(b) only allows use of CRS in forward-facing seats.

(OMB) approval for the information collection activities in this final rule. OMB has approved the information collection and assigned OMB control number 2120-0760. Accordingly, the FAA is updating the table in § 11.201(b) to display this control number.

#### *J. Effective Date*

The FAA recognizes that different operators will need different lengths of time to comply with this regulation due to variations in information technology systems, variations in currently published data, and the range of numbers of airplane make, model and series in each operator's fleet. In the NPRM, the FAA proposed an effective date of 150 days after the date of publication of the final rule in the **Federal Register** and proposed to require compliance on the effective date.

While the FAA did not receive any comments on the proposed effective and compliance dates, further review of this issue led the FAA to conclude that the effective date of the final rule should be 30 days after publication. Accordingly, the final rule will be effective 30 days after publication in the **Federal Register**, and compliance will be 150 days after publication of the final rule.

### **IV. Regulatory Notices and Analyses**

#### *A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995).

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows.

The FAA estimates that children under the age of two represent one percent of all commercial passengers.<sup>11</sup> When travelling by air, a caregiver for a child under the age of two may choose either to fly with the child seated in the caregiver's lap (at no additional fee for the caregiver), or to purchase a separate ticket for the child, thus allowing the child to be secured in his or her own seat, with or without the use of a CRS. The agency does not have the exact count of passengers younger than two or whether those passengers arrived at their destinations sitting in the lap of a caregiver or secured in a separate airplane seat.

For child safety purposes, the FAA encourages (but does not require) caregivers to purchase a separate ticket for each child under the age of two so that the child can be securely restrained in a CRS. The FAA does not require the use of CRS for children under the age of two based on the FAA's analysis which shows that when caregivers are forced to purchase airline seats for children under age 2, the additional cost of an airline ticket will motivate some families to drive to their destinations instead of to fly. As background, section 522 of Public Law 103-305, required the Secretary of Transportation to study the impact of mandating the use of CRSs for children under 2 years old on scheduled air carriers. The Secretary submitted a report of this study to Congress in 1995. The report estimated that if a child restraint rule were imposed, approximately five infant lives would be saved aboard aircraft, and two major injuries and four minor injuries would be avoided over a 10-year period. The report also cautioned that this improvement would be offset by additional highway fatalities for airline passengers who chose to drive rather than purchase a seat for children under

age 2. Even if infant fares were only 25 percent of full fare, the report estimated that there would be diversion to cars and thus a net increase in fatalities over a 10-year period.

The concern expressed in the 1995 report on mandating the use of CRSs for children under 2 years old, was that mandating CRSs (which require a passenger seat) could increase airline travel costs to families with children under age 2 enough to cause a significant number to travel by automobile instead of by airplane. In turn, this would expose the entire family to the higher risks of automobile travel and associated highway fatalities and injuries.<sup>12</sup> The FAA updated this report in December, 2011, and confirmed its conclusion.<sup>13</sup>

Currently, air carriers are not required to disclose seat dimension information on their Web sites. It is believed that some caregivers choose not to travel with a CRS due to concern that the seat will not fit the particular equipment being flown. Congress directed the FAA to conduct rulemaking "[T]o require each air carrier operating under part 121, to post on the Internet Web site of the air carrier the maximum dimensions of a child safety seat that can be used to enable passengers to determine which child safety seats can be used on those aircraft." See Public Law 112-95. Once implemented, this rule would require each part 121 air carrier that conducts passenger-carrying operations to post seat dimension information to their Web site (air carriers that do not have Web sites are excluded from this rule). This rule will benefit caregivers by making seat dimension information accessible, which in turn will allow them to determine if a particular CRS may fit in a seat of an aircraft. A caregiver may be inclined to purchase a separate ticket for a child under age 2 if the caregiver can reasonably expect that the child under age 2 can be secured in a CRS during flight.

The FAA considered several alternatives for determining the type of seat dimension information to be posted on air carrier Web sites.

One alternative required the width of each seat in each class of service for each individual airplane operated by an air carrier be posted on its Web site. While this alternative would provide the most precise information to caregivers, the FAA believes that

<sup>12</sup> See 70 FR 50266, Aug. 26, 2005. A copy of the Report to Congress has been placed in the docket.

<sup>13</sup> "Update of Safety Benefits & Tradeoffs Related to Requiring the Use of Child Restraint Systems on Aircraft for Children Less Than Two Years of Age" December, 2011. <http://www.dot.gov/faac/report/update-safety-benefits-tradeoffs-related>.

<sup>11</sup> Child Passenger Safety Forum, National Transportation Safety Board, December 9, 2010, Summary Report at page 3.



maintaining this much detail to be unnecessarily onerous for the air carriers because multiple seats of the same width can be found within each class of service. Further, in order for this information to be useful, there can be no change in a flight's equipment from the time a ticket is purchased to the time of the flight's departure.

Another alternative required air carriers to publish only one dimension — that of the narrowest seat across an air carrier's entire fleet. This alternative, however, would only allow a caregiver to determine if there may be a possibility of a particular CRS fitting a particular airline seat on a particular flight. The FAA believes that providing the dimension of the narrowest seat only across an entire fleet would not facilitate CRS use because a caregiver with a CRS larger than the narrowest seat may be discouraged from using a CRS, even though there may be wider seats available that could accommodate one. Therefore this approach would not meet the intent of Congress when it mandated disclosure of seat dimensions.

After considering the alternatives, the FAA decided that the information to be posted on air carrier Web sites should provide caregivers with data to facilitate CRS use but should not be overly burdensome for the air carriers. Based on these criteria and comments to the proposed rule, the final rule requires an air carrier to post on its Web site the width of the narrowest and widest seats for each make, model, and series of aircraft in each class of service in the air carrier's fleet. This level of detail is reasonable given that most air carriers already disclose other airplane-related dimensions on their Web sites, including dimensions for overhead bins, space underneath seats, maximum size of carry-on luggage, and maximum size for pet carriers. Because of the level of detail air carriers are already providing, the FAA believes the requirements of this rule to be a minimal impact to those part 121 air carriers conducting passenger-carrying operations.

In the proposed rule air carriers were required to provide only the dimension of the widest seat for each make, model, and series of aircraft. The FAA received no comments on the cost-benefit methodology and estimates.

To account for the inclusion of providing the narrowest seat dimension in addition to that of the widest, the costs of the final rule exceed those estimated for the proposed rule. The cost increase is a result of the additional workload required by staff to gather and post to an air carrier's Web site the dimension of the narrowest seat dimension for each make, model, and

series of aircraft operated by an air carrier, in addition to that of the widest. The FAA assumes that this activity does not impact the time estimated in the NPRM for management to verify that a carrier's Web site has been updated satisfactorily. Thus, adding the narrowest seat dimension to a carrier's Web site for the final rule increases present value costs beyond those of the NPRM by \$6,500 for the low case, and \$7,600 for the high case (in 2013 dollars).

The FAA reports there to be 81 part 121 air carriers;<sup>14</sup> however, only 58 of the 81 air carriers are impacted by this rule. Excluded from this rule's analysis are 21 cargo carriers; 1 air carrier that has ceased operations and filed for bankruptcy; and 1 air carrier that does not have an Internet Web site (air carriers that do not have Web sites do not need to comply with this rule).

To determine the cost of this rule, hours are estimated for each occupational job series<sup>15</sup> required to complete the task. The estimated hours are then multiplied by the United States Department of Labor Bureau of Labor Statistics (BLS) fully-burdened hourly wage rate for the corresponding occupational job series. Thus, the rule's total cost equals hours worked multiplied by hourly wages, summed across all part 121 air carriers affected by this rule. Further detail on the estimation of costs is provided below.

As the basis of costs for this rulemaking, the FAA used assumptions regarding job skills and labor hours from the regulatory analysis<sup>16</sup> for the DOT's "Enhancing Airline Passenger Protections"<sup>17</sup> rule. One provision of the DOT's rule required an air carrier to post on its Web site a tarmac delay plan and a customer commitment plan. The FAA believes that the skills and labor hours necessary to post seat dimension information to an air carrier's Web site are similar to those estimated for posting a tarmac delay plan and customer commitment plan. During the first year of the DOT's implementation of the "Enhancing Airline Passenger Protections" rule, it was estimated that it would take a computer programmer and a supervisor/manager a total of 8 hours to post the customer commitment plan and tarmac delay plan to an air

carrier's Web site. The FAA is using the DOT estimate as the basis for the time required for air carriers to comply with the seat dimension disclosure rule.

To show a range of costs for the 58 air carriers affected by this rulemaking, the FAA first estimated a low and high case of hours worked by staff (database and systems administrators) and management.<sup>18</sup> The estimated hours consist of two components: Base hours and variable hours. The base hour component is applicable to both staff and management. For staff, base hours represent the time it takes to identify the tasks required to post seat dimension disclosure information to an air carrier's Web site. For management, base hours represent the time expended verifying that Web sites are in compliance with this rulemaking. Base hours are assumed to be equal across all air carriers.

The variable hour component is only applicable to the staff labor group. It accounts for the incremental labor required to make Web sites compliant to this rule for air carriers operating a fleet of multiple aircraft makes, models, and series, versus those that may operate only one make, model, and series of aircraft. Thus, the variable hour component increases for each make, model and series of aircraft operated by an individual carrier. Total costs of this rule are calculated by multiplying the hours expended for each of the labor groups by their respective hourly compensation, which are then summed across all carriers.

Following is a more detailed description of the estimated hours and costs by labor group. It is important to note that even for the high case, this final rule is still expected to be minimal cost.

#### Estimate of Hours for Year 1

The FAA expects the time required for an air carrier to revise its Web site to include seat dimension information is most labor intensive during the first year of the rule's implementation. The estimated hours to comply with this rule include work performed by the staff and management labor groups.

*Staff Hours:* As in the NPRM, the low and high case base hour component for staff labor totals 8 and 16 hours, respectively, for each of the 58 air carriers. However, the variable hour

<sup>14</sup> FAA data from Q4, FY 2014.

<sup>15</sup> Based on United States Department of Labor, Bureau of Labor Statistics Occupational Codes.

<sup>16</sup> Final Regulatory Analysis, Consumer Rulemaking: Enhancing Airline Passenger Protections II at p. 43. This document can be found in Docket No. DOT-OST-2010-0140 or at <http://www.regulations.gov/#/documentDetail;D=DOT-OST-2010-0140-2046>.

<sup>17</sup> 76 FR 23110, April 25, 2011.

<sup>18</sup> To estimate costs for this rule, labor hours are composed of staff hours and management hours. Staff hours are assumed to be performed by BLS Job Series 15-1140—Database and Systems Administrators and Network Architects. Management hours are performed by BLS Job Series 15-3021—Computer and Information Systems Managers.

component used to estimate costs for the NPRM is doubled for the final rule, going from 0.5 hours per make, model and series of aircraft in an air carrier's fleet to 1.0 hour. The doubling of this component is based on the FAA decision to require air carriers to disclose on their Web sites the width of the narrowest seat for each make, model, and series of aircraft, in addition to the requirement for air carriers to disclose the width of the widest seat. The variable hour component does not vary between the low and high case.

As an example, an air carrier operating 3 make, model, and series of aircraft will expend 11 hours complying with this rule for the low case and 19 hours for the high case.<sup>19</sup> In the low case, the 11 hours is made up of 8 base

hours plus 3 variable hours (1 variable hour for each of the 3 make, model, and series of aircraft). In the high case, base hours are doubled to 16 hours, while the variable hours remain the same as in the low case at 3 hours, for a total of 19 hours.

*Management Hours:* Management oversight is required by each air carrier to verify that the update to the Web site has been completed satisfactorily. As in the NPRM, it is assumed that each of the 58 Web sites will require two hours of management review time to verify accuracy of data. This assumption is the same for both the low and high case.

Estimate of Hours for Years 2 Through 10

For years 2 through 10, the FAA determined that less time is required,

relative to year 1, to maintain the accuracy of seat dimension information posted to an air carrier's Web site. During this timeframe, it is established that air carriers with Web sites have already posted seat dimension information; thus air carriers may only need to revise the data periodically.

*Staff Hours:* For the low case, we use the same NPRM estimate of four staff hours annually for posting revised data. For the high case, staff hours worked are double that of the low case, for a total of 8 staff hours per year.

*Management Hours:* Management hours required for oversight during years 2 through 10 is estimated to be one hour per year. This estimate is the same for both the low and high case.

TABLE 1—ASSUMPTIONS: HOURS REQUIRED PER AIR CARRIER TO REVISE WEBSITE [Years 1–10]

Year of rule	Low case			High case		
	Staff base hours	Mgmt. base hours	Variable hours	Staff base hours	Mgmt. base hours	Variable hours
1 .....	8.0	2.0	* 1.0	16.0	same as low case ..	same as low case.
2–10 .....	4.0	1.0	N/A	8.0	same as low case ..	N/A.

\* This example is representative of a carrier with one make, model and series of aircraft. This number increases based on the count of different aircraft makes, models, and series.

Staff and Management Wages—Years 1 Through 10

The total cost for air carriers to comply with this rule is the sum of compensation paid<sup>20</sup> to staff and management for hours worked. The FAA determined, based on BLS job titles,<sup>21</sup> that staff work is performed by Database and System Administrators

and Network Architects (BLS Job Series 15–1140), and manager oversight is performed by Computer and Information Systems Managers (BLS Job Series 11–3021).

Since BLS reports average labor costs for scheduled air carriers independently of those for nonscheduled air carriers, estimated hours worked are tallied

individually as well. Of the 58 Web sites in this analysis, 42 are for air carriers engaged in scheduled operations while the remaining 16 Web sites are for air carriers engaged in nonscheduled operations. The following table shows the fully-burdened rates used to estimate costs for the scheduled and nonscheduled air carrier groups.

TABLE 2—ASSUMPTIONS: HOURLY WAGE AND BENEFITS COMPENSATION \*

NAICS **	Job series	Job category	Job title	Hourly wage	Benefits ***	Total hourly compensation
481100 Scheduled Air Transportation.	15–1140	Staff .....	Database and System Administrators and Network Architects.	\$44.97	\$19.00	\$63.97
	11–3021	Mgmt. ....	Computer and Information System Managers.	\$63.37	\$26.77	\$90.14
481200 Nonscheduled Air Transportation.	15–1140	Staff .....	Database and System Administrators and Network Architects.	\$35.21	\$14.88	\$50.09
	11–3021	Mgmt. ....	Computer and Information System Managers.	\$53.43	\$22.57	\$76.00

\* Source: U.S. Department of Labor, Bureau of Labor Statistics April 2014 Occupational Employment Statistics Survey (released in May 2013) ([www.bls.gov/oes/tables.htm](http://www.bls.gov/oes/tables.htm)).

\*\* North American Industry Classification System—US Census Bureau.

\*\*\* Source: U.S. Department of Labor, Bureau of Labor Statistics News Release dated June 12, 2014 “Employer Costs for Employee Compensation—March 2013” Page 3—Table A. Hourly wage rates are 70.3 percent of total hourly compensation. ([http://www.bls.gov/news.release/archives/ecec\\_06122013.pdf](http://www.bls.gov/news.release/archives/ecec_06122013.pdf)).

<sup>19</sup> For example, for an A319–100, the make is Airbus; the model is 319; the series is 100.

<sup>20</sup> Total hourly compensation is the sum of wages plus benefits.

<sup>21</sup> As reported in the April 2014 Occupational Employment Statistics Survey.

For the low case, multiplying hours required annually for each carrier to comply with this rule by the fully-burdened hourly wage rate over a ten-year period (and summed across all 58 air carriers) totals approximately \$219 thousand in 2013 dollars (\$161

thousand at 7 percent present value). For the high case, the rule costs approximately \$373 thousand (\$272 thousand at 7 percent present value), when summed across all carriers. This compares to operating revenues totaling just under \$165 billion for 54 reporting

air carriers (operating revenues for 4 of the air carriers affected by this rule were not available). Tables 3 and 4 summarize the low and high case costs for years 1 through 10. The FAA considers these costs to be minimal.

TABLE 3—LOW CASE COST ESTIMATE

[In thousands of 2013 dollars]

Year	1	2	3	4	5	6	7	8	9	10	Total cost
Scheduled Air Carrier:											
Staff Compensation .....	\$30.7	\$10.7	\$10.7	\$10.7	\$10.7	\$10.7	\$10.7	\$10.7	\$10.7	\$10.7	\$127.4
Management Compensation .....	7.6	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	41.6
Nonscheduled Air Carrier:											
Staff Compensation .....	\$7.9	\$3.2	\$3.2	\$3.2	\$3.2	\$3.2	\$3.2	\$3.2	\$3.2	\$3.2	\$36.7
Management Compensation .....	2.4	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	13.4
Total Costs .....	\$48.6	\$19.0	\$19.0	\$19.0	\$19.0	\$19.0	\$19.0	\$19.0	\$19.0	\$19.0	\$219.2
Present Value—7% .....	45.4	16.6	15.5	14.5	13.5	12.6	11.8	11.0	10.3	9.6	160.8

TABLE 4—HIGH CASE COST ESTIMATE

[In thousands of 2013 dollars]

Year	1	2	3	4	5	6	7	8	9	10	Total cost
Scheduled Air Carrier:											
Staff Compensation .....	\$52.2	\$21.5	\$21.5	\$21.5	\$21.5	\$21.5	\$21.5	\$21.5	\$21.5	\$21.5	\$245.6
Management Compensation .....	7.6	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	41.6
Nonscheduled Air Carrier:											
Staff Compensation .....	\$14.3	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$72.0
Management Compensation .....	2.4	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	13.4
Total Costs .....	\$76.5	\$32.9	\$32.9	\$32.9	\$32.9	\$32.9	\$32.9	\$32.9	\$32.9	\$32.9	\$372.6
Present Value—7% .....	71.5	28.7	26.9	25.1	23.5	21.9	20.5	19.2	17.9	16.7	271.8

In comparison, NPRM costs in 2013 dollars totaled \$211 thousand for the low case (\$154 thousand at 7 percent present value), and \$362 thousand for the high case (\$264 thousand at 7 percent present value).

This final rule addresses Congressional direction that requires air carriers to make available on their Web sites information to enable passengers to determine which child restraint system can be used on airplanes in passenger carrying operations. Industry comments to the NPRM generally support the changes required by Congress. Since this rule is mandated by Congress, the FAA believes that the benefits exceed the costs.

**B. Regulatory Flexibility Determination**

The Regulatory Flexibility Act (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to

regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration (SBA) small entity size standard for air carriers is 1,500 employees or less. Of the 58 part 121 air carriers analyzed for this rule, 23 are classified as large entities and 27 as small entities.<sup>22</sup> Employment statistics for the 8 remaining air carriers are not available; however, for purposes of the regulatory flexibility analysis, it is assumed that these 8 air carriers are small entities (for a total of 35 small entities). Since a majority of the air carriers analyzed for this rule are classified as small entities, the rule is expected to impact a substantial number of small entities.

For this regulatory flexibility analysis, calendar year (CY) 2013 operating revenues<sup>23</sup> were compared to the

<sup>22</sup> Based on air carrier filings to the U.S. Department of Transportation on Form 41, Schedule P10 “Employment Statistics by Labor Category” For the air carriers that did not provide employment statistics to the U.S. Department of Transportation, the Web site [www.aviationreferencedesk.com](http://www.aviationreferencedesk.com) was used.

<sup>23</sup> Based on air carrier filings to the U.S. Department of Transportation on Form 41,

estimated compliance cost for the high case during year 1 of the rule. Of the 35 air carriers considered to be small entities, operating revenue data were only available for 31 of them. For the 31 air carriers reporting financial data to the BTS, the highest compliance cost of this final rule for any one carrier was estimated to be \$1,524 in 2013 dollars and no greater than .06 percent of any carrier's CY 2013 operating revenues. The FAA believes a compliance cost of .06 percent relative to annual revenue is not a significant economic impact. There were no comments to the NPRM concerning the determination of no significant economic impact made in the initial regulatory flexibility determination. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

**C. Unfunded Mandates Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is

deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II do not apply.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the Paperwork Reduction Act of 1995 and regulations implementing the Act (5 CFR part 1320), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these information collection amendments to OMB for its review. OMB approved these new information collection requirements associated with this final rule and assigned OMB Control Number 2120-0760.

**Summary:** The rule will require air carriers conducting domestic, flag, and supplemental operations to make available on their Web sites the width

of the narrowest and widest passenger seats in each class of service for each airplane make, model, and series, used in passenger-carrying operations. This rule amends 14 CFR 121.311.

**Use:** This rule is intended to facilitate CRS use onboard airplanes. This rule will provide greater information to caregivers to help them determine whether a particular CRS will fit on a particular airplane.

**Respondents (including number of):** Respondents include each affected part 121 scheduled and nonscheduled passenger-carrying air carrier, which are 58.

**Frequency:** Each affected air carrier must comply with this rule. Once this rule is initially implemented, the only time air carriers would need to update their Web sites would be when a new airplane make, model, or series is introduced or when the narrowest or widest seat in a class of service in a currently listed make, model, or series of airplane is replaced with a larger or smaller seat.

**Annual Burden Estimate:** All of the costs accounted for in the economic analysis for this rulemaking relate to the information collection burden. A summary of the annual burden estimate for the low case and the high case expected to result from this final rule for years 1, 2, and 3 by carrier type (scheduled and nonscheduled) is provided in the tables below.

**TABLE 5—TOTAL PAPERWORK HOURS FOR YEARS 1, 2 AND 3 BY CARRIER TYPE**  
[Scheduled vs. Nonscheduled]

Hours	Hours								
	Scheduled carriers			Nonscheduled carriers			Total hours		
	Staff	Mgmt	Total	Staff	Mgmt	Total	Staff	Mgmt	Total
Low Case:									
Year 1 .....	480	84	564	157	32	189	637	116	753
Year 2-3 .....	168	42	210	64	16	80	232	58	290
High Case:									
Year 1 .....	816	84	900	285	32	317	1,101	116	1,217
Year 2-3 .....	336	42	378	128	16	144	464	58	522

**TABLE 6—TOTAL PAPERWORK COSTS FOR YEARS 1, 2 AND 3 BY CARRIER TYPE**  
[Scheduled vs. Nonscheduled]

Costs	Costs (in 2013 dollars)									
	Scheduled carriers			Nonscheduled carriers			Total costs			
	Staff	Mgmt	Total	Staff	Mgmt	Total	Staff	Mgmt	Total	Present value (7%)
Low Case:										
Year 1 .....	\$30,706	\$7,572	\$38,278	\$7,864	\$2,432	\$10,296	\$38,570	\$10,004	\$48,574	\$45,396

TABLE 6—TOTAL PAPERWORK COSTS FOR YEARS 1, 2 AND 3 BY CARRIER TYPE—Continued  
[Scheduled vs. Nonscheduled]

Costs	Costs (in 2013 dollars)									
	Scheduled carriers			Nonscheduled carriers			Total costs			
	Staff	Mgmt	Total	Staff	Mgmt	Total	Staff	Mgmt	Total	Present value (7%)
Year 2 .....	10,747	3,786	14,533	3,206	1,216	4,422	13,953	5,002	18,955	16,556
Year 3 .....	10,747	3,786	14,533	3,206	1,216	4,422	13,953	5,002	18,955	15,473
High Case:										
Year 1 .....	\$52,200	\$7,752	\$59,772	\$14,276	\$2,432	\$16,708	\$66,476	\$10,004	\$76,480	\$71,476
Year 2 .....	21,494	3,786	25,280	6,412	1,216	7,628	27,905	5,002	32,907	28,743
Year 3 .....	21,494	3,786	25,280	6,412	1,216	7,628	27,905	5,002	32,907	26,862

Additional detail regarding the annual burden is provided in the regulatory evaluation discussion provided in this preamble (Section VI. Regulatory Notices and Analyses, A. Regulatory Evaluation) as well as the Supporting Statement for Paperwork Reduction Act Submissions associated with this rulemaking.

The agency did not receive any public comments on this rule’s information collection requirements.

*E. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and has determined that it follows the direction of Congress, which may improve safety and thus is not considered as an unnecessary obstacle to foreign commerce.

*F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and

Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

*G. Executive Order 13609, Promoting International Regulatory Cooperation*

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will have no effect on international regulatory cooperation.

*H. Environmental Analysis*

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–5.6 and involves no extraordinary circumstances.

**VII. Executive Order Determinations**

*A. Executive Order 13132, Federalism*

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore,

would not have Federalism implications.

*B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it will not be a “significant energy action” under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

**VIII. Additional Information**

*A. Comments Submitted to the Docket*

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA’s dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

*B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
3. Accessing the Government Printing Office’s Federal Digital System at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or

by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

**List of Subjects**

*14 CFR Part 11*

Reporting and recordkeeping requirements.

14 CFR Part or section identified and described

Current OMB control number

*	*	*	*	*	*	*	*	*							
Part 121 .....	2120-0008,	2120-0028,	2120-0535,	2120-0571,	2120-0600,	2120-0606,	2120-0614,	2120-0616,	2120-0631,	2120-0651,	2120-0653,	2120-0691,	2120-0702,	2120-0739,	2120-0760
*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

**PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

■ 3. The authority citation for part 121 is revised to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112-95, sec. 412, 126 Stat. 89, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44729, 44732; 46105; Pub. L. 111-216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112-95 126 Stat 62 (49 U.S.C. 44732 note).

■ 4. In § 121.311, add paragraph (k) to read as follows:

**§ 121.311 Seats, safety belts, and shoulder harnesses.**

\* \* \* \* \*

(k) *Seat dimension disclosure.* (1) Each air carrier that conducts operations under this part and that has a Web site must make available on its Web site the width of the narrowest and widest passenger seats in each class of service for each airplane make, model and series operated by that air carrier in passenger-carrying operations.

(2) For purposes of paragraph (k)(1) of this section, the width of a passenger seat means the distance between the inside of the armrests for that seat.

■ 5. In § 121.583, revise paragraph (a) introductory text to read as follows:

**§ 121.583 Carriage of persons without compliance with the passenger-carrying requirements of this part.**

(a) When authorized by the certificate holder, the following persons, but no

*14 CFR Part 121*

Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

**PART 11—GENERAL RULEMAKING PROCEDURES**

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701-44702, 44711, and 46102.

■ 2. In § 11.201, in paragraph (b), revise the entry to Part 121 to read as follows:

**§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

others, may be carried aboard an airplane without complying with the passenger-carrying airplane requirements in §§ 121.309(f), 121.310, 121.391, 121.571, and 121.587; the passenger-carrying operation requirements in part 117 and §§ 121.157(c) and 121.291; the requirements pertaining to passengers in §§ 121.285, 121.313(f), 121.317, 121.547, and 121.573; and the information disclosure requirements in § 121.311(k):

\* \* \* \* \*

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f), 44701(a), and 49 U.S.C. 42301 preceding note added by Public Law 112-95, sec. 412, 126 Stat. 89, on September 18, 2015.

**Michael P. Huerta,**  
*Administrator.*

[FR Doc. 2015-24720 Filed 9-29-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. FAA-2015-0309; Special Conditions No. 25-594-SC]

**Special Conditions: Boeing Model 747-8, Dynamic Test Requirements for Single-Occupant, Oblique (Side-Facing) Seats With Airbag Devices**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 747-8 airplanes. This airplane will have novel or unusual design features associated with oblique-angled, single-occupant seats equipped with airbag systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 30, 2015. We must receive your comments by November 16, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2015-0309 using any of the following methods:  
*Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

*Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC, 20590-0001.

*Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Shelden, Airframe and Cabin Safety, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2785; facsimile 425-227-1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special

conditions based on the comments we receive.

#### Background

On February 3, 2014, the Boeing Company applied for an amendment to Type Certificate no. A20WE to allow installation of single-occupant, oblique-angled (side-facing) seats with airbag devices in Boeing Model 747-8 airplanes.

Boeing requested special conditions to allow installation of oblique business-class passenger seats in the Boeing Model 747-8 airplane. The seating configuration Boeing proposes in Certification Plan no. 15090, "Installation of Business Class Zodiac Seats and Furniture for 747-8 TRX RC076," consists of Zodiac Cirrus III model side-facing, pod-style, business-class seats (with surrounding shells and front-row furniture) installed at an angle of up to 30 degrees to the airplane longitudinal centerline. These seats will include inflatable restraint (airbag) systems for occupant restraint and injury protection.

The Model 747-8 airplane, a derivative of the Model 747-400 airplane, is a bi-level, wide-body airplane powered by four wing-mounted General Electric GENx-2B engines. The airplane will have a maximum seating capacity of 605 passengers and two crew members, and a maximum takeoff weight of 987,000 pounds.

#### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 747-8 airplane meets the applicable provisions of the regulations listed in Type Certificate no. A20WE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the "original type certification basis." The regulations listed in Type Certificate no. A20WE are as follows:

14 CFR part 25, Amendments 25-1 through 25-120, with exceptions permitted by § 21.101. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 747-8 airplanes because of a novel or unusual design

feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747-8 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

#### Novel or Unusual Design Features

The business-class seating configuration Boeing proposes is novel or unusual due to the seat installation at 30 degrees to the airplane centerline, the airbag-system installation, and the seat/occupant interface with the surrounding furniture that introduces occupant alignment and loading concerns. The proposed business-class seating configuration also is beyond the limits of current acceptable equivalent-level-of-safety findings.

Ongoing research is progressing to establish acceptable limits. Until those limits become available, the FAA proposes a set of interim limits based on the current literature available, current National Highway Traffic Safety Administration (NHTSA) regulations, and preliminary test data from the research program.

The existing regulations do not provide adequate or appropriate safety standards for occupants of oblique-angled seats with airbag systems. To provide a level of safety that is equivalent to that afforded occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement part 25 and, more specifically, supplement §§ 25.562 and 25.785. The requirements contained in these special conditions consist of both test conditions and injury pass/fail criteria.

## Discussion

Amendment 25–15 to part 25, dated October 24, 1967, introduced the subject of side-facing seats, and a requirement that each occupant in a side-facing seat must be protected from head injury by a safety belt and a cushioned rest that will support the arms, shoulders, head, and spine.

Subsequently, Amendment 25–20, dated April 23, 1969, clarified the definition of side-facing seats to require that each occupant of a seat, positioned at more than an 18-degree angle to the vertical plane of the airplane longitudinal centerline, must be protected from head injury by a safety belt and an energy-absorbing rest that will support the arms, shoulders, head, and spine; or by a safety belt and shoulder harness that will prevent the head from contacting any injurious object. The FAA concluded that an 18-degree angle would provide an adequate level of safety based on tests that were performed at that time, and thus adopted that standard.

Part 25 was amended June 16, 1988, by Amendment 25–64, to revise the emergency-landing conditions that must be considered in the design of the airplane. Amendment 25–64 revised the static-load conditions in 14 CFR 25.561, and added the new § 25.562 that requires dynamic testing for all seats approved for occupancy during takeoff and landing. The intent of Amendment 25–64 is to provide an improved level of safety for occupants on transport-category airplanes. Because most seating is forward-facing on transport-category airplanes, the pass/fail criteria developed in Amendment 25–64 focused primarily on these seats. As a result, the FAA issued Policy Memorandums ANM–03–115–30 and PS–ANM–100–2000–00123 to provide the additional guidance necessary to demonstrate the level of safety required by the regulations for side-facing seats.

To reflect current research findings, the FAA developed a methodology to address all fully side-facing seats (*i.e.*, seats positioned in the airplane with the occupant facing 90 degrees to the vertical plane of the airplane centerline), and has documented those requirements in a set of new special conditions. The FAA issued Policy Statement PS–ANM–25–03–R1 to define revised injury criteria associated with neck and leg injuries.

The proposed Model 747–8, a Transaero Airlines business-class seat installation, is novel such that the current Model 747–8 airplane certification basis does not adequately address protection of the occupant's

neck and spine for seat configurations that are positioned at an angle greater than 18 degrees from the airplane centerline. Therefore, The Boeing Company's proposed configuration will require new special conditions.

These special conditions will provide head injury criteria, neck injury criteria, spine injury criteria, and body-to-wall contact criteria. They contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

## Applicability

These special conditions are applicable to the Boeing Model 747–8 airplanes configured with the business-class seating defined in Boeing Certification Plan. Should Boeing apply at a later date for a change to the type certificates to include another model incorporating the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

## Conclusion

This action affects only certain novel or unusual design features on one model airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 747–8 airplane.

### Side-Facing Seats Special Conditions

In addition to the requirements of § 25.562:

#### 1. Head Injury Criteria.

Compliance with § 25.562(c)(5) is required, except that, if the anthropomorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a head-injury criterion (HIC) unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

#### 2. Body-to-Wall/Furnishing Contact.

If a seat is installed aft of structure (*e.g.*, an interior wall or furnishing) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area that an occupant could contact. For example, if different yaw angles could result in different airbag performance, then additional analysis or separate test(s) may be necessary to evaluate performance.

#### 3. Neck Injury Criteria.

The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

a. The  $N_{ij}$  (calculated in accordance with 49 CFR 571.208) must be below 1.0, where  $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$ , and  $N_{ij}$  critical values are:

- i.  $F_{zc} = 1530$  lb for tension
- ii.  $F_{zc} = 1385$  lb for compression
- iii.  $M_{yc} = 229$  lb-ft in flexion
- iv.  $M_{yc} = 100$  lb-ft in extension

b. In addition, peak  $F_z$  must be below 937 lb in tension and 899 lb in compression.

c. Rotation of the head about its vertical axis, relative to the torso, is limited to 105 degrees in either direction from forward-facing.

d. The neck must not impact any surface that would produce concentrated loading on the neck.

#### 4. Spine and Torso Injury Criteria

a. The shoulders must remain aligned with the hips throughout the impact



sequence, or support for the upper torso must be provided to prevent forward or lateral flailing beyond 45 degrees from the vertical during significant spinal loading. Alternatively, the lumbar spine tension ( $F_z$ ) cannot exceed 1200 lb.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X-direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE International (SAE) J211-1.

c. Occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

5. Longitudinal test(s), conducted to measure the injury criteria above, must be performed with the FAA Hybrid III ATD, as described in SAE 1999-01-1609. The test(s) must be conducted with an undeformed floor, at the most-critical yaw case(s) for injury, and with all lateral structural supports (armrests/walls) installed.

**Note:** Boeing must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in FAA Policy Memorandum PS-ANM-100-2000-00123, dated February 2, 2000, titled "Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets," is acceptable to the FAA.

### Inflatable Airbag Systems Special Conditions

If inflatable airbag systems are installed on single-place side-facing seats, the airbag systems must meet Special Conditions no. 25-589-SC.

Issued in Renton, Washington, on September 1, 2015.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-24724 Filed 9-29-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2015-2884; Special Conditions No. 25-595-SC]

#### Special Conditions: Embraer Model EMB-545 Airplanes; Seats With Inflatable Lap Belts

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Embraer Model EMB-545 airplanes. These airplanes will have a novel or unusual design feature associated with seats with inflatable lap belts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 30, 2015. We must receive your comments by November 16, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2015-2884 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC, 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's

complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057-3356; telephone (425) 227-2194, facsimile (425) 227-1232.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

#### Background

On October 14, 2010, Embraer S.A. applied for an amendment to Type Certificate No. TC00062IB to include the new Embraer Model EMB-545 airplane. These special conditions allow installation of inflatable lap belts for head-injury protection on certain seats in Embraer Model EMB-545 airplanes.

The Embraer Model EMB-545 airplane is a derivative of the Model EMB-550 airplane currently approved under Type Certificate No. TC00062IB.

As compared to the Model EMB-550, the Model EMB-545 fuselage is one meter shorter; the section ahead of the wing is 0.65 meters shorter; and the section aft of the wing is 0.40 meters shorter.

The fuselage length difference is in the pressurized section. The Model EMB-545 airplane is designed for an eight-passenger configuration and a maximum of nine passengers (including lavatory seat). Like the Model EMB-550, the Model EMB-545 airplane primary structure is aluminum. Materials other than aluminum will be used in areas with unique structural requirements. Advanced composites will be largely employed on the high-lift devices (two flaps), spoilers (three panels), and control surfaces (aileron). A winglet will be attached to each wing tip to further increase airplane aerodynamic efficiency. The empennage will be a swept T-tail composed of advanced composite material with metallic attachment fittings. The rudder and elevators also will be composed of composite material.

Two Honeywell HTF7500-E medium-bypass-ratio turbofan engines, mounted on aft-fuselage pylons, will power the Model EMB-545 airplane. Each engine will produce approximately 6,540 lbs. of thrust for normal takeoff. However, because the Model EMB-545 is smaller and lighter, software will regulate the thrust. The primary flight-control systems (elevators, ailerons, rudder, and multi-function spoilers) will be electronically controlled and powered by electrohydraulic servoactuators using digital fly-by-wire (FBW) technology. The FBW flight controls will receive commands directly from the cockpit dual sidesticks and conventional rudder pedals.

Occupants must be protected from head injury, as required by § 25.785, either by eliminating any injurious object within the striking radius of the head, or by installing padding. Traditionally, this has required either a setback of 35 inches from any bulkhead or other rigid interior feature or, where not practical, the installation of specified types of padding. The relative effectiveness of these established means of injury protection was not quantified. With the adoption of Amendment 25-64 to part 25, specifically § 25.562, a new standard was created that quantifies required head-injury protection.

Each seat-type design approved for crew or passenger occupancy during takeoff and landing, as required by § 25.562, must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests of a similar type seat. In particular, the

regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that protection must be provided, or the seat be designed, so that head impact does not exceed a HIC value of 1,000 units. While the test conditions described for HIC are detailed and specific, it is the intent of the requirement that an adequate level of head-injury protection be provided for passengers in a severe crash.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lap belts, the FAA recognizes that appropriate pass/fail criteria need to be developed that fully address the safety concerns specific to occupants of these seats.

#### Type Certification Basis

Under the provisions of 14 CFR 21.101, Embraer must show that the Model EMB-545 airplane meets the applicable provisions of the regulations listed in Type Certificate No. TC00062IB, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. TC00062IB are as follows:

14 CFR part 25, effective February 1, 1965, including Amendments 25-1 through 25-129, in their entirety. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Embraer Model EMB-545 airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model EMB-545 airplanes must comply with the fuel-

vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

#### Novel or Unusual Design Features

Embraer Model EMB-545 airplanes will incorporate the following novel or unusual design feature: seats with inflatable lap belts.

#### Discussion

The inflatable lap belt has two potential advantages over other means of head-impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, because such devices will likely provide a level of safety that exceeds the minimum standards of part 25. Conversely, inflatable lap belts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages to develop standards for this design feature.

The FAA has considered the installation of inflatable lap belts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions; and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

The inflatable lap belt will rely on electronic sensors for signaling, and will employ an automatic inflation mechanism for activation, so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. Embraer must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than  $10^{-9}$  per flight hour). The effect of an inadvertent deployment on a

passenger or crewmember that might be positioned close to the inflatable lap belt should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high-intensity radiated fields (HIRF). Existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are applicable. For compliance with those conditions, if inadvertent deployment could cause a hazard to the airplane, the inflatable lap belt is considered a critical system; if inadvertent deployment could cause injuries to persons, the inflatable lap belt should be considered an essential system. Finally, the inflatable lap-belt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of a pyrotechnic squib.

To function as an effective safety system, the inflatable lap belt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. The inflatable lap belt differs variously from traditional occupant-protection systems and requires special conditions to ensure adequate performance.

Because the inflatable lap belt is essentially a single-use device, it could potentially deploy under crash conditions that are not sufficiently severe as to require head-injury protection from the inflatable lap belt. And because an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable lap belt useless if a larger impact follows the initial impact. This situation does not exist with energy-absorbing pads or upper-torso restraints, which tend to provide continuous protection regardless of severity or number of impacts in a crash event. Therefore, the inflatable lap-belt installation should be such that the inflatable lap belt will provide protection when it is required, by not expending its protection during a less-severe impact. Also, it is possible to have several large impact events during the course of a crash, but there will be no requirement for the inflatable

lap belt to provide protection for multiple impacts.

Given that each occupant's restraint system provides protection for that occupant only, the installation must address unoccupied seats. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and that unoccupied seats may have lap belts that are active.

The inflatable lap belt should be effective for a wide range of occupants. The FAA has historically considered the range from the 5th percentile female to the 95th percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants due to the nature of the lap-belt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, so it would not be necessary to show that the inflatable lap belt will enhance the brace position. However, the inflatable lap belt must not introduce a hazard when it is deployed into a seated, braced occupant.

Another area of concern is the use of seats so equipped by children, whether they are lap-held, sitting in approved child-safety seats, or occupying the seat directly. Although specifically prohibited by FAA operating regulations, the use of the supplementary loop belt ("belly belt") may be required by other civil aviation authorities, and should also be considered with the end goal of meeting those regulations. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

The inflatable lap belt will be electrically powered. Likewise, the system could possibly fail due to a separation in the fuselage. Because this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the restraint system should function properly if such a separation occurs at any point in the fuselage.

Because the inflatable lap belt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. However, the lap-belt bag deflates to absorb energy, so it is likely that an inflatable lap belt would be deflated by the time passengers begin to leave their

seats. Nonetheless, it is appropriate to specify a time interval after which the inflatable lap belt may not impede rapid egress. The maximum time allowed for an exit to open fully after actuation is 10 seconds, according to § 25.809(b)(2). Therefore, the FAA has established 10 seconds as the time interval that the inflatable lap belt must not impede rapid egress from the seat after it is deployed. In actuality, it is unlikely that a flight attendant would prepare an exit this quickly in an accident severe enough to warrant deployment of the inflatable lap belt. The inflatable lap belt will likely deflate much more quickly than 10 seconds.

This potential impediment to rapid egress is even more critical at the seats installed in the emergency-exit rows. Installation of inflatable restraints at the Type III exit rows presents different egress concerns as compared with front-row seats. However, the need to address egress is already part of the special conditions, so there is no change to the special conditions at this time. As noted below, the method of compliance with the special conditions may involve specific considerations when an inflatable restraint is installed at Type III exits. Section 25.813 clearly requires access to the exit from the main aisle in the form of an unobstructed passageway, and no interference in opening the exit. The restraint system must not create an impediment to the access to, and the opening of, the exit. These lap belts should be evaluated in the exit row under existing regulations (§§ 25.809 and 25.813) and guidance material. The inflatable lap belts must also be evaluated in post-crash conditions, and should be evaluated using representative restraint systems in the bag-deployed condition.

This evaluation would include reviewing the access to, and opening of, the exit, specifically for obstructions in the egress path; and any interferences in opening the exit. Each unique interior configuration must be considered, *e.g.*, passageway width, single or dual passageways with outboard seat removed, etc. If the restraint creates any obstruction or interference, it is likely that it could impede rapid egress from the airplane. In some cases, the passenger is the one who will open the exit, such as a Type III over-wing hatch. Project-specific means-of-compliance guidance is likely necessary if these restraint systems are installed at the Type III exit rows.

Note that the special conditions are applicable to the inflatable lap-belt system as installed. The special conditions are not an installation approval. Therefore, while the special

conditions relate to each such system installed, the overall installation approval is separate, and must consider the combined effects of all such systems installed.

Embraer will install inflatable lap belts, a novel design feature, on certain seats of Model EMB-545 airplanes, to reduce the potential for head injury if an accident occurs. The inflatable lap belt works similar to an automotive inflatable air bag, except that the air bag in the Embraer design is integrated into the lap belt of the restraint system.

The performance criteria for head-injury protection in objective terms is stated in § 25.562. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lap belts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to the installation of seats with inflatable lap belts.

Accordingly, in addition to the passenger-injury criteria specified in § 25.785, these special conditions are proposed for Embraer Model EMB-545 airplanes equipped with inflatable lap belts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil-aviation authorities.

For a passenger-safety system, the inflatable lap belt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with inflatable air bags, the conditions of use and reliance on the inflatable lap belt as the sole means of injury protection are quite different. In automobile installations, the air bag is a supplemental system and works in conjunction with an upper-torso restraint. In addition, the crash event is more definable and typically of shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.). Airplanes also operate where exposure to HIRF could affect the lap-belt activation system.

Part I of Appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in Appendix F, because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on material types as well as use, and have been specified in light of

state-of-the-art materials available to perform a given function. Without a specific reference, the default requirement would apply to the type of material used in making the inflatable restraint, which is a fabric in this case. However, in writing special conditions, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable restraint means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints. Because the safety benefit of the inflatable restraint is significant, the flammability standard appropriate for these devices should not screen out suitable materials and thereby effectively eliminate the use of inflatable restraints. The FAA must establish a balance between the safety benefit of the inflatable restraint and its flammability performance. Presently, the 2.5-inch-per-minute horizontal test is considered to provide that balance. As the state-of-the-art in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

#### Applicability

These special conditions are applicable to Embraer Model EMB-545 airplanes. Should Embraer apply at a later date for a change to the type certificates to include another model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

#### Conclusion

This action affects only certain novel or unusual design features on Embraer Model EMB-545 airplanes. It is not a rule of general applicability, and it affects only Embraer Model EMB-545 airplanes listed on amended Type Certificate No. TC000621B.

#### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

#### The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the administrator, the following special conditions are issued as part of the type certification basis for Embraer Model EMB-545 airplanes with inflatable lap belts installed.

1. The inflatable lap belt must be shown to deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a 95th percentile male. The inflatable lap belt must provide a consistent approach to energy absorption throughout that range of occupants. In addition, the following situations must be considered.

The seat occupant is:

- holding an infant
- a child in a child-restraint device
- a child not using a child-restraint device
- a pregnant woman

2. The inflatable lap belt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have an active airbag system in the lap belt.

3. The design must prevent the inflatable lap belt from being either incorrectly buckled or incorrectly installed such that the inflatable lap belt would not properly deploy.

Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head-injury protection.

4. The inflatable lap-belt system must be shown not to be susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lap belt must not introduce injury mechanisms to the seated occupant, nor result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys, and an occupant whose inflatable lap belt is loosely fastened.

6. An inadvertent deployment that could cause injury to a standing or sitting person must be shown to be improbable.

7. It must be shown that inadvertent deployment of the airbag system in the lap belt, during the most critical part of the flight, either will not cause a hazard

to the airplane or its occupants, or meets the requirement of § 25.1309(b).

8. The inflatable lap belt must be shown to not impede rapid egress of occupants 10 seconds after its deployment.

9. The inflatable lap-belt system must be protected from lightning and HIRF. The threats specified in existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lap-belt system is considered a "critical system" if its deployment could have a hazardous effect on the airplane; otherwise it is considered an "essential" system.

10. The inflatable lap belt must function properly after loss of normal airplane electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lap belt does not have to be considered.

11. The inflatable lap belt must be shown to not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lap-belt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. A means must be available for a crewmember to verify the integrity of the inflatable-lap-belt-activation system prior to each flight, or it must be demonstrated to reliably operate between inspection intervals.

14. The inflatable material may not have an average burn rate of greater than 2.5 inches per minute when tested using the horizontal-flammability test as defined in 14 CFR part 25, Appendix F, Part I(b)(5).

15. The airbag system in the lap belt, once deployed, must not adversely affect the emergency-lighting system (*i.e.*, block floor-proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on September 2, 2015.

**Jeffrey E. Duven**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-24726 Filed 9-29-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2015-2392; Special Conditions No. 25-589-SC]

#### Special Conditions: Boeing Model 747-8 Airplanes; Seats With Inflatable Lap Belts

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 747-8 airplanes. These airplanes will have a novel or unusual design feature associated with seats with inflatable lap belts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 30, 2015. We must receive your comments by November 16, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2015-2392 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's

complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2194, facsimile (425) 227-1232.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

#### Background

On February 3, 2014, the Boeing Company applied for an amendment to Type Certificate no. A20WE to allow installation of inflatable lap belts for head-injury protection on certain seats in Boeing Model 747-8 airplanes.

The Model 747-8 airplane, a derivative of the Model 747-400 airplane, is a bi-level, wide-body airplane powered by four wing-mounted General Electric GENx-2B engines. The airplane will have a maximum seating

capacity of 605 passengers and two crew members, and a maximum takeoff weight of 987,000 pounds.

The Boeing Company requested special conditions to allow inflatable lap belts on Boeing Model 747–8 series airplanes, similar to Special Conditions no. 25–386–SC for Boeing Model 737 series airplanes; 25–187A–SC for Boeing Model 777 series airplanes; 25–148–SC for Boeing Model 767 series airplanes; and 25–431–SC for Boeing Model 787 series airplanes. These special conditions will allow installation of inflatable lap belts for head-injury protection on certain seats in Boeing Model 747–8 airplanes. Section 121.311(j) of 14 CFR requires that no person may operate a transport-category airplane type-certificated after January 1, 1958, and manufactured on or after October 27, 2009, in passenger-carrying operations after October 27, 2009, unless all passenger and flight-attendant seats on the airplane, operated under part 121 rules, meet the requirements of § 25.562 in effect on or after June 16, 1988.

The Boeing Model 747–8 airplane, operated under part 121, must meet all of the requirement of § 25.562 for passenger and flight-attendant seats. Therefore, it is in the interest of installers to show full compliance to § 25.562, so that an operator under part 121 may be able to use the airplane without having to conduct additional certification work. The FAA also notes that some foreign civil airworthiness authorities have invoked these same operator requirements in the form of airworthiness directives.

Occupants must be protected from head injury, as required by § 25.785, either by eliminating any injurious object within the striking radius of the head, or by installing padding. Traditionally, this has required either a setback of 35 inches from any bulkhead or other rigid interior feature or, where not practical, the installation of specified types of padding. The relative effectiveness of these established means of injury protection was not quantified. With the adoption of Amendment 25–64 to part 25, specifically § 25.562, a new standard was created that quantifies required head-injury protection.

Each seat-type design approved for crew or passenger occupancy during takeoff and landing, as required by § 25.562, must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests of a similar type seat. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that protection must be provided, or the

seat be designed, so that head impact does not exceed a HIC value of 1,000 units. While the test conditions described for HIC are detailed and specific, it is the intent of the requirement that an adequate level of head-injury protection be provided for passengers in a severe crash.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lap belts, the FAA recognizes that appropriate pass/fail criteria need to be developed that fully address the safety concerns specific to occupants of these seats.

#### Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 747–8 airplane meets the applicable provisions of the regulations listed in Type Certificate no. A20WE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the “original type certification basis.” The regulations incorporated by reference in Type Certificate no. A20WE are as follows:

14 CFR part 25, Amendments 25–1 through 25–120, with exceptions permitted by § 21.101. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 747–8 airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–8 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

#### Novel or Unusual Design Features

Boeing Model 747–8 airplanes will incorporate the following novel or unusual design feature: Seats with inflatable lap belts. The inflatable lap belt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criterion (HIC) measurement as required by Title 14, Code of Federal Regulations (14 CFR), 25.562(c)(5). The inflatable lap belt functions similarly to an automotive inflatable airbag, but in this case, the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While inflatable airbags are now standard in the automotive industry, the use of an inflatable lap belt is novel for commercial aviation.

#### Discussion

The inflatable lap belt has two potential advantages over other means of head-impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, because such devices will likely provide a level of safety that exceeds the minimum standards of part 25. Conversely, inflatable lap belts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages to develop standards for this design feature.

The FAA has considered the installation of inflatable lap belts to have two primary safety concerns: First, that they perform properly under foreseeable operating conditions; and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

The inflatable lap belt will rely on electronic sensors for signaling, and will employ an automatic inflation mechanism for activation, so that it is available when needed. These same devices could be susceptible to

inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. Boeing must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than  $10^{-9}$  per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the inflatable lap belt should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high-intensity radiated fields (HIRF). Existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are applicable. For compliance with those conditions, if inadvertent deployment could cause a hazard to the airplane, the inflatable lap belt is considered a critical system; if inadvertent deployment could cause injuries to persons, the inflatable lap belt should be considered an essential system. Finally, the inflatable lap-belt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of a pyrotechnic squib.

To function as an effective safety system, the inflatable lap belt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. The inflatable lap belt differs variously from traditional occupant-protection systems and requires special conditions to ensure adequate performance.

Because the inflatable lap belt is essentially a single-use device, it could potentially deploy under crash conditions that are not sufficiently severe as to require head-injury protection from the inflatable lap belt. And because an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable lap belt useless if a larger impact follows the initial impact. This situation does not exist with energy-absorbing pads or upper-torso restraints, which tend to

provide continuous protection regardless of severity or number of impacts in a crash event. Therefore, the inflatable lap-belt installation should be such that the inflatable lap belt will provide protection when it is required, by not expending its protection during a less-severe impact. Also, it is possible to have several large impact events during the course of a crash, but there will be no requirement for the inflatable lap belt to provide protection for multiple impacts.

Given that each occupant's restraint system provides protection for that occupant only, the installation must address unoccupied seats. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and that unoccupied seats may have lap belts that are active.

The inflatable lap belt should be effective for a wide range of occupants. The FAA has historically considered the range from the 5th percentile female to the 95th percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants due to the nature of the lap-belt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, so it would not be necessary to show that the inflatable lap belt will enhance the brace position. However, the inflatable lap belt must not introduce a hazard when it is deployed into a seated, braced occupant.

Another area of concern is the use of seats so equipped by children, whether they are lap-held, sitting in approved child-safety seats, or occupying the seat directly. Although specifically prohibited by FAA operating regulations, the use of the supplementary loop belt ("belly belt") may be required by other civil aviation authorities, and should also be considered with the end goal of meeting those regulations. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

The inflatable lap belt will be electrically powered. Likewise, the system could possibly fail due to a separation in the fuselage. Because this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the restraint system

should function properly if such a separation occurs at any point in the fuselage.

Because the inflatable lap belt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. However, the lap-belt bag deflates to absorb energy, so it is likely that an inflatable lap belt would be deflated by the time passengers begin to leave their seats. Nonetheless, it is appropriate to specify a time interval after which the inflatable lap belt may not impede rapid egress. The maximum time allowed for an exit to open fully after actuation is 10 seconds, according to § 25.809(b)(2). Therefore, the FAA has established 10 seconds as the time interval that the inflatable lap belt must not impede rapid egress from the seat after it is deployed. In actuality, it is unlikely that a flight attendant would prepare an exit this quickly in an accident severe enough to warrant deployment of the inflatable lap belt. The inflatable lap belt will likely deflate much more quickly than 10 seconds.

This potential impediment to rapid egress is even more critical at the seats installed in the emergency-exit rows. Installation of inflatable restraints at the Type III exit rows presents different egress concerns as compared with front-row seats. However, the need to address egress is already part of the special conditions, so there is no change to the special conditions at this time. As noted below, the method of compliance with the special conditions may involve specific considerations when an inflatable restraint is installed at Type III exits. Section 25.813 clearly requires access to the exit from the main aisle in the form of an unobstructed passageway, and no interference in opening the exit. The restraint system must not create an impediment to the access to, and the opening of, the exit. These lap belts should be evaluated in the exit row under existing regulations (§§ 25.809 and 25.813) and guidance material. The inflatable lap belts must also be evaluated in post-crash conditions, and should be evaluated using representative restraint systems in the bag-deployed condition.

This evaluation would include reviewing the access to, and opening of, the exit, specifically for obstructions in the egress path; and any interferences in opening the exit. Each unique interior configuration must be considered, e.g., passageway width, single or dual passageways with outboard seat removed, etc. If the restraint creates any obstruction or interference, it is likely that it could impede rapid egress from the airplane. In some cases, the

passenger is the one who will open the exit, such as a Type III over-wing hatch. Project-specific means-of-compliance guidance is likely necessary if these restraint systems are installed at the Type III exit rows.

Note that the special conditions are applicable to the inflatable lap-belt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is separate, and must consider the combined effects of all such systems installed.

Boeing will install inflatable lap belts, a novel design feature, on certain seats of Model 747-8 airplanes, to reduce the potential for head injury if an accident occurs. The inflatable lap belt works similar to an automotive inflatable air bag, except that the air bag in the Boeing design is integrated into the lap belt of the restraint system.

The performance criteria for head-injury protection in objective terms is stated in § 25.562. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lap belts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to the installation of seats with inflatable lap belts.

Accordingly, in addition to the passenger-injury criteria specified in § 25.785, these special conditions are proposed for the Boeing Model 747-8 airplanes equipped with inflatable lap belts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil-aviation authorities.

For a passenger-safety system, the inflatable lap belt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with inflatable air bags, the conditions of use and reliance on the inflatable lap belt as the sole means of injury protection are quite different. In automobile installations, the air bag is a supplemental system and works in conjunction with an upper-torso restraint. In addition, the crash event is more definable and typically of shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.). Airplanes also operate where exposure

to HIRF could affect the lap-belt activation system.

The current special conditions for the Boeing Model 777 airplane were amended to address flammability of the airbag material. During the development of the inflatable lap belt, the manufacturer was unable to develop a fabric that would meet the inflation requirements for the bag and the flammability requirements of part 25, Appendix F, Part I(a)(1)(ii). The fabrics that were developed that meet the flammability requirement did not produce acceptable deployment characteristics. However, the manufacturer was able to develop a fabric that not only meets the flammability requirements of part 25, Appendix F, Part I(a)(1)(ii), but also has acceptable deployment characteristics.

Part I of Appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in Appendix F, because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on material types as well as use, and have been specified in light of state-of-the-art materials available to perform a given function. Without a specific reference, the default requirement would apply to the type of material used in making the inflatable restraint, which is a fabric in this case. However, in writing special conditions, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable restraint means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints. Because the safety benefit of the inflatable restraint is significant, the flammability standard appropriate for these devices should not screen out suitable materials and thereby effectively eliminate the use of inflatable restraints. The FAA must establish a balance between the safety benefit of the inflatable restraint and its flammability performance. Presently, the 2.5-inch-per-minute horizontal test is considered to provide that balance. As the state-of-the-art in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to

that established by the existing airworthiness standards.

### Applicability

These special conditions are applicable to the Boeing Model 747-8 airplanes. Should Boeing apply at a later date for a change to the type certificates to include another model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

### Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747-8 airplanes. It is not a rule of general applicability, and it affects only Boeing Model 747-8 airplanes listed on amended Type Certificate no. A20WE.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747-8 airplanes with inflatable lap belts installed.

1. The inflatable lap belt must be shown to deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a 95th percentile male. The inflatable lap belt must provide a consistent approach to energy absorption throughout that range of occupants. In addition, the following situations must be considered.

The seat occupant is:

- Holding an infant
- a child in a child-restraint device
- a child not using a child-restraint device
- a pregnant woman

2. The inflatable lap belt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have an active airbag system in the lap belt.

3. The design must prevent the inflatable lap belt from being either incorrectly buckled or incorrectly



installed such that the inflatable lap belt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head-injury protection.

4. The inflatable lap-belt system must be shown not to be susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lap belt must not introduce injury mechanisms to the seated occupant, nor result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys, and an occupant whose inflatable lap belt is loosely fastened.

6. An inadvertent deployment that could cause injury to a standing or sitting person must be shown to be improbable.

7. It must be shown that inadvertent deployment of the airbag system in the lap belt, during the most critical part of the flight, either will not cause a hazard to the airplane or its occupants, or meets the requirement of § 25.1309(b).

8. The inflatable lap belt must be shown to not impede rapid egress of occupants 10 seconds after its deployment.

9. The inflatable lap-belt system must be protected from lightning and HIRF. The threats specified in existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lap-belt system is considered a "critical system" if its deployment could have a hazardous effect on the airplane; otherwise it is considered an "essential" system.

10. The inflatable lap belt must function properly after loss of normal airplane electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lap belt does not have to be considered.

11. The inflatable lap belt must be shown to not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lap-belt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. A means must be available for a crewmember to verify the integrity of the inflatable-lap-belt-activation system prior to each flight, or it must be

demonstrated to reliably operate between inspection intervals.

14. The inflatable material may not have an average burn rate of greater than 2.5 inches per minute when tested using the horizontal-flammability test as defined in 14 CFR part 25, Appendix F, Part I(b)(5).

15. The airbag system in the lap belt, once deployed, must not adversely affect the emergency-lighting system (*i.e.*, block floor-proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on September 1, 2015.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-24725 Filed 9-29-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2015-3367; Special Conditions No. 25-596-SC]

#### Special Conditions: Flight Structures, Inc., Boeing Model 777-200 Dynamic Test Requirements for Single-Occupant, Oblique (Side-Facing) Seats With Airbag Devices

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 777-200 airplanes. This airplane, as modified by Flight Structures, Inc., will have novel or unusual design features associated with oblique-angled, single-occupant seats equipped with airbag systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 30, 2015. We must receive your comments by November 16, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2015-3367 using any of the following methods:

*Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

*Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC, 20590-0001.

*Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Sheldon, Airframe and Cabin Safety, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2785; facsimile 425-227-1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

## Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

## Background

On July 7, 2014, Flight Structures, Inc., applied for a supplemental type certificate to allow the installation of oblique business-class passenger seats, positioned at 32.5 degrees to the vertical plane of the airplane longitudinal centerline, and to include inflatable lap belts, in Boeing Model 777–200 airplanes.

The seating configuration Flight Structures, Inc., proposes in certification plan No. B3FS332–D10 includes the installation of TSO–39c-approved, Zodiac Aries model, side-facing, pod-style, business-class seats (with surrounding shells and front-row furniture), installed at an angle of up to 32.5 degrees to the airplane longitudinal centerline. These seats will include restraint (airbag) systems for occupant restraint and injury protection.

The Boeing Model 777–200 airplane, approved under Type Certificate No. T00001SE, is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport airplane, with seating capacity for 440 passengers.

## Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Flight Structures, Inc., must show that the Model 777–200 airplane, as changed, meets the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the “original type-certification basis.” The regulations listed in Type Certificate No. T00001SE are as follows:

14 CFR part 25, Amendments 25–1 through 25–82, with exceptions listed in the type-certification data sheet. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 777–200 airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–200 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

## Novel or Unusual Design Features

The business-class seating configuration Flight Structures, Inc., proposes is novel and unusual due to the seat installation at 32.5 degrees to the aircraft centerline, the airbag-system installation, and the seat/occupant interface with the surrounding furniture that introduces occupant alignment and loading concerns. The proposed business-class seating configuration also is beyond the limits of current acceptable equivalent-level-of-safety findings.

Ongoing research is progressing to establish acceptable limits. Until those limits become available, the FAA proposes a set of interim limits based on the current literature available, current National Highway Traffic Safety Administration (NHTSA) regulations, and preliminary test data from the research program.

The existing regulations do not provide adequate or appropriate safety standards for occupants of oblique-angled seats with airbag systems. To provide a level of safety that is equivalent to that afforded occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement part 25 and, more specifically, supplement §§ 25.562 and 25.785. The requirements contained in these special conditions consist of both test conditions and injury pass/fail criteria.

## Discussion

Amendment 25–15 to part 25, dated October 24, 1967, introduced the subject of side-facing seats, and a requirement that each occupant in a side-facing seat must be protected from head injury by a safety belt and a cushioned rest that will support the arms, shoulders, head, and spine.

Subsequently, Amendment 25–20, dated April 23, 1969, clarified the definition of side-facing seats to require that each occupant of a seat, positioned at more than an 18-degree angle to the vertical plane of the airplane longitudinal centerline, must be protected from head injury by a safety belt and an energy-absorbing rest that will support the arms, shoulders, head, and spine; or by a safety belt and shoulder harness that will prevent the head from contacting any injurious object. The FAA concluded that an 18-degree angle would provide an adequate level of safety based on tests that were performed at that time, and thus adopted that standard.

Part 25 was amended June 16, 1988, by Amendment 25–64, to revise the emergency-landing conditions that must be considered in the design of the airplane. Amendment 25–64 revised the static-load conditions in 14 CFR 25.561, and added the new § 25.562 that requires dynamic testing for all seats approved for occupancy during takeoff and landing. The intent of Amendment 25–64 is to provide an improved level of safety for occupants on transport-category airplanes. Because most seating is forward-facing on transport-category airplanes, the pass/fail criteria developed in Amendment 25–64 focused primarily on these seats. As a result, the FAA issued Policy Memorandums ANM–03–115–30 and PS–ANM–100–2000–00123 to provide the additional guidance necessary to demonstrate the level of safety required by the regulations for side-facing seats.

To reflect current research findings, the FAA developed a methodology to address all fully side-facing seats (*i.e.*, seats positioned in the airplane with the occupant facing 90 degrees to the vertical plane of the airplane centerline), and has documented those requirements in a set of new special conditions. The FAA issued Policy Statement PS–ANM–25–03–R1 to define revised injury criteria associated with neck and leg injuries.

The proposed Model 777–200 airplane business-class seat installation is novel such that the current Model 777–200 airplane certification basis does not adequately protect the occupant’s neck and spine for seat

configurations that are positioned at an angle greater than 18 degrees from the airplane centerline. Therefore, the Flight Structures, Inc., proposed configuration will require new special conditions.

These special conditions will provide head injury criteria, neck injury criteria, spine injury criteria, and body-to-wall contact criteria. They contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

### Applicability

These special conditions are applicable to the Boeing Model 777-200 airplanes configured with the business-class seating defined in Flight Structures, Inc., certification plan No. B3FS332-D10. Should Flight Structures, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances, and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 777-200 airplane.

#### Side-Facing Seats Special Conditions

In addition to the requirements of § 25.562:

##### 1. Head-Injury Criteria

Compliance with § 25.562(c)(5) is required, except that, if the anthropomorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a head-injury criterion (HIC) unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

##### 2. Body-to-Wall/Furnishing Contact

If a seat is installed aft of structure (*e.g.*, an interior wall or furnishing) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area that an occupant could contact. For example, if different yaw angles could result in different airbag performance, then additional analysis or separate test(s) may be necessary to evaluate performance.

##### 3. Neck Injury Criteria

The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

a. The  $N_{ij}$  (calculated in accordance with 49 CFR 571.208) must be below 1.0, where  $N_{ij} = F_z/F_{z_c} + M_y/M_{y_c}$ , and  $N_{ij}$  critical values are:

- i.  $F_{z_c} = 1530$  lb for tension
- ii.  $F_{z_c} = 1385$  lb for compression
- iii.  $M_{y_c} = 229$  lb-ft in flexion
- iv.  $M_{y_c} = 100$  lb-ft in extension

b. In addition, peak  $F_z$  must be below 937 lb in tension and 899 lb in compression.

c. Rotation of the head about its vertical axis, relative to the torso, is limited to 105 degrees in either direction from forward-facing.

d. The neck must not impact any surface that would produce concentrated loading on the neck.

### 4. Spine and Torso Injury Criteria

a. The shoulders must remain aligned with the hips throughout the impact sequence, or support for the upper torso must be provided to prevent forward or lateral flailing beyond 45 degrees from the vertical during significant spinal loading. Alternatively, the lumbar spine tension ( $F_z$ ) cannot exceed 1200 lb.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X-direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE International (SAE) J211-1.

c. Occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

5. Longitudinal test(s), conducted to measure the injury criteria above, must be performed with the FAA Hybrid III ATD, as described in SAE 1999-01-1609. The test(s) must be conducted with an undeformed floor, at the most-critical yaw case(s) for injury, and with all lateral structural supports (armrests/walls) installed.

**Note:** Boeing must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in FAA Policy Memorandum PS-ANM-100-2000-00123, dated February 2, 2000, titled "Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets," is acceptable to the FAA.

#### Inflatable Lap Belt Special Conditions

If inflatable lap belts are installed on single-place side-facing seats, the lap belts must meet Special Conditions No. 25-187A-SC.

Issued in Renton, Washington, on September 2, 2015.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-24727 Filed 9-29-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 73**

[Docket No. FDA-2015-C-1154]

**Listing of Color Additives Exempt From Certification; Mica-Based Pearlescent Pigments**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (“FDA” or “we”) is amending the color additive regulations to provide for the safe use of mica-based pearlescent pigments prepared from titanium dioxide and mica as color additives in certain distilled spirits. This action is in response to a color additive petition (CAP) submitted by E. & J. Gallo Winery.

**DATES:** This rule is effective November 2, 2015. See section VIII for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing by October 30, 2015.

**ADDRESSES:** You may submit either electronic or written objections and requests for a hearing, identified by Docket No. FDA-2015-C-1154, by any of the following methods:

*Electronic Submissions*

Submit electronic objections in the following way:

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

*Written Submissions*

Submit written objections in the following ways:

- *Mail/Hand delivery/Courier (for paper or submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Agency name and Docket No. FDA-2015-C-1154 for this rulemaking. All objections received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting objections, see the “Objections” heading of the **SUPPLEMENTARY INFORMATION** section.

*Docket:* For access to the docket to read background documents or objections received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the

heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Salome Bhagan, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 240-402-3041.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In a notice published in the **Federal Register** on April 22, 2015 (80 FR 22449), we announced that we filed a color additive petition (CAP 5C0302) to amend the color additive regulations in § 73.350 *Mica-based pearlescent pigments* (21 CFR 73.350).

CAP 5C0302 was submitted by E. & J. Gallo Winery, c/o Keller and Heckman LLP, Three Embarcadero Center, Suite 1420, San Francisco, CA 94111 (petitioner). In CAP 5C0302, E. & J. Gallo Winery proposed to amend the color additive regulations in § 73.350 to increase the maximum permitted alcohol content of distilled spirits to which mica-based pearlescent pigments may be added from 23 percent to 25 percent alcohol by volume, and to remove the current limitation for distilled spirits mixtures containing more than 5 percent wine on a proof gallon basis. The term “distilled spirits” is defined by the Alcohol and Tobacco Tax and Trade Bureau as ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use. The term does not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis (27 CFR 5.11).

Mica-based pearlescent pigments prepared from titanium dioxide and mica are currently approved under § 73.350(c)(1)(i) for use as a color additive in amounts up to 1.25 percent, by weight, in cereals, confections and frostings, gelatin deserts, hard and soft candies (including lozenges), nutritional supplement tablets and gelatin capsules, and chewing gum. They are also approved under § 73.350(c)(1)(ii) in amounts up to 0.07 percent, by weight, in: Distilled spirits containing not less than 18 percent and not more than 23 percent alcohol by volume but not including distilled spirits mixtures containing more than 5 percent wine on a proof gallon basis (§ 73.350(c)(1)(ii)(A)); cordials, liqueurs, flavored alcoholic malt beverages, wine

coolers, and cocktails (§ 73.350(c)(1)(ii)(B)); and non-alcoholic cocktail mixes and mixers, such as margarita mix, Bloody Mary mix, and daiquiri mix, but excluding eggnog, tonic water, and beverages that are typically consumed without added alcohol (e.g., fruit juices, fruit juice drinks, and soft drinks) (§ 73.350(c)(1)(ii)(C)). The pigments also are approved under § 73.350(c)(1)(iii) in egg decorating kits used for coloring the shells of eggs in amounts consistent with good manufacturing practice. Mica-based pearlescent pigments prepared from titanium dioxide on mica, iron oxide on mica, and titanium dioxide and iron oxide on mica are approved for use as a color additive in ingested drugs under § 73.1350 (21 CFR 73.1350). Mica-based pearlescent pigments formed by depositing titanium or iron salts from a basic solution onto mica, followed by calcination to produce titanium dioxide or iron oxides on mica, are approved for use in contact lenses under § 73.3128 (21 CFR 73.3128). The color additive that is mica-based pearlescent pigments prepared from titanium dioxide and mica will be referred hereinafter in this final rule as mica-based pearlescent pigments.

**II. Safety Evaluation**

*A. Determination of Safety*

Under section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379e(b)(4)), a color additive cannot be listed for a particular use unless the data and information available to FDA establishes that the color additive is safe for that use. FDA’s color additive regulations in 21 CFR 70.3(i) define “safe” to mean that there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive. To establish with reasonable certainty that a color additive intended for use in food is not harmful under its intended conditions of use, we consider the projected human dietary exposure to the additive, the additive’s toxicological data, and other relevant information (such as published literature) available to us. We compare an individual’s estimated daily intake (EDI) of the additive from all sources to an acceptable daily intake (ADI) established by toxicological data. The EDI is determined by projections based on the amount of the additive proposed for use in particular foods and on data regarding the amount consumed from all sources of the additive. We typically use the EDI for the 90th percentile consumer of a color additive as a

measure of high chronic dietary exposure.

### *B. Safety of the Petitioned Use of the Color Additive*

During our safety review of the use of mica-based pearlescent pigments proposed in CAP 5C0302, we considered the exposure to the color additive from its petitioned use and from the currently permitted uses in food and ingested drugs under §§ 73.350 and 73.1350, respectively. In estimating the cumulative estimated dietary intake (CEDI) of these pigments, we determined that the exposure to mica-based pearlescent pigments from the use in egg decorating kits used for coloring the shells of boiled eggs and in contact lenses (§§ 73.350(c)(1)(iii) and 73.3128, respectively) is negligible and, therefore, does not contribute to the exposure.

The petitioner estimated the eaters-only exposure to mica-based pearlescent pigments from the proposed use in distilled spirits containing not less than 18 percent and not more than 25 percent alcohol by volume at 0.14 grams per person per day (g/p/d) at the mean and 0.31 g/p/d at the 90th percentile for the U.S. population (Ref. 1). (An eaters-only exposure is the total of the amount of food consumed per day averaged over the number of days in the survey period by individuals consuming the food at least once during the survey period.) We conclude that the petitioner's exposure estimates are sufficiently conservative to account for the petitioned use of mica-based pearlescent pigments. Regarding cumulative exposure from the current and petitioned uses of mica-based pearlescent pigments, we note that in our recent final rule that provided for the safe use of mica-based pearlescent pigments as color additives in cordials, liqueurs, flavored alcoholic malt beverages, wine coolers, cocktails, non-alcoholic cocktail mixers and mixes, and in egg decorating kits for coloring shell eggs, we estimated the CEDI for the use of mica-based pearlescent pigments in food (§ 73.350) and ingested drugs (§ 73.1350) to be 0.25 g/p/d at the mean and 0.50 g/p/d at the 90th percentile for the U.S. population (80 FR 32303 at 32305, June 8, 2015). Since the petitioned use of mica-based pearlescent pigments will generally substitute for currently-permitted uses of mica-based pearlescent pigments in other alcoholic beverages with no change in the maximum use level of 0.07 percent by weight, we have determined that the petitioned use of mica-based pearlescent pigments will not result in an increase in consumer exposure to these pigments. Therefore, we conclude that our previous CEDI for mica-based

pearlescent pigments of 0.25 g/p/d at the mean and 0.50 g/p/d at the 90th percentile for the U.S. population will remain unchanged (Ref. 1).

To support the safety of the proposed use of mica-based pearlescent pigments in food, the petitioner referenced the safety determination made by FDA for previously filed petitions (70 FR 42271, July 22, 2005); (71 FR 31927, June 2, 2006); and (78 FR 35115, June 12, 2013); including our previously established ADI for mica-based pearlescent pigments of 1.8 g/p/d based on a 2-year rat carcinogenicity bioassay (71 FR 31927 at 31928). Because there is no increase in the intake of mica-based pearlescent pigments beyond a level that has already been established as safe, FDA has no concerns regarding the petitioned use of mica-based pearlescent pigments in distilled spirits containing not less than 18 percent and not more than 25 percent alcohol by volume (Ref. 2).

### **III. Conclusion**

Based on the data and information in the petition and other relevant material, FDA concludes that the petitioned use of mica-based pearlescent pigments prepared from titanium dioxide and mica as a color additive at a level of up to 0.07 percent by weight in distilled spirits containing not less than 18 percent and not more than 25 percent alcohol by volume, is safe. We further conclude that the additive will achieve its intended technical effect and is suitable for the petitioned use. Therefore, we are amending the color additive regulations in part 73 as set forth in this document. In addition, based upon the factors listed in 21 CFR 71.20(b), we conclude that certification of mica-based pearlescent pigments prepared from titanium dioxide and mica is not necessary for the protection of the public health.

### **IV. Public Disclosure**

In accordance with § 71.15 (21 CFR 71.15), the petitions and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, we will delete from the documents any materials that are not available for public disclosure.

### **V. Environmental Impact**

We previously considered the environmental effects of this rule, as stated in the April 22, 2015 notice of filing for CAP 5C0302 (80 FR 22449). We stated that we had determined, under 21 CFR 25.32(k), that this action

is of a type that does not individually or cumulatively have a significant effect on the human environment such that neither an environmental assessment nor an environmental impact statement is required. We have not received any new information or comments that would affect our previous determination.

### **VI. Paperwork Reduction Act of 1995**

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

### **VII. Section 301(l) of the Federal Food, Drug, and Cosmetic Act**

Our review of this petition was limited to section 721 of the FD&C Act. This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(l) of the FD&C Act prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(l)(1) to (l)(4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(l) of the FD&C Act or any of its exemptions apply to food containing this additive. Accordingly, this final rule should not be construed to be a statement that a food containing this additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(l) of the FD&C Act. Furthermore, this language is included in all color additive final rules that pertain to food and therefore should not be construed to be a statement of the likelihood that section 301(l) of the FD&C Act applies.

### **VIII. Objections**

This rule is effective as shown in the **DATES** section, except as to any provisions that may be stayed by the filing of proper objections. If you will be adversely affected by one or more provisions of this regulation, you may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within

each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>. We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

## IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday and are available electronically at <http://www.regulations.gov>.

1. FDA Memorandum from H. Lee, Chemistry Review Group, Division of Petition Review, to S. Bhagan, Regulatory Group I, Division of Petition Review, May 19, 2015.
2. FDA Memorandum from S. Park, Toxicology Team, Division of Petition Review, to S. Bhagan, Regulatory Group I, Division of Petition Review, June 8, 2015.

### List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

### PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 73.350 is amended by revising paragraph (c)(1)(ii)(A) to read as follows:

#### § 73.350 Mica-based pearlescent pigments.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) Distilled spirits containing not less than 18 percent and not more than 25 percent alcohol by volume.

\* \* \* \* \*

Dated: September 25, 2015.

**Susan Bernard,**

*Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.*

[FR Doc. 2015-24795 Filed 9-29-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 558

[Docket No. FDA-2010-N-0155]

#### Veterinary Feed Directive Regulation Questions and Answers; Small Entity Compliance Guide; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of availability.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide and guidance for industry #120 entitled “Veterinary Feed Directive Regulation Questions and Answers.” This guidance aids industry in complying with the requirements of the Veterinary Feed Directive (VFD) final rule that published in the **Federal Register** on June 3, 2015. The purpose of this document is to describe the Veterinary Feed Directive requirements for veterinarians, feed manufacturers and other distributors, animal producers, and other parties involved in the distribution or use of medicated feed containing a Veterinary Feed Directive drug (VFD feed).

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** You may submit comments as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- *For written/paper comments submitted to the Division of Dockets Management,* FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA-2010-N-0155 for “Veterinary Feed Directive Regulation Questions and Answers; Small Entity Compliance Guide; Guidance for Industry; Availability.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS

CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV-6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:**

Dragan Momcilovic, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-402-5944, [dragan.momcilovic@fda.hhs.gov](mailto:dragan.momcilovic@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of June 3, 2015 (80 FR 31520), FDA published a notice of availability for a draft guidance entitled "Veterinary Feed Directive Regulation Questions and Answers" giving interested persons until August 3, 2015, to comment on the draft guidance. FDA received several comments on the draft guidance and those comments were considered as the guidance was

finalized. The guidance announced in this notice finalizes the draft guidance dated June 2015. This guidance also serves as a Small Entity Compliance Guide (SECG) to aid industry in complying with the requirements of the VFD final rule that published in the **Federal Register** on June 3, 2015 (80 FR 31708). FDA has prepared this SECG in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104-121). This document is intended to provide guidance to small businesses on the requirements of the final rule.

In 1996, Congress enacted the Animal Drug Availability Act (ADAA) to facilitate the approval and marketing of new animal drugs and medicated feeds. In passing the ADAA, Congress created a new regulatory category for certain animal drugs used in animal feed called VFD drugs. VFD drugs are new animal drugs intended for use in or on animal feed which are limited to use under the professional supervision of a licensed veterinarian. FDA published final regulations implementing the VFD-related provisions of the ADAA in 2000. On June 3, 2015, FDA published a VFD final rule that revised those VFD regulations and introduced clarifying changes to specified definitions, and published the draft revised guidance for comment.

**II. Significance of Guidance**

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on VFD regulation questions and answers. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

**III. Paperwork Reduction Act of 1995**

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR 558.6 have been approved under OMB control number 0910-0363.

**IV. Electronic Access**

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm> or <http://www.regulations.gov>.

Dated: September 23, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-24685 Filed 9-29-15; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 870**

[Docket No. FDA-2015-N-3165]

**Medical Devices; Cardiovascular Devices; Classification of the Steerable Cardiac Ablation Catheter Remote Control System**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the steerable cardiac ablation catheter remote control system into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the steerable cardiac ablation catheter remote control system's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This order is effective September 30, 2015. The classification was applicable on December 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Deborah Castillo, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1321, Silver Spring, MD 20993-0002, 301-796-4908.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless, and until, the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate

device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1) of the FD&C Act. Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if

FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of “low-moderate risk” or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On February 14, 2014, Catheter Robotics, Inc. submitted a request for classification of the AMIGO Remote Catheter System under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the

establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 18, 2014, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 870.5700.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a steerable cardiac ablation catheter remote control system will need to comply with the special controls named in this final order. The device is assigned the generic name steerable cardiac ablation catheter remote control system, and it is identified as a prescription device that is external to the body and interacts with the manual handle of a steerable cardiac ablation catheter to remotely control the advancement, retraction, rotation, and deflection of a compatible, steerable ablation catheter used for the treatment of cardiac arrhythmias in the right side of the heart. The device allows reversion to manual control of the steerable cardiac ablation catheter without withdrawal of the catheter and interruption of the procedure.

FDA has identified the following risks to health associated specifically with this type of device, as well as the mitigation measures required to mitigate these risks in table 1.

TABLE 1—STEERABLE CARDIAC ABLATION CATHETER REMOTE CONTROL SYSTEM RISKS AND MITIGATION MEASURES

Identified risk	Mitigation measure
Device Failure, Resulting in Patient Injury or Interruption of Procedure	Non-Clinical Mechanical Performance Testing Non-Clinical Electrical Testing: Electromagnetic Compatibility (EMC), Electrical Safety, Electrical System, Performance, Shelf Life Testing, Sterilization Testing, In Vivo Testing, Labeling, Training.
Device Alters Catheter Functionality (Advance/Withdrawal, Rotation, Deflection) Resulting in Patient Injury (e.g., Perforation) or Improper Catheter Performance (Positioning and Contact) or Interruption of Procedure.	Non-Clinical Mechanical Performance Testing Non-Clinical Electrical Testing: EMC, Electrical Safety, Electrical System, Performance, In Vivo Testing, Labeling, Post Market Surveillance.
Adverse Tissue Reaction .....	Sterilization Testing.
Improper Device Use/Use Error .....	Labeling, Training, In Vivo Testing, Post Market Surveillance.
Interference with Other Electrical Equipment/Devices (e.g., Device Malfunction).	Non-Clinical Mechanical Performance Testing Non-Clinical Electrical Testing: EMC, Electrical Safety, Electrical System, Performance, Labeling.
Electrical Shock .....	Non-Clinical Electrical Testing: Electrical Safety Testing, Labeling.
Device Malfunction Resulting in Unanticipated Operation (e.g., Device Stoppage, Unintended Movement).	Non-Clinical Mechanical Performance Testing Non-Clinical Electrical Testing: EMC, Electrical Safety, Electrical System, Performance, In Vivo Testing, Labeling, Training.

FDA believes that the following special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness:

- Non-clinical mechanical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance testing must be performed:
  - Mechanical performance of the system (without catheter connected);
  - mechanical performance of the system with compatible catheters connected to verify that the system does not impact catheter function or



performance. Assessments must include the following:

- Side-by-side remote control and manual comparisons of catheter manipulation (including all ranges of motion of catheter deflection and tip curl) for all compatible catheters; must include testing for worst-case conditions, and
  - evaluation of the accuracy and function of all device control safety features; and
    - simulated-use testing in a bench anatomic model or animal model.
- Non-clinical electrical testing must include validation of EMC, electrical safety, thermal safety, and electrical system performance. The following performance testing must be performed:
  - Electrical performance of the system with compatible catheters connected to verify that the system does not impact catheter function or performance. Assessments must include the following:
    - Side-by-side remote control and manual comparisons of catheter manipulation (including all ranges of motion of catheter deflection and tip curl) for all compatible catheters; must include testing for worst-case conditions, and
      - evaluation of the accuracy and function of all device control safety features; and
        - electrical safety between the device and ablation catheter system and with other electrical equipment expected in the catheter lab or operating room.
    - In vivo testing must demonstrate that the device performs as intended under anticipated conditions of use, including an assessment of the system impact on the functionality and performance of compatible catheters, and documentation of the adverse event profile associated with clinical use. Evidence must be submitted to address the following:
      - Manipulation and positioning: Ability to manipulate compatible catheters to pre-specified cardiac locations and confirm proper anatomic placement and tissue contact, in accordance with the system indications for use and the compatible catheter indications for use;
      - Safety: Assess device-related complication rate and major procedural complication rate (regardless of device relatedness) in comparison to literature and/or a manual comparison group for compatible ablation catheters to support the indications for use;
      - Efficacy: Assess ablation success in comparison to literature and/or a manual comparison group for compatible ablation catheters to support the indications for use; and

- User assessment of device remote controls and safety features.
  - Post-market surveillance (PMS) must be conducted and completed in accordance with FDA-agreed upon PMS protocol.
    - A training program must be included with sufficient educational elements that, upon completion of the training program, the clinician and supporting staff can
      - Identify the safe environments for device use,
      - use all safety features of device, and
      - operate the device in simulated or actual use environments representative of indicated environments and use for the indication of compatible catheters.
    - Performance data must demonstrate the sterility of the sterile disposable components of the system.
      - Performance data must support shelf life by demonstrating continued sterility of the device (of the sterile disposable components), package integrity, and device functionality over the requested shelf life.
      - Labeling must include the following:
        - Appropriate instructions, warnings, cautions, limitations, and information related to the intended patient population, compatible ablation catheters, and the device safeguards for the safe use of the device;
        - specific instructions and the clinical training needed for the safe use of the device, which includes:
          - instructions on assembling the device in all available configurations, including installation and removal of compatible catheters;
          - instructions and explanation of all controls, inputs, and outputs;
          - instructions on all available modes or states of the device;
          - instructions on all safety features of the device; and
          - validated methods and instructions for reprocessing/disinfecting any reusable components;
        - a detailed summary of the mechanical compatibility testing including:
          - A table with a complete list of compatible catheters tested (manufacturer trade name and model number), and
          - a table with detailed test results, including type of test, acceptance criteria, and test results (*i.e.*, pass for meeting acceptance criteria);
  - a detailed summary of the in vivo testing including:
    - a table with a complete list of compatible catheters used during testing (manufacturer trade name and model number);

- adverse events encountered pertinent to use of the device under use conditions;
  - a detailed summary of the device- and procedure-related complications; and
  - a summary of study outcomes and endpoints. Information pertinent to the fluoroscopy times/exposure for the procedure, patient and operator fluoroscopic exposure;
    - other labeling items:
      - a detailed summary of pertinent non-clinical testing information: EMC, mechanical, electrical, and sterilization of device and components;
      - a detailed summary of the device technical parameters; and
      - an expiration date/shelf life and storage conditions for the sterile accessories; and
    - when available, and according to the timeframe included in the PMS protocol agreed upon with FDA, provide a detailed summary of the PMS data including:
      - Updates to the labeling to accurately reflect outcomes or necessary modifications based upon data collected during the PMS experience, and
      - inclusion of results and adverse events associated with utilization of the device during the PMS.

The steerable cardiac ablation catheter remote control system is a prescription device restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device; see 21 CFR 801.109 (*Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the steerable cardiac ablation catheter remote control system they intend to market.

## II. Environmental Impact

The Agency has determined under 21 CFR 25.33(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

### III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485; and the collections of information in 21 CFR part 820, regarding postmarket surveillance, have been approved under OMB control number 0910–0449.

### IV. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at <http://www.regulations.gov>.

1. DEN140009: De Novo Request from Catheter Robotics, Inc., dated February 14, 2014.

#### List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

#### PART 870—CARDIOVASCULAR DEVICES

- 1. The authority citation for 21 CFR part 870 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

- 2. Add § 870.5700 to subpart F to read as follows:

#### § 870.5700 Steerable cardiac ablation catheter remote control system.

(a) *Identification.* A steerable cardiac ablation catheter remote control system is a prescription device that is external to the body and interacts with the manual handle of a steerable cardiac ablation catheter to remotely control the advancement, retraction, rotation, and deflection of a compatible, steerable

ablation catheter used for the treatment of cardiac arrhythmias in the right side of the heart. The device allows reversion to manual control of the steerable cardiac ablation catheter without withdrawal of the catheter and interruption of the procedure.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical mechanical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance testing must be performed:

- (i) Mechanical performance of the system (without catheter connected);
- (ii) Mechanical performance of the system with compatible catheters connected to verify that the system does not impact catheter function or performance. Assessments must include the following:

(A) Side-by-side remote control and manual comparisons of catheter manipulation (including all ranges of motion of catheter deflection and tip curl) for all compatible catheters; must include testing for worst-case conditions, and

(B) Evaluation of the accuracy and function of all device control safety features; and

(iii) Simulated-use testing in a bench anatomic model or animal model.

(2) Non-clinical electrical testing must include validation of electromagnetic compatibility (EMC), electrical safety, thermal safety, and electrical system performance. The following performance testing must be performed:

(i) Electrical performance of the system with compatible catheters connected to verify that the system does not impact catheter function or performance. Assessments must include the following:

(A) Side-by-side remote control and manual comparisons of catheter manipulation (including all ranges of motion of catheter deflection and tip curl) for all compatible catheters; must include testing for worst-case conditions, and

(B) Evaluation of the accuracy and function of all device control safety features; and

(ii) Electrical safety between the device and ablation catheter system and with other electrical equipment expected in the catheter lab or operating room.

(3) In vivo testing must demonstrate that the device performs as intended under anticipated conditions of use, including an assessment of the system impact on the functionality and performance of compatible catheters,

and documentation of the adverse event profile associated with clinical use. Evidence must be submitted to address the following:

(i) Manipulation and Positioning:

Ability to manipulate compatible catheters to pre-specified cardiac locations and confirm proper anatomic placement and tissue contact, in accordance with the system indications for use and the compatible catheter indications for use;

(ii) Safety: Assess device-related complication rate and major procedural complication rate (regardless of device relatedness) in comparison to literature and/or a manual comparison group for compatible ablation catheters to support the indications for use;

(iii) Efficacy: Assess ablation success in comparison to literature and/or a manual comparison group for compatible ablation catheters to support the indications for use; and

(iv) User assessment of device remote controls and safety features.

(4) Post-market surveillance (PMS) must be conducted and completed in accordance with FDA agreed upon PMS protocol.

(5) A training program must be included with sufficient educational elements that, upon completion of the training program, the clinician and supporting staff can:

(i) Identify the safe environments for device use,

(ii) Use all safety features of device, and

(iii) Operate the device in simulated or actual use environments representative of indicated environments and use for the indication of compatible catheters.

(6) Performance data must demonstrate the sterility of the sterile disposable components of the system.

(7) Performance data must support shelf life by demonstrating continued sterility of the device (of the sterile disposable components), package integrity, and device functionality over the requested shelf life.

(8) Labeling must include the following:

(i) Appropriate instructions, warnings, cautions, limitations, and information related to the intended patient population, compatible ablation catheters, and the device safeguards for the safe use of the device;

(ii) Specific instructions and the clinical training needed for the safe use of the device, which includes:

(A) Instructions on assembling the device in all available configurations, including installation and removal of compatible catheters;

(B) Instructions and explanation of all controls, inputs, and outputs;

(C) Instructions on all available modes or states of the device;

(D) Instructions on all safety features of the device; and

(E) Validated methods and instructions for reprocessing/disinfecting any reusable components;

(iii) A detailed summary of the mechanical compatibility testing including:

(A) A table with a complete list of compatible catheters tested (manufacturer trade name and model number), and

(B) A table with detailed test results, including type of test, acceptance criteria, and test results (*i.e.*, pass for meeting acceptance criteria);

(iv) A detailed summary of the *in vivo* testing including:

(A) A table with a complete list of compatible catheters used during testing (manufacturer trade name and model number);

(B) Adverse events encountered pertinent to use of the device under use conditions;

(C) A detailed summary of the device- and procedure-related complications; and

(D) A summary of study outcomes and endpoints. Information pertinent to the fluoroscopy times/exposure for the procedure, patient, and operator fluoroscopic exposure;

(v) Other labeling items:

(A) A detailed summary of pertinent non-clinical testing information: EMC, mechanical, electrical, and sterilization of device and components;

(B) A detailed summary of the device technical parameters; and

(C) An expiration date/shelf life and storage conditions for the sterile accessories; and

(vi) When available, and according to the timeframe included in the PMS protocol agreed upon with FDA, provide a detailed summary of the PMS data including:

(A) Updates to the labeling to accurately reflect outcomes or necessary modifications based upon data collected during the PMS experience, and

(B) Inclusion of results and adverse events associated with utilization of the device during the PMS.

Dated: September 23, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-24624 Filed 9-29-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 311

[Docket ID: DoD-2015-OS-0077]

#### Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Direct final rule with request for comments.

**SUMMARY:** The Office of the Secretary of Defense (OSD) is exempting those records contained in DPPFA 07, entitled "Counterintelligence Management Information System (CIMIS)," pertaining to investigatory material compiled for counterintelligence and law enforcement purposes (under (k)(2) of the Act), other than material within the scope of subsection (j)(2) of the Privacy Act to enable the protection of identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence. The exemption will allow DoD to provide protection against notification of investigatory material including certain reciprocal investigations which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence. Further, requiring OSD to grant access to records and amend these records would unfairly impede the investigation of allegations of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

**DATES:** The rule will be effective on December 9, 2015 unless adverse comments are received by November 30, 2015. If adverse comment is received, the Department of Defense will publish a timely withdrawal of the rule in the **Federal Register**.

**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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

*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 at (571) 372-0461.

**SUPPLEMENTARY INFORMATION:** This direct final rule makes changes to the Office of the Secretary Privacy Program rules. These changes will allow the Department to add an exemption rule to the Office of the Secretary of Defense Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act.

This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

#### Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves non-substantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

**Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. This rule does not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive orders.

**Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. Chapter 6)**

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense. A Regulatory Flexibility Analysis is not required.

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

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

**Section 202, Public Law 104–4, “Unfunded Mandates Reform Act”**

It has been determined that this Privacy Act rule for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that this rulemaking will not significantly or uniquely affect small governments.

**Executive Order 13132, “Federalism”**

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. This rule does not have

substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no Federalism assessment is required.

**List of Subjects in 32 CFR Part 311**

Privacy.

Accordingly, 32 CFR part 311 is amended to read as follows:

**PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM**

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

**Authority:** 5 U.S.C. 522a.

■ 2. Section 311.8 is amended by adding paragraph (c)(25) to read as follows:

**§ 311.8 Procedures for exemptions.**

\* \* \* \* \*

(c) \* \* \*

(25) *System identifier and name:* DPFPA 07, Counterintelligence Management Information System (CIMIS).

(i) *Exemptions:* Portions of this system that fall within 5 U.S.C. 552a (k)(2) are exempt from the following provisions of 5 U.S.C. 552a, section (c)(3); (d); (e)(1); (e)(4) (G) through (I); and (f) of the Act, as applicable.

(ii) *Authority:* 5 U.S.C. 552a(k)(2).

(iii) *Reasons:*

(A) From subsections (c)(3) because making available to a record subject the accounting of disclosure from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected offender by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(B) From subsection (d) because these provisions concern individual access to and amendment of certain records contained in this system, including counterintelligence, law enforcement, and investigatory records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of agencies; compromise sensitive information related to national security; interfere with the overall counterintelligence and

investigative process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another’s personal privacy; reveal a sensitive investigation or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterintelligence investigations and analysis activities and impose an excessive administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(C) From subsection (e)(1) because it is not always possible to determine what information is relevant and necessary at an early stage in a given investigation. Also, because Pentagon Force Protection Agency and other agencies may not always know what information about a known or suspected offender may be relevant to the purpose of conducting an operational response.

(D) From subsections (e)(4)(G) through (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(E) From subsection (f) because requiring the Agency to grant access to records and establishing agency rules for amendment of records would compromise the existence of any criminal, civil, or administrative enforcement activity. To require the confirmation or denial of the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to the existence of an on-going investigation.

Counterintelligence investigations would be jeopardized by agency rules requiring verification of the record, disclosure of the record to the subject, and record amendment procedures.

Dated: July 31, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015–24791 Filed 9–29–15; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[Docket ID: DoD–2015–OS–0071]

**32 CFR Part 311****Privacy Act; Implementation****AGENCY:** Office of the Secretary, DoD.**ACTION:** Direct final rule with request for comments.

**SUMMARY:** The Office of the Secretary of Defense (OSD) is exempting those records contained in DPFPA 06, entitled “Internal Affairs Records System,” pertaining to open or closed investigatory material compiled for law enforcement purposes (under (j)(2) of the Act) to enable OSD to conduct certain internal affairs investigations, relay law enforcement information without compromise of the information, protect investigative techniques and efforts employed, as well as open or closed investigatory material compiled for law enforcement purposes (under (k)(2) of the Act), other than material within the scope of subsection (j)(2) of the Privacy Act to enable the protection of identities of confidential informants who might not otherwise come forward and who furnished information under an express promise that the informant’s identity would be held in confidence. This exemption rule will allow the Pentagon Force Protection Agency to ensure the integrity of the Internal Affairs investigative process, including certain reciprocal investigations, by preventing the subject of the record from using the Privacy Act to learn of the existence of open investigations, thereby compromising investigative techniques, or open and closed investigations which place confidential informants in jeopardy who furnished information under an express promise that the informant’s identity would be held in confidence. Further, requiring the Pentagon Force Protection Agency to grant access to records and amend these records would unfairly impede the investigation. To confirm or deny the existence of a record pertaining to an open investigation a requesting individual may in itself provide an answer to that individual. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

**DATES:** The rule is effective on December 9, 2015 unless adverse comments are received by November 30, 2015. If adverse comment is received,

the Department of Defense will publish a timely withdrawal of the rule in the **Federal Register**.

**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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.
- 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 at (571) 372–0461.

**SUPPLEMENTARY INFORMATION:** This direct final rule makes non-substantive changes to the Office of the Secretary Privacy Program rules. These changes will allow the Department to add an exemption rule to the Office of the Secretary of Defense Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act.

This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

**Direct Final Rule and Significant Adverse Comments**

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves non-substantive changes dealing with DoD’s management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule’s underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider

whether it warrants a substantive response in a notice and comment process.

**Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. This rule does not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive orders.

**Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. Chapter 6)**

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense. A Regulatory Flexibility Analysis is not required.

**Public Law 95–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

**Section 202, Public Law 104–4, “Unfunded Mandates Reform Act”**

It has been determined that this Privacy Act rule for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that this rulemaking will not significantly or uniquely affect small governments.

**Executive Order 13132, "Federalism"**

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no Federalism assessment is required.

**List of Subjects in 32 CFR Part 311**

Privacy.

Accordingly, 32 CFR part 311 is amended to read as follows:

**PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM**

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

■ 2. Section 311.8 is amended by adding paragraph (c)(24) to read as follows:

**§ 311.8 Procedures for exemptions.**

\* \* \* \* \*

(c) \* \* \*

(24) System identifier and name: DPFFPA 06, Internal Affairs Records System.

(i) Exemptions: Portions of this system that fall within 5 U.S.C. 552a(j)(2) and/or (k)(2) are exempt from the following provisions of 5 U.S.C. 552a, section (c)(3) and (4); (d); (e)(1) through (e)(3); (e)(4)(G) through (I); (e)(5); (f) and (g) of the Act, as applicable.

(ii) Authority: 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) Reasons:

(A) From subsections (c)(3) and (4) because making available to a record subject the accounting of disclosure of investigations concerning him or her would specifically reveal an investigative interest in the individual. Revealing this information would reasonably be expected to compromise open or closed administrative or civil investigation efforts to a known or suspected offender by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(B) From subsection (d) because these provisions concern individual access to and amendment of open or closed investigation records contained in this system, including law enforcement and

investigatory records. Compliance with these provisions would provide the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of the Pentagon Force Protection Agency; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential informant or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of investigative records would interfere with open or closed administrative or civil law enforcement investigations and analysis activities and impose an excessive administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(C) From subsections (e)(1) through (e)(3) because it is not always possible to determine what information is relevant and necessary in open or closed investigations.

(D) From subsections (e)(4)(G) through (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(E) From subsection (e)(5) because the requirement that investigative records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the criminal, administrative, or civil investigative process. It is the nature of Internal Affairs investigations to uncover the commission of illegal acts and administrative violations. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significant as further investigation brings new details to light.

(F) From subsection (f) because requiring the Agency to grant access to records and establishing agency rules for amendment of records would compromise the existence of any criminal, civil, or administrative enforcement activity. To require the confirmation or denial of the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to the existence of an on-going investigation. The investigation of possible unlawful

activities would be jeopardized by agency rules requiring verification of the record, disclosure of the record to the subject, and record amendment procedures.

(G) From subsection (g) for compatibility with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal, administrative and civil investigations, standards of accuracy, relevance, timeliness and completeness cannot apply to open or closed investigations in this record system. Information gathered in criminal investigations is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

Dated: July 23, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24631 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[Docket No. USCG-2015-0924]

**Drawbridge Operation Regulation; Sacramento River, Sacramento, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0 at Sacramento, CA. The deviation is necessary to allow the community to participate in the 5K Walk to Defeat ALS. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

**DATES:** This deviation is effective from 11 a.m. to 1 p.m. on October 3, 2015.

**ADDRESSES:** The docket for this deviation, [USCG-2015-0924], is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200

New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, email *David.H.Sulouff@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over Sacramento River, at Sacramento, CA. The drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 11 a.m. to 1 p.m. on October 3, 2015, to allow the community to participate in the 5K Walk to Defeat ALS. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 15, 2015.

**D.H. Sulouff,**

*District Bridge Chief, Eleventh Coast Guard District.*

[FR Doc. 2015-24828 Filed 9-29-15; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2015-0883]

#### Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0 at Sacramento, CA. The deviation is necessary to allow the community to participate in the Urban Cow Half Marathon. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

**DATES:** This deviation is effective from 7:30 a.m. to 10 a.m. on October 4, 2015.

**ADDRESSES:** The docket for this deviation, [USCG-2015-0883], is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, email *David.H.Sulouff@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over Sacramento River, at Sacramento, CA. The drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7:30 a.m. to 10 a.m. on October 4, 2015, to allow the community to participate in the Urban Cow Half Marathon. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 15, 2015.

**D.H. Sulouff,**

*District Bridge Chief, Eleventh Coast Guard District.*

[FR Doc. 2015-24829 Filed 9-29-15; 8:45 am]

**BILLING CODE 9110-04-P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2010-21 and CP2010-36]

#### Update to Product Lists

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Final rule.

**SUMMARY:** The Commission is updating the product lists. This action reflects a publication policy adopted by Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which is re-published in its entirety, includes these updates.

**DATES:** *Effective Date:* September 30, 2015.

*Applicability Dates:* July 1, 2015, Global Expedited Package Services (GEPS)—Non-Published Rates 7 (MC2015-55 and CP2015-83); July 2, 2015, Priority Mail Contract 126 (MC2015-56 and CP2015-84); July 2, 2015, Priority Mail & First-Class Package Service Contract 5 (MC2015-57 and CP2015-85); July 8, 2015, Parcel Return Service Contract 9 (MC2015-58 and CP2015-88); July 8, 2015, Priority Mail

Contract 127 (MC2015–60 and CP2015–90); July 8, 2015, Parcel Return Service Contract 10 (MC2015–59 and CP2015–89); July 14, 2015, Priority Mail Contract 129 (MC2015–62 and CP2015–93); July 15, 2015, Priority Mail & First-Class Package Service Contract 6 (MC2015–63 and CP2015–94); July 16, 2015, Priority Mail Contract 128 (MC2015–61 and CP2015–92); July 17, 2015, Priority Mail Contract 130 (MC2015–64 and CP2015–95); July 17, 2015, Priority Mail Contract 131 (MC2015–65 and CP2015–96); July 17, 2015, Priority Mail Contract 132 (MC2015–66 and CP2015–97); July 20, 2015, Priority Mail Contract 133 (MC2015–67 and CP2015–98); August 4, 2015, Priority Mail Contract 135 (MC2015–71 and CP2015–109); August 4, 2015, Priority Mail Contract 134 (MC2015–70 and CP2015–108); August 4, 2015, Priority Mail Express & Priority Mail Contract 19 (MC2015–69 and CP2015–107); August 5, 2015, Priority Mail Contract 138 (MC2015–74 and CP2015–112); August 5, 2015, Priority Mail & First-Class Package Service Contract 7 (MC2015–75 and CP2015–114); August 5, 2015, Priority Mail Contract 137 (MC2015–73 and CP2015–111); August 10, 2015, Priority Mail Contract 136 (MC2015–72 and CP2015–110); August 11, 2015, Priority Mail Contract 139 (MC2015–76 and CP2015–120); August 13, 2015, Priority Mail Express Contract 26 (MC2015–77 and CP2015–121); August 18, 2015, Priority Mail Express & Priority Mail Contract 20 (MC2015–78 and CP2015–123); August 25, 2015, Priority Mail Contract 140 (MC2015–79 and CP2015–126); September 14, 2015, Priority Mail Contract 141 (MC2015–80 and CP2015–134); September 14, 2015, Priority Mail Express Contract 27 (MC2015–81 and CP2015–135).

**FOR FURTHER INFORMATION CONTACT:**

David A. Trissell, General Counsel, at 202–789–6800.

**SUPPLEMENTARY INFORMATION:** This document identifies updates to the product lists, which appear as 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule.

Publication of the updated product lists in the **Federal Register** is addressed in the Postal Accountability and Enhancement Act (PAEA) of 2006.

*Authorization.* The Commission process for periodic publication of updates was established in Docket Nos. MC2010–21 and CP2010–36, Order No. 445, April 22, 2010, at 8.

*Changes.* The product lists are being updated by publishing a replacement in its entirety of 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. The following

products are being added, removed, or moved within the product lists:

1. Global Expedited Package Services (GEPS)—Non-Published Rates 7 (MC2015–55 and CP2015–83) (Order No. 2558), added July 1, 2015.
2. Priority Mail Contract 126 (MC2015–56 and CP2015–84) (Order No. 2559), added July 2, 2015.
3. Priority Mail & First-Class Package Service Contract 5 (MC2015–57 and CP2015–85) (Order No. 2560), added July 2, 2015.
4. Parcel Return Service Contract 9 (MC2015–58 and CP2015–88) (Order No. 2569), added July 8, 2015.
5. Priority Mail Contract 127 (MC2015–60 and CP2015–90) (Order No. 2570), added July 8, 2015.
6. Parcel Return Service Contract 10 (MC2015–59 and CP2015–89) (Order No. 2572), added July 8, 2015.
7. Priority Mail Contract 129 (MC2015–62 and CP2015–93) (Order No. 2582), added July 14, 2015.
8. Priority Mail & First-Class Package Service Contract 6 (MC2015–63 and CP2015–94) (Order No. 2583), added July 15, 2015.
9. Priority Mail Contract 128 (MC2015–61 and CP2015–92) (Order No. 2592), added July 16, 2015.
10. Priority Mail Contract 130 (MC2015–64 and CP2015–95) (Order No. 2595), added July 17, 2015.
11. Priority Mail Contract 131 (MC2015–65 and CP2015–96) (Order No. 2596), added July 17, 2015.
12. Priority Mail Contract 132 (MC2015–66 and CP2015–97) (Order No. 2598), added July 17, 2015.
13. Priority Mail Contract 133 (MC2015–67 and CP2015–98) (Order No. 2600), added July 20, 2015.
14. Priority Mail Contract 135 (MC2015–71 and CP2015–109) (Order No. 2636), added August 4, 2015.
15. Priority Mail Contract 134 (MC2015–70 and CP2015–108) (Order No. 2637), added August 4, 2015.
16. Priority Mail Express & Priority Mail Contract 19 (MC2015–69 and CP2015–107) (Order No. 2638), added August 4, 2015.
17. Priority Mail Contract 138 (MC2015–74 and CP2015–112) (Order No. 2640), added August 5, 2015.
18. Priority Mail & First-Class Package Service Contract 7 (MC2015–75 and CP2015–114) (Order No. 2641), added August 5, 2015.
19. Priority Mail Contract 137 (MC2015–73 and CP2015–111) (Order No. 2642), added August 5, 2015.
20. Priority Mail Contract 136 (MC2015–72 and CP2015–110) (Order No. 2647), added August 10, 2015.
21. Priority Mail Contract 139 (MC2015–76 and CP2015–120) (Order No. 2651), added August 11, 2015.

22. Priority Mail Express Contract 26 (MC2015–77 and CP2015–121) (Order No. 2662), added August 13, 2015.

23. Priority Mail Express & Priority Mail Contract 20 (MC2015–78 and CP2015–123) (Order No. 2670), added August 18, 2015.

24. Priority Mail Contract 140 (MC2015–79 and CP2015–126) (Order No. 2680), added August 25, 2015.

25. Priority Mail Contract 141 (MC2015–80 and CP2015–134) (Order No. 2706), added September 14, 2015.

26. Priority Mail Express Contract 27 (MC2015–81 and CP2015–135) (Order No. 2707), added September 14, 2015.

The following negotiated service agreements have expired and are being deleted from the Mail Classification Schedule:

1. Express Mail Contract 12 (MC2012–36 and CP2012–44) (Order No. 1433).
2. Priority Mail Contract 39 (MC2012–37 and CP2012–45) (Order No. 1434).
3. Priority Mail Contract 41 (MC2012–39 and CP2012–47) (Order No. 1445).
4. First-Class Package Service Contract 8 (MC2012–27 and CP2012–36) (Order No. 1394).
5. First-Class Package Service Contract 9 (MC2012–28 and CP2012–37) (Order No. 1395).
6. First-Class Package Service Contract 10 (MC2012–35 and CP2012–43) (Order No. 1419).
7. First-Class Package Service Contract 11 (MC2012–40 and CP2012–48) (Order No. 1446).
8. First-Class Package Service Contract 12 (MC2012–41 and CP2012–49) (Order No. 1447).
9. First-Class Package Service Contract 13 (MC2012–42 and CP2012–50) (Order No. 1452).
10. First-Class Package Service Contract 14 (MC2012–43 and CP2012–51) (Order No. 1453).
11. First-Class Package Service Contract 15 (MC2012–45 and CP2012–53) (Order No. 1457).

*Updated product lists.* The referenced changes to the product lists are incorporated into 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule.

**List of Subjects in 39 CFR Part 3020**

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

**PART 3020—PRODUCT LISTS**

- 1. The authority citation for part 3020 continues to read as follows:



**Authority:** 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ **2. Revise Appendix A of Subpart A of Part 3020—Mail Classification Schedule to read as follows:**

**Appendix A to Subpart A of Part 3020—Mail Classification Schedule**

(An asterisk (\*) indicates an organizational class or group, not a Postal Service product.)

**Part A—Market Dominant Products**

**1000 Market Dominant Product List**

**First-Class Mail**

- Single-Piece Letters/Postcards
- Presorted Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail

**International**

**Inbound Letter Post**

**Standard Mail (Commercial and Nonprofit)\***

- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route

**Letters**

**Flats**

**Parcels**

**Every Door Direct Mail—Retail**

**Periodicals\***

**In-County Periodicals**

**Outside County Periodicals**

**Package Services\***

- Alaska Bypass Service
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

**Special Services\***

- Ancillary Services
- International Ancillary Services
- Address Management Services
- Caller Service
- Credit Card Authentication
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service
- Customized Postage
- Stamp Fulfillment Services

**Negotiated Service Agreements\***

- Domestic\*
  - Valassis Direct Mail, Inc. Negotiated Service Agreement
  - PHI Acquisitions, Inc. Negotiated Service Agreement

**International\***

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1
- Inbound Market Dominant Exprés Service Agreement 1

**Nonpostal Services\***

- Alliances with the Private Sector to Defray Cost of Key Postal Functions Philatelic Sales

**Market Tests\***

**Part B—Competitive Products**

**2000 Competitive Product List**

**Domestic Products\***

- Priority Mail Express
- Priority Mail
- Parcel Select
- Parcel Return Service

**First-Class Package Service**

**Standard Post**

**International Products\***

- Outbound International Expedited Services
- Inbound Parcel Post (at UPU rates)
- Outbound Priority Mail International
- International Priority Airmail (IPA)
- International Surface Air List (ISAL)
- International Direct Sacks—M-Bags
- Outbound Single-Piece First-Class Package International Service

**Negotiated Service Agreements\***

**Domestic\***

- Priority Mail Express Contract 8
- Priority Mail Express Contract 11
- Priority Mail Express Contract 13
- Priority Mail Express Contract 14
- Priority Mail Express Contract 15
- Priority Mail Express Contract 16
- Priority Mail Express Contract 17
- Priority Mail Express Contract 18
- Priority Mail Express Contract 19
- Priority Mail Express Contract 20
- Priority Mail Express Contract 21
- Priority Mail Express Contract 22
- Priority Mail Express Contract 23
- Priority Mail Express Contract 24
- Priority Mail Express Contract 25
- Priority Mail Express Contract 26
- Priority Mail Express Contract 27
- Parcel Return Service Contract 5
- Parcel Return Service Contract 6
- Parcel Return Service Contract 7
- Parcel Return Service Contract 8
- Parcel Return Service Contract 9
- Parcel Return Service Contract 10

**Priority Mail Contract 24**

**Priority Mail Contract 29**

**Priority Mail Contract 33**

**Priority Mail Contract 40**

**Priority Mail Contract 42**

**Priority Mail Contract 43**

**Priority Mail Contract 44**

**Priority Mail Contract 45**

**Priority Mail Contract 46**

**Priority Mail Contract 47**

**Priority Mail Contract 48**

**Priority Mail Contract 51**

**Priority Mail Contract 52**

**Priority Mail Contract 53**

**Priority Mail Contract 54**

**Priority Mail Contract 55**

**Priority Mail Contract 56**

**Priority Mail Contract 57**

**Priority Mail Contract 58**

**Priority Mail Contract 59**

**Priority Mail Contract 60**

**Priority Mail Contract 61**

**Priority Mail Contract 62**

**Priority Mail Contract 63**

**Priority Mail Contract 64**

**Priority Mail Contract 65**

**Priority Mail Contract 66**

**Priority Mail Contract 67**

**Priority Mail Contract 70**

**Priority Mail Contract 71**

**Priority Mail Contract 72**

**Priority Mail Contract 73**

**Priority Mail Contract 74**

**Priority Mail Contract 75**

**Priority Mail Contract 76**

**Priority Mail Contract 77**

**Priority Mail Contract 78**

**Priority Mail Contract 79**

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**Priority Mail Contract 86**

**Priority Mail Contract 87**

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**Priority Mail Contract 92**

**Priority Mail Contract 93**

**Priority Mail Contract 94**

**Priority Mail Contract 95**

**Priority Mail Contract 96**

**Priority Mail Contract 97**

**Priority Mail Contract 98**

**Priority Mail Contract 99**

**Priority Mail Contract 100**

**Priority Mail Contract 101**

**Priority Mail Contract 102**

**Priority Mail Contract 103**

**Priority Mail Contract 104**

**Priority Mail Contract 105**

**Priority Mail Contract 106**

**Priority Mail Contract 107**

**Priority Mail Contract 108**

**Priority Mail Contract 109**

**Priority Mail Contract 110**

**Priority Mail Contract 111**

**Priority Mail Contract 112**

**Priority Mail Contract 113**

**Priority Mail Contract 114**

**Priority Mail Contract 115**

**Priority Mail Contract 116**

**Priority Mail Contract 117**

**Priority Mail Contract 118**

**Priority Mail Contract 119**

**Priority Mail Contract 120**

**Priority Mail Contract 121**

**Priority Mail Contract 122**

**Priority Mail Contract 123**

**Priority Mail Contract 124**

**Priority Mail Contract 125**

**Priority Mail Contract 126**

**Priority Mail Contract 127**

**Priority Mail Contract 128**

**Priority Mail Contract 129**

**Priority Mail Contract 130**

**Priority Mail Contract 131**

**Priority Mail Contract 132**

**Priority Mail Contract 133**

**Priority Mail Contract 134**

**Priority Mail Contract 135**

**Priority Mail Contract 136**

**Priority Mail Contract 137**

**Priority Mail Contract 138**

**Priority Mail Contract 139**

**Priority Mail Contract 140**

**Priority Mail Contract 141**

**Priority Mail Express & Priority Mail Contract 9**

**Priority Mail Express & Priority Mail Contract 10**

**Priority Mail Express & Priority Mail Contract 11**

**Priority Mail Express & Priority Mail Contract 12**

**Priority Mail Express & Priority Mail Contract 13**

**Priority Mail Express & Priority Mail Contract 14**

**Priority Mail Express & Priority Mail Contract 16**

**Priority Mail Express & Priority Mail Contract 17**

Priority Mail Express & Priority Mail Contract 18  
 Priority Mail Express & Priority Mail Contract 19  
 Priority Mail Express & Priority Mail Contract 20  
 Parcel Select & Parcel Return Service Contract 3  
 Parcel Select & Parcel Return Service Contract 5  
 Parcel Select Contract 2  
 Parcel Select Contract 3  
 Parcel Select Contract 4  
 Parcel Select Contract 5  
 Parcel Select Contract 6  
 Parcel Select Contract 7  
 Parcel Select Contract 8  
 Parcel Select Contract 9  
 Priority Mail—Non-Published Rates  
 Priority Mail—Non-Published Rates 1  
 First-Class Package Service Contract 16  
 First-Class Package Service Contract 17  
 First-Class Package Service Contract 18  
 First-Class Package Service Contract 19  
 First-Class Package Service Contract 20  
 First-Class Package Service Contract 21  
 First-Class Package Service Contract 22  
 First-Class Package Service Contract 23  
 First-Class Package Service Contract 24  
 First-Class Package Service Contract 25  
 First-Class Package Service Contract 26  
 First-Class Package Service Contract 27  
 First-Class Package Service Contract 28  
 First-Class Package Service Contract 29  
 First-Class Package Service Contract 30  
 First-Class Package Service Contract 31  
 First-Class Package Service Contract 32  
 First-Class Package Service Contract 33  
 First-Class Package Service Contract 34  
 First-Class Package Service Contract 35  
 First-Class Package Service Contract 36  
 First-Class Package Service Contract 37  
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 1  
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 2  
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 3  
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 4  
 Priority Mail & First-Class Package Service Contract 1  
 Priority Mail & First-Class Package Service Contract 2  
 Priority Mail & First-Class Package Service Contract 3  
 Priority Mail & First-Class Package Service Contract 4  
 Priority Mail & First-Class Package Service Contract 5  
 Priority Mail & First-Class Package Service Contract 6  
 Priority Mail & First-Class Package Service Contract 7  
 Outbound International\*  
 Global Expedited Package Services (GEPS) Contracts GEPS 3  
 Global Direct Contracts  
 Global Direct Contracts 1  
 Global Bulk Economy (GBE) Contracts  
 Global Plus Contracts  
 Global Plus 1C  
 Global Plus 2C  
 Global Reseller Expedited Package Contracts  
 Global Reseller Expedited Package Services 1

Global Reseller Expedited Package Services 2  
 Global Reseller Expedited Package Services 3  
 Global Reseller Expedited Package Services 4  
 Global Expedited Package Services (GEPS)—Non-Published Rates  
 Global Expedited Package Services (GEPS)—Non-Published Rates 2  
 Global Expedited Package Services (GEPS)—Non-Published Rates 3  
 Global Expedited Package Services (GEPS)—Non-Published Rates 4  
 Global Expedited Package Services (GEPS)—Non-Published Rates 5  
 Global Expedited Package Services (GEPS)—Non-Published Rates 6  
 Global Expedited Package Services (GEPS)—Non-Published Rates 7  
 Priority Mail International Regional Rate Boxes—Non-Published Rates  
 Outbound Competitive International Merchandise Return Service  
 Agreement with Royal Mail Group, Ltd.  
 Priority Mail International Regional Rate Boxes Contracts  
 Priority Mail International Regional Rate Boxes Contracts 1  
 Inbound International\*  
 International Business Reply Service (IBRS) Competitive Contracts  
 International Business Reply Service Competitive Contract 1  
 International Business Reply Service Competitive Contract 3  
 Inbound Direct Entry Contracts with Customers  
 Inbound Direct Entry Contracts with Foreign Postal Administrations  
 Inbound Direct Entry Contracts with Foreign Postal Administrations  
 Inbound Direct Entry Contracts with Foreign Postal Administrations 1  
 Inbound EMS  
 Inbound EMS 2  
 Inbound Air Parcel Post (at non-UPU rates)  
 Royal Mail Group Inbound Air Parcel Post Agreement  
 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1  
 Special Services\*  
 Address Enhancement Services  
 Greeting Cards, Gift Cards, and Stationery  
 International Ancillary Services  
 International Money Transfer Service—Outbound  
 International Money Transfer Service—Inbound  
 Premium Forwarding Service  
 Shipping and Mailing Supplies  
 Post Office Box Service  
 Competitive Ancillary Services  
 Nonpostal Services\*  
 Advertising  
 Licensing of Intellectual Property other than Officially Licensed Retail Products (OLRP)  
 Mail Service Promotion  
 Officially Licensed Retail Products (OLRP)  
 Passport Photo Service  
 Photocopying Service  
 Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property  
 Training Facilities and Related Services

USPS Electronic Postmark (EPM) Program  
 Market Tests\*  
 Metro Post  
 International Merchandise Return Service (IMRS)—Non-Published Rates  
 Customized Delivery

**Shoshana M. Grove,**  
*Secretary.*

[FR Doc. 2015–24605 Filed 9–29–15; 8:45 am]

**BILLING CODE 7710–FW–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA–HQ–OPP–2014–0840; FRL–9933–27]

### Acibenzolar-S-methyl; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of acibenzolar-S-methyl in or on fruit, citrus, group 10–10 and fruit, pome, group 11–10. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 30, 2015. Objections and requests for hearings must be received on or before November 30, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0840, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone

number: (703) 305-7090; email address: [RDfRNNotices@epa.gov](mailto:RDfRNNotices@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

#### B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

#### C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2014-0840 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 30, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-

2014-0840, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

### II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 11, 2015 (80 FR 7559) (FRL-9921-94), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8269) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC. The petition requested that 40 CFR 180.561 be amended by establishing tolerances for residues of the fungicide, acibenzolar-S-methyl, in or on pome fruit, crop group 11-10 at 0.03 parts per million (ppm) and citrus fruit, crop group 10-10 at 0.01 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerance for residues of acibenzolar-S-methyl in or on fruit, citrus, group 10-10 at 0.02 ppm. The reason for this change is explained in Unit IV.C.

### III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is

reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for acibenzolar-S-methyl including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with acibenzolar-S-methyl follows.

#### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In subchronic and chronic oral studies in rats, dogs and mice, signs of mild regenerative hemolytic anemia were consistently observed in all three species. These signs frequently included decreased erythrocyte counts, decreased hemoglobin, decreased hematocrit, increased reticulocyte counts, increased hemosiderosis in the spleen, liver and/or bone marrow, extramedullary hematopoiesis in the spleen, and increased spleen weights in both males and females. A compensatory response (increased erythrocyte production) regularly followed the initial anemia. Additional toxic effects observed in these same studies included decreases in body weight, body weight gain and/or food consumption. No other significant treatment-related effects of toxicological concern were observed in these subchronic and chronic oral studies. In a 28-day dermal study in rats, no systemic or dermal effects were observed at dose levels up to 1,000 milligram (mg)/kilogram (kg)/day, the limit dose. No neurotoxic effects were observed at any dose in a subchronic neurotoxicity study in rats.

Treatment-related developmental malformations, anomalies and variations were observed in a developmental toxicity study in rats at or below the no observable adverse effect level (NOAEL) for maternal toxicity. At the highest dose tested in this study (400 mg/kg/day), both maternal toxicity (hemorrhagic perineal discharge) and considerable developmental toxicity (including total litter resorptions, fetal malformations, anomalies and variations) were observed. The fetal malformations noted at this dose included treatment-related effects on nervous system tissues (hydrocephaly, craniorachis and anophthalmia/micropthalmia). At the next lower dose tested (200 mg/kg/day), treatment-related visceral malformations and skeletal variations were demonstrated in the absence of significant maternal toxicity. A similar increased sensitivity of fetuses or pups (as compared to adults) was not observed in a developmental toxicity study in rabbits or in 2-generation and 1-generation (range-finding) studies in rats. In a dermal developmental toxicity study in rats, no maternal or developmental toxicity was observed at dose levels up to 500 mg/kg/day, the highest dose tested.

In a battery of mutagenicity studies, results were negative in all studies except in an *in vitro* chromosome aberration study in Chinese hamster ovary (CHO) cells, in which there was

evidence of a clastogenic response in the absence of S-9 activation.

In a 2-year chronic toxicity/ carcinogenicity study in rats and an 18-month carcinogenicity study in mice, acibenzolar-S-methyl was negative for carcinogenicity when administered at dose levels adequate for the testing of carcinogenic potential.

Acibenzolar-S-methyl showed no significant toxicity in a battery of acute toxicity tests (Toxicity Category III or IV in all tests). Considerable skin sensitizing (contact allergenic) potential was demonstrated in a dermal sensitization study in guinea pigs for the technical grade material. The end-use product did not show dermal sensitization in guinea pigs.

Specific information on the studies received and the nature of the adverse effects caused by acibenzolar-S-methyl as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document titled "Acibenzolar-S-Methyl. A Human Health Risk Assessment to support Section 3 Use of Acibenzolar-S-Methyl Uses on Citrus Crop Group 10-10, and Pome Crop Group 11-10 at pages 39-44 in docket ID number EPA-HQ-OPP-2014-0840.

*B. Toxicological Points of Departure/ Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies

toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for acibenzolar-S-methyl used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ACIBENZOLAR-S-METHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute Dietary (Females 13–49 years old and children 1–12 years old).	NOAEL = 8.2 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Acute RfD = 0.082 mg/kg/day. aPAD = 0.082 mg/kg/day.	Developmental Neurotoxicity Toxicity—Rat. Developmental LOAEL = 82 mg/kg/day based on changes in brain morphometrics in the cerebellum in offspring. Maternal NOAEL = 326.2 mg/kg/day (highest dose tested); no effects observed in maternal animals.
Chronic Dietary (Females 13–49 years old and children 1–12 years old).	NOAEL = 8.2 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Chronic RfD = 0.082 mg/kg/day. cPAD = 0.082 mg/kg/day.	Developmental Neurotoxicity Toxicity—Rat. Developmental LOAEL = 82 mg/kg/day based on changes in brain morphometrics in the cerebellum in offspring. Maternal NOAEL = 326.2 mg/kg/day (highest dose tested); no effects observed in maternal animals.
Chronic Dietary (Males 12+ yrs. and Females 50+ yrs.).	NOAEL = 25 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Chronic RfD = 0.25 mg/kg/day. cPAD = 0.25 mg/kg/day.	Chronic Toxicity—Dog; Co-critical; Chronic/Cancer—Rat and Mouse, Reproduction Toxicity—Rat. LOAEL = 105 mg/kg/day based on hemolytic anemia with compensatory response.
Incidental Oral .....	NOAEL = 8.2 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x	Occupational LOC for MOE = 100.	Developmental Neurotoxicity Toxicity—Rat. Developmental LOAEL = 82 mg/kg/day based on changes in brain morphometrics in the cerebellum in offspring. Maternal NOAEL = 326.2 mg/kg/day (highest dose tested); no effects observed in maternal animals.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ACIBENZOLAR-S-METHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (all routes) .....	EPA has determined that acibenzolar-S-methyl is not likely to be a human carcinogen.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF<sub>A</sub> = extrapolation from animal to human (interspecies). UF<sub>H</sub> = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to acibenzolar-S-methyl, EPA considered exposure under the petitioned-for tolerances as well as all existing acibenzolar-S-methyl tolerances in 40 CFR 180.561. EPA assessed dietary exposures from acibenzolar-S-methyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for acibenzolar-S-methyl for females 13–49 years old and children 1–12 years old. No acute endpoint was identified for the general population/adults. In estimating acute dietary exposure, EPA used food consumption data from the U.S. Department of Agriculture’s (USDA’s) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA) 2003–2008. A probabilistic assessment was performed for the acute analysis. Foods were classified as blended, partially blended, or non-blended. The acute analysis assumed a distribution of residues based on field-trial data for non-blended and partially blended commodities. For blended commodities, the mean field-trial values were used as a point estimate. A value of 1/2 level of quantification (LOQ) was used for samples that contained less than LOQ residues. Time-limited tolerance values were used (0.05 ppm) for the Experimental Use Permit (EUP) commodities, *i.e.*, apple, pear, and grapefruit. Section 3 tolerance-level residues were used for all other citrus and pome fruit commodities. Dietary Exposure Evaluation Model (DEEM) default processing factors were used for apple juice, cranberry juice, dried apples, dried pears, dried onion, dried banana, dried plantain, and dried tomato. Empirical processing factors were used for citrus juice (1.0), tomato paste (7.1), tomato puree (2.9), and

tomato juice (1.0). Residues of acibenzolar-S-methyl did not concentrate in citrus juice or oil. The acute analysis used available maximum percent crop treated (MPCT) estimates and assumed 100 PCT for commodities for which no PCT data were available. Based on the lettuce metabolism data, a factor of 1.5X was applied to estimates of acibenzolar-S-methyl residues to account for all of the residues of concern for dietary risk (including CGA–210007, CGA–323060 and CGA–324041).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA NHANES/WEIA 2003–2008. A conservative chronic dietary exposure analysis was performed for the general U.S. population and various population subgroups. In the chronic dietary exposure analysis, tolerance-level residues were used and 100% CT was assumed for all commodities. Temporary tolerance values were used for apple, pear, and grapefruit, since they are higher than the new section 3 tolerances, and do not expire until 12/31/2015. Section 3 tolerance levels are used for all other crop group 10–10, and pome crop group 11–10 commodities. DEEM default processing factors were used for apple juice, dried apples, cranberry juice, dried apple, dried pears, dried onion, dried banana, dried plantain, and dried tomato. A processing factor was not used for tomato paste because a separate tolerance has been established for this processed commodity. In the submitted tomato processing study, processing factors of 1.0 and 2.9 were reported for tomato juice and tomato puree, respectively. These processing factors were used in the dietary exposure assessment. Residues of acibenzolar-S-methyl did not concentrate in citrus juice or oil based on a processing study, so a processing factor of 1.0 was used. A factor of 1.5X was applied to estimates of acibenzolar-S-methyl residues to account for all of the

residues of concern for dietary risk (including CGA–210007, CGA–323060 and CGA–324041).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that acibenzolar-S-methyl does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For the acute dietary analysis, EPA estimated PCT for the following crops for which uses of acibenzolar-S-methyl are currently registered based on available MPCT estimates: Broccoli: 10%; cabbage: 2.5%; cauliflower: 10%; lettuce: 10%; peppers: 10%; spinach: 50%; and tomatoes: 10%.

In the chronic dietary exposure analysis, 100% CT was assumed for all commodities.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses a maximum

PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for acibenzolar-*S*-methyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of acibenzolar-*S*-methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Surface water estimated drinking water concentrations (EDWCs) were generated for the total residues of acibenzolar and CGA 210007 using the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) model for all proposed uses. Exposure in ground water due to leaching was assessed with the Pesticide Root Zone Model Ground Water (PRZM-GW). The EDWCs of acibenzolar-*S*-methyl for acute exposures are estimated to be 47.19 microgram per liter ( $\mu\text{g/L}$ ) for surface water (citrus) and 13.33  $\mu\text{g/L}$  for ground water. For chronic exposures (non-cancer) assessments the EDWC is 13.33  $\mu\text{g/L}$  for surface water (apple).

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water

concentration value of 47.19  $\mu\text{g/L}$  was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 13.33  $\mu\text{g/L}$  was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Acibenzolar-*S*-methyl is not being registered for any specific use patterns that would result in residential exposure in this action. However, a revised post-application residential exposure assessment was conducted to update the residential exposures based on the 2012 revised Residential SOPs.

There is the potential for post-application exposure for individuals exposed as a result of being in an environment that has been previously treated with acibenzolar-*S*-methyl. The quantitative exposure/risk assessment for residential post-application exposures is based on the following scenarios: Adult, 11 to <16 years old, and 6 to <11 years old dermal exposure from playing golf on treated golf courses (short-term dermal exposure).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <http://www.epa.gov/pesticides/trac/science/trac6a05.pdf>.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found acibenzolar-*S*-methyl to share a common mechanism of toxicity with any other substances, and acibenzolar-*S*-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acibenzolar-*S*-methyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at <http://www.epa.gov/pesticides/cumulative>.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the rat developmental toxicity study, treatment-related visceral malformations and skeletal variations were observed in fetuses at 200 mg/kg/day, the NOAEL for maternal toxicity. In the developmental neurotoxicity study, offspring toxicity was observed at 82 mg/kg/day while no maternal toxicity was observed at 326 mg/kg/day, the highest dose tested. Additional developmental toxicity studies in rats and rabbits and reproduction studies in rats provided no indication of increased susceptibility of rat or rabbit fetuses or neonates compared to adult animals.

3. *Conclusion.* The FQPA factor for increased susceptibility to infants and children is reduced to 1x based on the following considerations.

i. The toxicology database for acibenzolar-*S*-methyl is complete and adequate for assessing increased susceptibility under FQPA. The pre- and postnatal toxicity database for acibenzolar-*S*-methyl includes developmental toxicity studies in rats and rabbits, a developmental neurotoxicity study (DNT) study in rats, and a 2-generation reproduction toxicity study in rats.

ii. There is some evidence of potential neurotoxicity in a developmental neurotoxicity study. Although there were no treatment-related offspring effects seen on survival, clinical signs, functional observational battery (FOB), developmental land marks, brain weights or neuropathology, significant morphometric changes (decreased thickness of the molecular layer of the cerebellum) were observed in male offspring on postnatal date (PND) 63 at 82 mg/kg/day. At the high dose, treatment-related offspring effects included decreased body weights, increased auditory startle response and increased thickness in the corpus

callosum in females. No effects were observed in maternal animals at the highest dose tested. However, in a subchronic neurotoxicity study in rats, no compound-related effects were observed in the FOB, motor activity, gross pathology or neuropathology at the highest doses (575/628 mg/kg/day, male/female) tested.

iii. Based on the developmental toxicity in rats and the developmental neurotoxicity studies in rats, there is concern for increased qualitative and/or quantitative susceptibility following in utero exposure to acibenzolar-*S*-methyl. However, the degree of concern for the increased susceptibility seen in these studies is low, as there are no residual uncertainties with regard to pre- and/or postnatal toxicity since (1) NOAELs and LOAELs have been identified for all effects of concern, (2) a clear dose response has been well defined, and (3) the points of departure selected for risk assessment are protective of the fetal/offspring effects.

iv. There are no residual uncertainties identified in the exposure databases. The refined acute dietary assessment utilizes maximum percent crop treated estimates but is still considered conservative, since it is based on field trial data treated at the shorest preharvest interval and maximum use rate. The chronic dietary and residential risk assessments are also conservative. These assessments will not underestimate dietary and/or non-dietary residential exposure to acibenzolar-*S*-methyl. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acibenzolar-*S*-methyl in drinking water. EPA used similarly conservative assumptions to assess post-application exposure. These assessments will not underestimate the exposure and risks posed by acibenzolar-*S*-methyl.

#### E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary

exposure from food and water to acibenzolar-*S*-methyl will occupy 33% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acibenzolar-*S*-methyl from food and water will utilize 13% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). There is potential short-term exposure to acibenzolar-*S*-methyl via the dietary pathway and the residential pathway (golfing on treated golf courses). Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,300 for children 6 to <11 years old. Because EPA's level of concern for acibenzolar-*S*-methyl is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Since the short- and intermediate-term PODs are the same and short-term exposure estimates are greater than their intermediate-term counterparts, the short-term aggregate risk assessment is protective of the intermediate-term aggregate exposure.

5. *Aggregate cancer risk for U.S. population.* An aggregate cancer risk was not calculated because acibenzolar-*S*-methyl was classified as "not likely to be carcinogenic to humans".

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acibenzolar-*S*-methyl residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

HPLC/UV Method AG-617A is available for tolerance enforcement. The method consists of an initial hydrolysis with NaOH to convert acibenzolar-*S*-methyl to CGA-210007 followed by methanol extraction. Residues are then diluted with HCl and purified by a series of solid-phase extraction steps.

Prior to HPLC/UV analysis, residues are partitioned into ethyl acetate, dried down, and re-dissolved in phosphoric acid. This method has a LOQ of 0.02 ppm. The method includes optional detection via HPLC/MS, giving a means of residue confirmation.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for acibenzolar-*S*-methyl.

##### C. Revisions to Petitioned-For Tolerances

The tolerance level for fruit, citrus, group 10–10 (0.02 ppm) is being set at the LOQ of the enforcement method which is higher than the petitioned-for tolerance (0.01 ppm). The names of the crop groups for citrus and pome fruit are being corrected to fruit, citrus, group 10–10 and fruit, pome, group 11–10.

#### V. Conclusion

Therefore, tolerances are established for residues of acibenzolar-*S*-methyl, fungicide, in or on fruit, citrus, group 10–10 at 0.02 ppm and fruit, pome, group 11–10 at 0.03 ppm.

#### VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory

Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 4, 2015.

**Susan Lewis,**  
*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. In § 180.561, is amended by adding alphabetically the entries for “Fruit, citrus, group”, and “Fruit, pome, group” to the table in paragraph (a)(1) to read as follows:

**§ 180.561 Acibenzolar-S-methyl; tolerances for residues.**

- (a) \* \* \*
- (1) \* \* \*

Commodity	Parts per million
* * * * *	*
Fruit, citrus, group 10–10 .....	0.02
Fruit, pome, group 11–10 .....	0.03
* * * * *	*

[FR Doc. 2015–24463 Filed 9–29–15; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[EPA–HQ–SFUND–2015–0136, 0137, 0138, 0140, and 0141; FRL–9934–75–OSWER]**

**National Priorities List**

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

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA” or “the Act”), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (“NPL”) constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (“the EPA” or “the agency”) in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds five sites to the General Superfund section of the NPL.

**DATES:** The document is effective on October 30, 2015.

**ADDRESSES:** Contact information for the EPA Headquarters:

- Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW., William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Jennifer Wendel, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8799.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.
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- Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; 303/312-6484.
- Sharon Murray, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6-1, San Francisco, CA 94105; 415/947-4250.

- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL-112, Seattle, WA 98101; 206/463-1349.

**FOR FURTHER INFORMATION CONTACT:**

Terry Jeng, phone: (703) 603-8852, email: [jeng.terry@epa.gov](mailto:jeng.terry@epa.gov) Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

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**I. Background**

*A. What are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 (“CERCLA” or “the Act”), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (“SARA”), Public Law 99-499, 100 Stat. 1613 *et seq.*

*B. What is the NCP?*

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes “criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.” “Removal” actions are defined broadly and include a wide range of actions taken to study,

clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

*C. What is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of “releases” and the highest priority “facilities” and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the “General Superfund section”) and one of sites that are owned or operated by other federal agencies (the “Federal Facilities section”). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (“HRS”) score and determining whether the facility is placed on the NPL.

*D. How are sites listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response

to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR

300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

(1) The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

(2) The EPA determines that the release poses a significant threat to public health.

(3) The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

#### *E. What happens to sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with a permanent remedy, taken instead of or in addition to removal actions" (40 CFR 300.5). However, under 40 CFR 300.425(b)(2), placing a site on the NPL "does not imply that monies will be expended." The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

#### *F. Does the NPL define the boundaries of sites?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are

typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. Plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the remedial investigation ("RI") "is a process undertaken \* \* \* to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with

the feasibility study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

#### *G. How are sites removed from the NPL?*

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

#### *H. May the EPA delete portions of sites from the NPL as they are cleaned up?*

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

**I. What is the construction completion list (CCL)?**

The EPA also has developed an NPL construction completion list (“CCL”) to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see the EPA’s Internet site at <http://www.epa.gov/superfund/cleanup/ccl.htm>.

**J. What is the Sitewide Ready for Anticipated Use Measure?**

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-

Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to [http://www.epa.gov/superfund/programs/recycle/pdf/sitewide\\_a.pdf](http://www.epa.gov/superfund/programs/recycle/pdf/sitewide_a.pdf).

**K. What is state/tribal correspondence concerning NPL listing?**

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA’s policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: <http://www.epa.gov/superfund/sites/npl/hrsres/policy/govlet.pdf>. The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains

the concerns at the site and the EPA’s rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA’s Web site at <http://www.epa.gov/superfund/sites/query/queryhtm/nplstcor.htm>.

**II. Availability of Information to the Public**

**A. May I review the documents relevant to this final rule?**

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through <http://www.regulations.gov> (see table below for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified below in section II D.

**DOCKET IDENTIFICATION NUMBERS BY SITE**

Site name	City/county, state	Docket ID No.
Estech General Chemical Company .....	Calumet City, IL .....	EPA-HQ-SFUND-2015-0136
Colonial Creosote .....	Bogalusa, LA .....	EPA-HQ-SFUND-2015-0137
BJAT LLC .....	Franklin, MA .....	EPA-HQ-SFUND-2015-0138
Main Street Ground Water Plume .....	Burnet, TX .....	EPA-HQ-SFUND-2015-0140
Grain Handling Facility at Freeman .....	Freeman, WA .....	EPA-HQ-SFUND-2015-0141

**B. What documents are available for review at the EPA headquarters docket?**

The headquarters docket for this rule contains the HRS score sheets, the documentation record describing the information used to compute the score and a list of documents referenced in the documentation record for each site.

**C. What documents are available for review at the EPA regional dockets?**

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score.

These reference documents are available only in the regional dockets.

**D. How do I access the documents?**

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the regional dockets for hours. For addresses for the headquarters and regional dockets, see “ADDRESSES” section in the beginning portion of this preamble.

**E. How may I obtain a current list of NPL sites?**

You may obtain a current list of NPL sites via the Internet at <http://www.epa.gov/superfund/sites/npl/index.htm> or by contacting the Superfund docket (see contact information in the beginning portion of this document).

**III. Contents of This Final Rule**

**A. Additions to the NPL**

This final rule adds the following five sites to the General Superfund section of the NPL. These sites are being added to the NPL based on HRS score.

General Superfund section:

State	Site name	City/County
IL .....	Estech General Chemical Company .....	Calumet City.
LA .....	Colonial Creosote .....	Bogalusa.
MA .....	BJAT LLC .....	Franklin.
TX .....	Main Street Ground Water Plume .....	Burnet.
WA .....	Grain Handling Facility at Freeman .....	Freeman.

*B. What did the EPA do with the public comments it received?*

The EPA is adding five sites to the NPL in this final rule, all to the general Superfund section. All of the sites were proposed for addition to the NPL on March 26, 2015 (80 FR 15972).

Four of the sites received no comments. They are BJAT LLC in Franklin, MA; Estech General Chemical Company in Calumet City, IL; Colonial Creosote in Bogalusa, LA; and Main Street Ground Water Plume in Burnet, TX. Although two comments were erroneously submitted to the docket for Colonial Creosote along with two erroneous comments for Main Street Ground Water Plume, all four comments related to the Anaconda Aluminum Co Columbia Falls Reduction Plant. Those comments will be addressed at the time a decision is made on the Anaconda Aluminum Co Columbia Falls Reduction Plant site.

Extensive comments were submitted for the Grain Handling Facility at Freeman in Freeman, WA. Those comments have been addressed in a response to comments support document available in the public docket concurrently with the publication of this rule.

**IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities

under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

*E. Executive Order 13132: Federalism*

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also,

placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

*K. Congressional Review Act*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation. Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802. Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington v. EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996), cast the

validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 21, 2015.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

40 CFR part 300 is amended as follows:

**PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to Part 300 is amended by adding entries for “Estech General Chemical Company”, “Colonial Creosote”, “BJAT LLC”, “Main Street Ground Water Plume” and “Grain Handling Facility at Freeman” in alphabetical order by state to read as follows:

**Appendix B to Part 300—National Priorities List**

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
IL	Estech General Chemical Company	Calumet City.	*
LA	Colonial Creosote	Bogalusa.	*
MA	BJAT LLC	Franklin.	*
TX	Main Street Ground Water Plume	Burnet.	*
WA	Grain Handling Facility at Freeman	Freeman.	*

(a) A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

\* \* \* \* \*  
 [FR Doc. 2015-24330 Filed 9-29-15; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3000**  
**[L13100000 PP0000 LLWO310000]**  
**RIN 1004-AE44**

**Minerals Management: Adjustment of Cost Recovery Fees**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Bureau of Land Management (BLM)

mineral resources regulations to update some fees that cover the BLM’s cost of processing certain documents relating to its minerals programs and some filing fees for mineral-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.

**DATES:** This final rule is effective October 1, 2015.

**ADDRESSES:** You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street NW., Washington, DC 20240; Attention: RIN 1004-AE44.

**FOR FURTHER INFORMATION CONTACT:** Steven Wells, Chief, Division of Fluid Minerals, 202–912–7143; Mitchell Leverette, Chief, Division of Solid Minerals, 202–912–7113; or Mark Purdy, Regulatory Affairs, 202–912–7635. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C (43 CFR parts 3000–3900) according to

changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The fee recalculations are based on a mathematical formula. The public had an opportunity to comment on this procedure during the comment period on the 2005 cost recovery rule, and this new rule administers the procedure set forth in those regulations. Therefore, the BLM has changed the fees in this final rule without providing opportunity for additional notice and comment. See 43 CFR 3000.10(c). Accordingly, the Department of the Interior for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the rule may be effective less than 30 days after publication.

**II. Discussion of Final Rule**

The BLM publishes a fee update rule each year, which becomes effective on October 1 of that year. The fee updates are based on the change in the IPD–GDP from the 4th Quarter of one calendar

year to the 4th Quarter of the following calendar year. This fee update rule is based on the change in the IPD–GDP from the 4th Quarter of 2013 to the 4th Quarter of 2014, thus reflecting the rate of inflation over four calendar quarters.

The fee is calculated by applying the IPD–GDP to the base value from the previous year’s rule, also known as the “existing value.” This calculation results in an updated base value. The updated base value is then rounded to the closest multiple of \$5 for fees equal to or greater than \$1, or to the nearest cent for fees under \$1, to establish the new fee.

Under this rule, 34 fees will remain the same and 14 fees will increase. Of the fees that will be increased, 12 of the fee increases will amount to \$5 each. The largest increase, \$40, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, and will increase the fee from \$3,035 to \$3,075. The fee for adjudicating a patent application containing 10 or fewer claims will increase by \$15, from \$1,520 to \$1,535.

The calculations that resulted in the new fees are included in the table below:

Fixed cost recovery fees FY16 Document/action	Existing fee <sup>1</sup>	Existing value <sup>2</sup>	IPD–GDP Increase <sup>3</sup>	New value <sup>4</sup>	New fee <sup>5</sup>
<b>Oil &amp; Gas (parts 3100, 3110, 3120, 3130, 3150)</b>					
Noncompetitive lease application .....	\$405	\$403.6113	\$5.0451	\$408.6565	\$410
Competitive lease application .....	155	156.6327	1.9579	158.5906	160
Assignment and transfer of record title or operating rights	90	90.3565	1.1295	91.4859	90
Overriding royalty transfer, payment out of production .....	10	12.0454	0.1506	12.1960	10
Name change, corporate merger or transfer to heir/devi-see .....	210	210.8318	2.6354	213.4672	215
Lease consolidation .....	445	445.7650	5.5721	451.3371	450
Lease renewal or exchange .....	405	403.6113	5.0451	408.6565	410
Lease reinstatement, Class I .....	80	78.3005	0.9788	79.2793	80
Leasing under right-of-way .....	405	403.6113	5.0451	408.6565	410
Geophysical exploration permit application—Alaska <sup>6</sup> .....	25	.....	.....	.....	25
Renewal of exploration permit—Alaska <sup>7</sup> .....	25	.....	.....	.....	25
<b>Geothermal (part 3200)</b>					
Noncompetitive lease application .....	405	403.6113	5.0451	408.6565	410
Competitive lease application .....	155	156.6327	1.9579	158.5906	160
Assignment and transfer of record title or operating right	90	90.3565	1.1295	91.4859	90
Name change, corporate merger or transfer to heir/devi-see .....	210	210.8318	2.6354	213.4672	215
Lease consolidation .....	445	445.7650	5.5721	451.3371	450
Lease reinstatement .....	80	78.3005	0.9788	79.2793	80
Nomination of lands .....	115	112.7688	1.4096	114.1784	115
Plus per acre nomination fee .....	0.11	0.11277	0.00141	0.11418	0.11
Site license application .....	60	60.2377	0.7530	60.9906	60
Assignment or transfer of site license .....	60	60.2377	0.7530	60.9906	60
<b>Coal (parts 3400, 3470)</b>					
License to mine application .....	10	12.0454	0.1506	12.1960	10
Exploration license application .....	330	331.3177	4.1415	335.4592	335
Lease or lease interest transfer .....	65	66.2762	0.8285	67.1047	65

Fixed cost recovery fees FY16 Document/action	Existing fee <sup>1</sup>	Existing value <sup>2</sup>	IPD-GDP Increase <sup>3</sup>	New value <sup>4</sup>	New fee <sup>5</sup>
<b>Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)</b>					
Applications other than those listed below .....	35	36.1468	0.4518	36.5987	35
Prospecting permit amendment .....	65	66.2762	0.8285	67.1047	65
Extension of prospecting permit .....	110	108.4299	1.3554	109.7853	110
Lease modification or fringe acreage lease .....	30	30.1294	0.3766	30.5060	30
Lease renewal .....	520	518.0692	6.4759	524.5451	525
Assignment, sublease, or transfer of operating rights .....	30	30.1294	0.3766	30.5060	30
Transfer of overriding royalty .....	30	30.1294	0.3766	30.5060	30
Use permit .....	30	30.1294	0.3766	30.5060	30
Shasta and Trinity hardrock mineral lease .....	30	30.1294	0.3766	30.5060	30
Renewal of existing sand and gravel lease in Nevada .....	30	30.1294	0.3766	30.5060	30
<b>Multiple Use; Mining (Group 3700)</b>					
Notice of protest of placer mining operations .....	10	12.0454	0.1506	12.1960	10
<b>Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)</b>					
Application to open lands to location .....	10	12.0454	0.1506	12.1960	10
Notice of Location .....	20	18.0629	0.2258	18.2886	20
Amendment of location .....	10	12.0454	0.1506	12.1960	10
Transfer of mining claim/site .....	10	12.0454	0.1506	12.1960	10
Recording an annual FLPMA filing .....	10	12.0454	0.1506	12.1960	10
Deferment of assessment work .....	110	108.4299	1.3554	109.7853	110
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands .....	30	30.1294	0.3766	30.5060	30
Mineral Patent adjudication (more than ten claims) .....	3,035	3,036.1112	37.9514	3,074.0626	3,075
(ten or fewer claims) .....	1,520	1,518.0398	18.9755	1,537.0153	1,535
Adverse claim .....	110	108.4299	1.3554	109.7853	110
Protest .....	65	66.2762	0.8285	67.1047	65
<b>Oil Shale Management (parts 3900, 3910, 3930)</b>					
Exploration License Application .....	320	317.7838	3.9723	321.7561	320
Assignment or sublease of record title or overriding roy- alty .....	65	64.6399	0.8080	65.4479	65

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis (March 27, 2015).

<sup>1</sup> The Existing Fee was established by the 2014 (Fiscal Year 2015) cost recovery fee update rule published September 25, 2014 (79 FR 57476), effective October 1, 2014.

<sup>2</sup> The Existing Value is the figure from the New Value column in the previous year's rule.

<sup>3</sup> From 4th Quarter 2013 to 4th Quarter 2014, the IPD-GDP increased by 1.25 percent. The value in the IPD-GDP Increase column is 1.25 percent of the Existing Value.

<sup>4</sup> The sum of the Existing Value and the IPD-GDP Increase is the New Value.

<sup>5</sup> The New Fee for Fiscal Year 2016 is the New Value rounded to the nearest \$5 for values equal to or greater than \$1, or to the nearest penny for values under \$1.

<sup>6</sup> Section 365 of the Energy Policy Act of 2005 (Pub. L. 109-58) directed in subsection (i) that "the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations." In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854-58855. While the \$25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, the BLM interprets the Energy Policy Act provision as prohibiting it from increasing this \$25 fee.

<sup>7</sup> The BLM interprets the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting it from increasing this \$25 fee, as well.

### III. How Fees Are Adjusted

Each year, the figures in the Existing Value column in the table above (not those in the Existing Fee column) are used as the basis for calculating the adjustment to these fees. The Existing Value is the figure from the New Value column in the previous year's rule. In the case of fees that were not in the table the previous year, or that had no figure in the New Value column the previous year, the Existing Value is the same as the Existing Fee. Because the new fees are derived from the new values, adjustments based on the figures in the

Existing Fee column would lead to significantly over- or under-valued fees over time. Accordingly, fee adjustments are made by multiplying the annual change in the IPD-GDP by the figure in the Existing Value column. This calculation defines the New Value for this year, which is then rounded to the nearest \$5 for fees equal to or greater than \$1 or the nearest penny for fees under \$1 to establish the New Fee.

### IV. Procedural Matters

#### Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule, and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of \$100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or

communities. The changes in today's rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule applies an inflation factor that increases some existing user fees for processing documents associated with the onshore minerals programs. However, most of these fee increases are less than 2 percent, and none of the increases materially affect the budgetary impact of user fees.

Finally, this rule will not raise novel legal or policy issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 cost recovery rule.

#### *The Regulatory Flexibility Act*

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service

industries, for which the SBA has a different definition of "small entity."

The final rule may affect a large number of small entities since 14 fees for activities on public lands will be increased. However, the BLM has concluded that the effects will not be significant. Most of the fixed fee increases will be less than 2 percent as a result of this final rule. The adjustments result in no increase in the fee for the processing of 34 documents relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for adjudications of mineral patent applications involving more than 10 mining claims, which will be increased by \$40. For the 2005 final rule, the BLM completed a Regulatory Flexibility Act threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

#### *The Small Business Regulatory Enforcement Fairness Act*

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than \$100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule. Accordingly, a Small Entity Compliance Guide is not required.

#### *Executive Order 13132, Federalism*

This final rule 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. In accordance with Executive Order 13132, therefore,

we find that the final rule does not have federalism implications. A federalism assessment is not required.

#### *The Paperwork Reduction Act of 1995*

This rule does not contain information collection requirements that require a control number from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). After the effective date of this rule, the new fees may affect the non-hour burdens associated with the following control numbers:

##### Oil and Gas

(1) 1004–0034 which expires July 31, 2018;

(2) 1004–0137 which expires January 31, 2018;

(3) 1004–0162 which expires September 30, 2015;

(4) 1004–0185 which expires December 31, 2015;

##### Geothermal

(5) 1004–0132 which expires December 31, 2016;

##### Coal

(6) 1004–0073 which expires August 31, 2016;

##### Mining Claims

(7) 1004–0025 which expires March 31, 2016;

(8) 1004–0114 which expires October 31, 2016; and

##### Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121 which expires March 31, 2016.

#### *Takings Implication Assessment (Executive Order 12630)*

As required by Executive Order 12630, the BLM has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.



*The National Environmental Policy Act (NEPA)*

The BLM has determined that this final rule qualifies as a routine financial transaction and a regulation of an administrative, financial, legal, or procedural nature that is categorically excluded from environmental review under NEPA pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215.

Pursuant to Council on Environmental Quality (CEQ) regulations, the term “categorical exclusions” means categories of actions “which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of [CEQ] regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.” 40 CFR 1508.4.

*The Unfunded Mandates Reform Act of 1995*

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, because it will not result in State, local, private sector, or tribal government expenditures of \$100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

*Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. Specifically, the rule would not have substantial direct effects on one or more Indian tribes. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

*Information Quality Act*

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

*Effects on the Nation’s Energy Supply (Executive Order 13211)*

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It merely adjusts certain administrative cost recovery fees to account for inflation.

*Author*

The principal author of this rule is Mark Purdy of the Division of Regulatory Affairs, Bureau of Land Management.

**List of Subjects in 43 CFR Part 3000**

Public lands—mineral resources, Reporting and recordkeeping requirements.

**Janice M. Schneider,**  
*Assistant Secretary, Land and Minerals Management.*

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR part 3000 as follows:

**PART 3000—MINERALS MANAGEMENT: GENERAL**

■ 1. The authority citation for part 3000 continues to read as follows:

**Authority:** 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

**Subpart 3000—General**

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

**§ 3000.12 What is the fee schedule for fixed fees?**

(a) The table in this section shows the fixed fees that you must pay to the BLM for the services listed for Fiscal Year 2016. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM Web site (<http://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

FY 2016 PROCESSING AND FILING FEE TABLE

Document/action	FY 2016 fee
<b>Oil &amp; Gas (parts 3100, 3110, 3120, 3130, 3150)</b>	
Noncompetitive lease application .....	\$410
Competitive lease application .....	160
Assignment and transfer of record title or operating rights .....	90
Overriding royalty transfer, payment out of production .....	10
Name change, corporate merger or transfer to heir/devisee .....	215
Lease consolidation .....	450
Lease renewal or exchange .....	410
Lease reinstatement, Class I .....	80
Leasing under right-of-way .....	410
Geophysical exploration permit application—Alaska .....	25
Renewal of exploration permit—Alaska .....	25
<b>Geothermal (part 3200)</b>	
Noncompetitive lease application .....	410
Competitive lease application .....	160
Assignment and transfer of record title or operating rights .....	90
Name change, corporate merger or transfer to heir/devisee .....	215
Lease consolidation .....	450
Lease reinstatement .....	80

FY 2016 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2016 fee
Nomination of lands .....	115
plus per acre nomination fee .....	0.11
Site license application .....	60
Assignment or transfer of site license .....	60
<b>Coal (parts 3400, 3470)</b>	
License to mine application .....	10
Exploration license application .....	335
Lease or lease interest transfer .....	65
<b>Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)</b>	
Applications other than those listed below .....	35
Prospecting permit application amendment .....	65
Extension of prospecting permit .....	110
Lease modification or fringe acreage lease .....	30
Lease renewal .....	525
Assignment, sublease, or transfer of operating rights .....	30
Transfer of overriding royalty .....	30
Use permit .....	30
Shasta and Trinity hardrock mineral lease .....	30
Renewal of existing sand and gravel lease in Nevada .....	30
<b>Public Law 359; Mining in Powersite Withdrawals: General (part 3730)</b>	
Notice of protest of placer mining operations .....	10
<b>Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)</b>	
Application to open lands to location .....	10
Notice of location * .....	20
Amendment of location .....	10
Transfer of mining claim/site .....	10
Recording an annual FLPMA filing .....	10
Deferment of assessment work .....	110
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands .....	30
Mineral patent adjudication .....	3,075 (more than 10 claims) 1,535 (10 or fewer claims)
Adverse claim .....	110
Protest .....	65
<b>Oil Shale Management (parts 3900, 3910, 3930)</b>	
Exploration license application .....	320
Application for assignment or sublease of record title or overriding royalty .....	65

\* To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833.

\* \* \* \* \*  
[FR Doc. 2015-24699 Filed 9-29-15; 8:45 am]  
BILLING CODE 4310-84-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 204 and 237**

[Docket No. DARS 2015-0009]

RIN 0750-AI29

**Defense Federal Acquisition Regulation Supplement: Electronic Copies of Contractual Documents (DFARS Case 2012-D056)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish that the Electronic Data Access system is the primary tool for distributing contracts and contract data and to provide internal control procedures for data verification to ensure contract documents in the Electronic Data Access system are accurate representations of original documents. This rule also removes outmoded language that is not consistent with electronic document processes.

**DATES:** Effective September 30, 2015.  
**FOR FURTHER INFORMATION CONTACT:** Ms. Tresa Sullivan, telephone 571-372-6089.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD published a proposed rule in the **Federal Register** at 80 FR 4846 on January 29, 2015, to establish that the Electronic Document Access (EDA) system is the primary tool for distributing contracts and contract data and to provide internal control procedures for data verification to ensure contract documents in EDA are accurate representations of original documents; and remove outmoded language that does not resonate with electronic document processes. No respondents submitted public comments in response to the proposed rule.

**II. Discussion and Analysis**

There are some minor editorial changes made from the proposed rule in the final rule to clarify the distribution of signed contract copies to contractors, uploading of certain contract attachments into EDA, and what constitutes an original signature. Accordingly, paragraph (a) is added to DFARS 204.201 to clarify that contracting officers shall distribute one signed copy or reproduction of the signed contract to the contractor in lieu of the requirements at FAR 4.201(a). DFARS 204.270–1, paragraph (a), and 204.802, paragraph (a), now include statements that contract attachments that are classified, are too sensitive for widespread distribution, or cannot be practicably converted to electronic format should be provided by separate cover and not uploaded into EDA. Additionally, section 204.802, paragraph (f) is added to state that a photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as below. This rule is required to update guidance in the Defense Federal Acquisition Regulation Supplement (DFARS). A review of the DFARS language related to contract files and contract distribution resulted in recommendations to remove coverage that was structured to support processes for and distribution of paper files and paper copies and to add coverage reflecting current electronic processes.

This final rule amends the DFARS to make the following changes:

- DFARS 204.201, paragraph (a), clarifies that contracting officers shall distribute one signed copy or reproduction of the signed contract to the contractor in lieu of the requirements at FAR 4.201(a).

- DFARS 204.270, Electronic Document Access, states the policy that the Electronic Data Access (EDA) System, an online repository for contractual instruments and supporting documents, is DoD's primary tool for electronic distribution of contractual documents. The rule provides that contract attachments that are classified, are too sensitive for widespread distribution, or cannot be practicably converted to electronic format should be provided by separate cover and not uploaded into EDA. This section also provides policy that agencies have certain responsibilities when posting documents to EDA, to include internal control procedures that ensure electronic copies of contract documents and data in EDA are accurate representations of original documents.

- DFARS 204.802, Contract Files, is revised. The language in this section, which addresses contract file requirements for authenticating and conforming paper documents and copies, is being removed as it is outdated. A new paragraph (a) is being added, providing that electronic documents posted to the EDA system are a part of the contract file. Additionally, paragraph (f) is added to state that a photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date.

No comments were received from the public in response to the initial regulatory flexibility analysis.

There will be little, if any, impact on small entities as this rule primarily

affects procedures for internal Government electronic posting and distribution of contractual documents.

This rule does not require any reporting or recordkeeping, and no alternatives were identified that will accomplish the objectives of the rule.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 204 and 237**

Government procurement.

Jennifer L. Hawes,

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 204 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 237 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 204—ADMINISTRATIVE MATTERS**

■ 2. Amend section 204.201 by adding paragraph (a) to read as follows:

**204.201 Procedures.**

\* \* \* \* \*

(a) In lieu of the requirement at FAR 4.201 (a), contracting officers shall distribute one signed copy or reproduction of the signed contract to the contractor.

**204.270 [Amended]**

■ 3. Amend section 204.270 by removing the text.

■ 4. Add sections 204.270–1 and 204.270–2 to subpart 204.2 to read as follows:

**204.270–1 Policy.**

(a) The Electronic Document Access (EDA) system, an online repository for contractual instruments and supporting documents, is DoD's primary tool for electronic distribution of contract documents and contract data. Contract attachments shall be uploaded to EDA, except for contract attachments that are classified, are too sensitive for widespread distribution (*e.g.*, personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act, or cannot be practicably converted to electronic format (*e.g.*, samples, drawings, and models). Section J (or similar location

when the Uniform Contract Format is not used) shall include the annotation “provided under separate cover” for any attachment not uploaded to EDA.

(b) Agencies are responsible for ensuring the following when posting documents, including contractual instruments, to EDA—

(1) The timely distribution of documents; and

(2) That internal controls are in place to ensure that—

(i) The electronic version of a contract document in EDA is an accurate representation of the contract; and

(ii) The contract data in EDA is an accurate representation of the underlying contract.

#### 204.270–2 Procedures.

The procedures at PGI 204.270–2 provide details on how to record the results of data verification in EDA. When these procedures are followed, contract documents in EDA are an accurate representation of the contract and therefore may be used for audit purposes.

■ 5. Revise section 204.802 to read as follows:

#### 204.802 Contract files.

(a) Any document posted to the Electronic Document Access (EDA) system is part of the contract file and is accessible by multiple parties, including the contractor. Do not include in EDA contract documents that are classified, too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act), or attachments that cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Inclusion of any document in EDA other than contracts, modifications, and orders is optional.

(f) A photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date.

#### 204.805 [Amended]

■ 6. Amend section 204.805, paragraph (1), by removing “official contract files” and adding “contract files” in its place.

### PART 237—SERVICE CONTRACTING

■ 7. Revise section 237.172 to read as follows:

#### 237.172 Service contracts surveillance.

Ensure that quality assurance surveillance plans are prepared in conjunction with the preparation of the statement of work or statement of

objectives for solicitations and contracts for services. These plans should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contract. (See FAR subpart 46.4.) Retain quality assurance surveillance plans in the contract file. See <http://sam.dau.mil>, Step Four—Requirements Definition, for examples of quality assurance surveillance plans.

[FR Doc. 2015–24785 Filed 9–29–15; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 232

[Docket No. DARS 2015–0047]

RIN 0750–AI70

#### Defense Federal Acquisition Regulation Supplement: Contract Debts—Conform to FAR Section Designations (DFARS Case 2015–D029)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) subpart on contract debts to conform with the comparable Federal Acquisition Regulation (FAR) subpart.

**DATES:** Effective September 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Julie Hammond, telephone 571–372–6174.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is amending the numbering structure for various sections in DFARS subpart 232.6 and revising section headings, where appropriate, in order to conform with the FAR. This change will align the DFARS with the same coverage in the FAR. No changes are made beyond the redesignation of DFARS subpart 232.6 section numbers and the conformation of DFARS section headings to the FAR.

##### II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires

that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the DFARS sections are being renumbered merely to conform to the FAR sections and the DFARS section titles are being modified to conform to the FAR section titles. The content of the DFARS sections remains unchanged. This will alleviate any confusion the contracting officers may have and aid in moving between the two regulations with ease. These requirements affect only the internal operating procedures of the Government.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

##### V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 232**

Government procurement.

**Jennifer L. Hawes,***Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 232 is amended as follows:

**PART 232—CONTRACT FINANCING**

■ 1. The authority citation for 48 CFR part 232 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**232.605 [Redesignated as 232.602]**

■ 2. Redesignate section 232.605 as 232.602.

■ 3. In the newly redesignated section 232.602, revise the heading to read as follows:

**232.602 Responsibilities.**

\* \* \* \* \*

**232.606 [Redesignated as 232.603]**

■ 4. Redesignate section 232.606 as 232.603.

■ 5. Revise the newly redesignated section 232.603 to read as follows:

**232.603 Debt determination.**

When transferring a case to the contract financing office, follow the procedures at PGI 232.603.

**232.610 [Redesignated as 232.604]**

■ 6. Redesignate section 232.610 as 232.604.

■ 7. Revise the newly redesignated section 232.604 to read as follows:

**232.604 Demand for payment.**

When issuing a demand for payment of a contract debt, follow the procedures at PGI 232.604.

**232.616 [Redesignated as 232.610]**

■ 8. Redesignate section 232.616 as 232.610.

■ 9. Revise the newly redesignated section 232.610 to read as follows:

**232.610 Compromising debts.**

Only the department/agency contract financing offices (see PGI 232.070(c)) are authorized to compromise debts covered by this subpart.

**232.617 [Redesignated as 232.611]**

■ 10. Redesignate section 232.617 as 232.611.

**232.611 [Amended]**

■ 11. In the newly redesignated section 232.611, amend paragraph (a) by

removing “FAR 32.617(a)(2)” and adding “FAR 32.611(a)(2)” in its place.

[FR Doc. 2015–24786 Filed 9–29–15; 8:45 am]

BILLING CODE 5001–06–P

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Part 192**

[Docket No. PHMSA–2010–0026; Amdt. Nos. 191–23; 192–120; 195–100]

RIN 2137–AE59

**Pipeline Safety: Miscellaneous Changes to Pipeline Safety Regulations: Response to Petitions for Reconsideration**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** On March 11, 2015, PHMSA published a final rule amending the pipeline safety regulations to make miscellaneous changes that updated and clarified certain regulatory requirements. These amendments addressed several subject matter areas, including the performance of post-construction inspections, Type B onshore gas gathering line leak surveys, qualifying plastic pipe joiners, ethanol regulation, pipe transportation, offshore pipeline condition report filing, pressure reduction calculations for hazardous liquid pipeline anomalies, and components fabricated by welding. This final rule responds to petitions for reconsideration of the final rule.

**DATES:** The effective date of the amendment to 49 CFR 192.305, published at 80 FR 12779, March 11, 2015, is delayed indefinitely. PHMSA will publish a document in the **Federal Register** announcing a new effective date.

**FOR FURTHER INFORMATION CONTACT:** Kay McIver, Transportation Specialist, by telephone at 202–366–0113, or by electronic mail at [kay.mciver@dot.gov](mailto:kay.mciver@dot.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On March 11, 2015, PHMSA published a final rule amending the pipeline safety regulations to make miscellaneous changes that update and clarify certain regulatory requirements (80 FR 12762). These amendments address several subject matter areas,

including the performance of post-construction inspections, Type B onshore gas gathering line leak surveys, qualifying plastic pipe joiners, ethanol regulation, pipe transportation, offshore pipeline condition report filing, pressure reduction calculations for hazardous liquid pipeline anomalies, and components fabricated by welding.

**II. Petitions for Reconsideration**

Collectively, PHMSA received four petitions for reconsideration of the final rule from the American Public Gas Association (APGA), the American Gas Association (AGA), the Interstate Natural Gas Association (INGAA), and the National Association of Pipeline Safety Representatives (NAPSR). The APGA, the AGA, and NAPSR expressed concerns about the provisions of the final rule applicable to construction inspection in § 192.305. INGAA and the AGA expressed concerns applicable to provisions in the final rule applicable to components fabricated by welding.

*Components Fabricated by Welding; 49 CFR 192.153 and 192.165(b)(3)*

In the final rule published on March 11, 2015, PHMSA added paragraph (e) to § 192.153 requiring that “a component having a design pressure established under paragraph (a) or paragraph (b) of this section and subject to the strength testing requirements of § 192.505(b) must be tested to at least 1.5 times the MAOP.” PHMSA also modified § 192.165(b)(3) to cross-reference this new subsection. In the preamble to the final rule, PHMSA noted “this proposal is not a change to the current pressure testing requirements found in Part 192, but [is] simply a clarification to ensure a clearer understanding of PHMSA’s pressure testing requirements for certain ASME BPVC vessels located in compressor stations, meter stations and other Class 3 or Class 4 locations” (80 FR 12772, March 11, 2015).

On April 10, 2015, INGAA and AGA filed separate petitions for reconsideration with PHMSA regarding this change (Docket No. PHMSA–2010–0026). INGAA stated that PHMSA’s modifications to these code sections were not merely a clarification, but a departure from industry and agency understanding and practice, and require additional review. Specifically, INGAA claimed that PHMSA changed the acceptable test factor for a pressure vessel built under the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPVC) from the ASME requirements of 1.3 times the Maximum Allowable Working Pressure

(MAWP) to 1.5 times the Maximum Allowable Operating Pressure (MAOP).

INGAA and AGA requested that PHMSA reconsider this change due to a lack of technical justification and regulatory support, asking PHMSA to, at a minimum, conduct a study to validate the future use of 1.5 times MAOP for ASME pressure vessels and create an exception for ASME pressure vessels that were put into operation between July 14, 2004 (when the 1.3 factor was adopted by ASME) and October 1, 2015 (the final rule's effective date).

After reviewing INGAA's and AGA's petitions for reconsideration, the language in the final rule, and the Pipeline Safety Regulations (PSR), PHMSA disagrees with the petitioners' claim that the change, as written, was a departure from industry and agency understanding. The pressure testing requirements in the PSR for pipelines in Class 3 and 4 areas, as well as facilities located in Class 1 and 2 areas, are subject to the requirements of § 192.505(b) and require a pressure test equal to a minimum of 1.5 times the MAOP. The testing requirements of § 192.505(b), which were not revised in the final rule, state that in a Class 1 or Class 2 location, each compressor station, regulator station, and measuring station must be tested to at least Class 3 location test requirements. PHMSA believes the amendment to § 192.153 and the corresponding cross-reference with § 192.165(b)(3) simply clarify the regulations, is consistent with existing agency understanding and practice, and ensures regulated parties do not incorrectly use the newer ASME BPVC design factor of 1.3 for pressure testing in instances where pipelines must be tested at 1.5 times MAOP.

Regarding INGAA's request to create an exception for ASME pressure vessels put into operation between July 14, 2004, and October 1, 2015, from the requirements found at § 192.153(e), PHMSA is considering INGAA's request and will be evaluating the potential costs and environmental implications to operators to retest the non-compliant pressure vessels.

#### *Responsibility To Conduct Construction Inspections; 49 CFR 192.305*

Prior to the issuance of the final rule on March 11, 2015, § 192.305 stated that "each transmission pipeline or main must be inspected to ensure that it is constructed in accordance with this part," and § 195.204 stated "inspection must be provided to ensure the installation of pipe or pipeline systems in accordance with the requirements of this subpart." In the final rule issued on March 11, 2015, PHMSA amended

§ 192.305 to specify that a pipeline operator must not use operator personnel to perform a required inspection if the operator personnel also performed the construction task that required inspection. This amendment was based, in part, on a petition (Docket No. PHMSA-2010-0026) from the National Association of Pipeline Safety Representatives (NAPSR),<sup>1</sup> which suggested that contractors who install transmission lines or mains should be prohibited from inspecting their own work for compliance purposes. On Wednesday, July 11, 2012, the Gas Pipeline Advisory Committee recommended that PHMSA adopt the amendment.

On April 10, 2015, the APGA petitioned for a clarification, or in the alternative, a reconsideration of the final rule. The APGA stated that the amendment to § 192.305 has the potential to impose significant costs on publicly-owned gas distribution systems with little, if any, corresponding safety benefit. The APGA stated that if a utility has only one qualified crew that works together to construct distribution mains, there would not be anyone working for the utility available and qualified to perform the inspection. According to the APGA, 585 municipal gas utilities have 5 or fewer employees. The APGA went on to say that prohibiting small utilities from having their own employees inspect pipeline construction work performed by employees of the municipal utility would significantly increase the costs for those utilities by requiring small utilities to contract with third parties for such inspections. The APGA stated that its concerns would be alleviated by a clarification stating a two-man utility crew may inspect each other's work and comply with the amendment to § 192.305.

On April 10, 2015, the AGA petitioned PHMSA to extend the compliance date for the amendments in § 192.305 and § 195.204 from October 1, 2015, to January 1, 2016. The AGA asked for this additional time to allow pipeline operators to modify their construction inspection procedures, align associated documentation, and ensure proper training is in place for both company employees and contractors.

On July 28, 2015, NAPSR petitioned PHMSA to reconsider the revision of

<sup>1</sup> NAPSR is a non-profit organization of state pipeline safety personnel who serve to promote pipeline safety in the United States and its territories. Its membership includes the staff manager responsible for regulating pipeline safety from each state that is certified to do so or conducts inspections under an agreement with DOT in lieu of certification.

§ 192.305, as it undermines the 2002 NAPSR CR-1-02 resolution. NAPSR asked for a delay in the effective date of the final rule relative to § 192.305 until PHMSA has reviewed the rule and worked with NAPSR to address its concerns. According to NAPSR, allowing contractor personnel to inspect the work performed by their own company does not remove the inherent conflict of interest that is present and defeats the safety benefits that NAPSR intended. NAPSR stated that its original resolution would have prohibited contractors from self-inspecting their own work. NAPSR noted that, unfortunately, the final rule's amendment specifically allows contract personnel to inspect the work of their own crews so long as the inspector did not directly perform the task being inspected. Additionally, the amendment appears to apply to operator construction personnel as well, which was not NAPSR's original intent since, in its experience, operator personnel have less of an incentive to accept poor-quality work. Further, the final rule mistakenly decreases the scope of the inspection by changing the inspection requirements to only those found in Subpart G for the construction of mains and transmission lines, rather than in all of Part 192 as it was prior to the amendment.

As stated in the final rule, PHMSA believes that these construction inspections are important safety requirements because transmission pipelines and distribution mains are usually buried after construction, and subsequent examinations of these pipelines often involve a difficult excavation process. Upon further examination of the impacts of this amendment, in particular the issues raised by the petitioners, PHMSA believes that further examination and analysis of this safety issue is warranted prior to this change going into effect. Therefore, PHMSA is delaying the effective date of the amendment to 49 CFR 192.305 indefinitely. During this delay, PHMSA will be evaluating the ways operators are currently complying with § 192.305, developing guidance (based on input from industry and other regulatory bodies) and hosting a series of workshops on the guidance. Upon completion of this evaluation, PHMSA will determine the efficacy of the amendment and decide if any additional amendments to the current regulations are warranted and to propose any necessary amendments to § 192.305. Please note, the effective date for all the other amendments contained in the final rule remains October 1, 2015.

### III. Regulatory Analyses and Notices

#### *Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures*

This final rule is a non-significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and therefore was not reviewed by the Office of Management and Budget. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This final rule will not impose increased compliance costs on the regulated industry. The amendments to the March 11, 2015 final rule provide regulatory relief to pipeline operators involved in construction inspection and do not alter the cost benefit analysis and conclusions.

#### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This final rule will not impose increased compliance costs on the regulated industry. The delay in the effective date to § 192.305 does not alter our original certification that the March 11, 2015 final rule does not have a significant impact on a substantial number of small entities. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

This final rule imposes no new requirements for recordkeeping and reporting.

#### *Unfunded Mandates Reform Act of 1995*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of \$100 million, adjusted for inflation, or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

#### *National Environmental Policy Act*

The National Environmental Policy Act (42 U.S.C. 4321–4375) requires that Federal agencies analyze final actions to determine whether those actions will have a significant impact on the human environment. The Council on Environmental Quality regulations requires Federal agencies to conduct an environmental review considering (1) the need for the final action, (2) alternatives to the final action, (3) probable environmental impacts of the final action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

The amendment adopted in this final rule will not impose increased compliance costs on the regulated industry or have any measureable effect on our original assessment. The amendments to the March 11, 2015, final rule provide regulatory relief to pipeline operators involved in construction inspection. Overall, this final rule will reduce the compliance burden without compromising pipeline safety. Therefore, PHMSA has determined that this final rule will not have a significant impact on the human environment.

#### *Privacy Act Statement*

Anyone may search the electronic form of all comments received for any

of our dockets. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (70 FR 19477).

#### *Executive Order 13132*

PHMSA has analyzed this final rule according to Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not impose substantial direct compliance costs on State and local governments. This final rule does not preempt State law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### *Executive Order 13211*

This final rule is not a "significant energy action" under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action.

The effective date for the amendment revising 49 CFR 192.305, published March 11, 2015, at 80 FR 12779, is delayed indefinitely.

Issued in Washington, DC on September 25, 2015, under authority delegated in 49 CFR Part 1.97.

**Stacy Cummings,**

*Interim Executive Director.*

[FR Doc. 2015–24763 Filed 9–29–15; 8:45 am]

**BILLING CODE P**

# Proposed Rules

Federal Register

Vol. 80, No. 189

Wednesday, September 30, 2015

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1051

[Doc. No. AO-15-0071; AMS-DA-14-0095]

#### Milk in California; Reconvened Hearing on a Proposal To Establish a Federal Milk Marketing Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice to reconvene public hearing on proposed rulemaking.

**SUMMARY:** In the event of a lapse of appropriations necessitating an adjournment of the public hearing on September 30, 2015, this Notice serves to establish a date to reconvene a public hearing that began on September 22, 2015, in Clovis, CA, to consider and take evidence on a proposal to establish a Federal milk marketing order to regulate the handling of milk in California.

**DATES:** The hearing will reconvene at 9:00 a.m. two business days after the date Federal government operations resume. If the date is a Friday, the hearing will reconvene the following Monday. If the reconvening date is a Federal Holiday, the hearing will reconvene the next business day.

**ADDRESSES:** The hearing will reconvene at the Clovis Veterans Memorial District Building, 808 Fourth Street, Clovis, California 93612; telephone (559) 299-0471. If still ongoing, the hearing will be held on October 22 and 23, 2015, at the Piccadilly Inn Airport Hotel, 5115 E. McKinley Avenue, Fresno, California 93727; telephone (559) 375-7760.

**FOR FURTHER INFORMATION CONTACT:** William Francis, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, Stop 0231—Room 2969—S, 1400 Independence Avenue SW., Washington, DC 20250-0231; (202) 720-6274; email address: [william.francis@ams.usda.gov](mailto:william.francis@ams.usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact Diane Hirsch, AMS Dairy Program, at (425) 487-5601, email: [dhirsch@fmmaseattle.com](mailto:dhirsch@fmmaseattle.com), before the hearing begins.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:  
*Notice of Hearing:* Issued August 4, 2015; published August 5, 2015, FR 80 47210.

In the event of a lapse of appropriations necessitating an adjournment of the public hearing on September 30, 2015, notice is hereby given that the hearing to consider the promulgation of a Federal Milk Marketing Order for the state of California will reconvene in session at the Clovis Veterans Memorial District Building, 808 Fourth Street, Clovis, California 93612; telephone (559) 299-0471. If still ongoing, the hearing will be held on October 22 and 23, 2015, at the Piccadilly Inn Airport Hotel, 5115 E. McKinley Avenue, Fresno, California 93727; telephone (559) 375-7760. At the reconvened hearing, testimony will continue to be received regarding Proposals 1-4 as included in the Notice of Hearing published August 5, 2015, 80 FR 47210.

#### List of Subjects in 7 CFR 1051

Milk marketing orders.

**Authority:** 7 U.S.C. 601-674, and 7253.

Dated: September 25, 2015.

**Rex A. Barnes,**

*Associate Administrator.*

[FR Doc. 2015-24799 Filed 9-29-15; 8:45 am]

**BILLING CODE 3410-02-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51, 60, 61, and 63

[EPA-HQ-OAR-2014-0292; FRL-9934-85-OAR]

RIN 2060-AS34

#### Revisions to Test Methods, Performance Specifications, and Testing Regulations for Air Emission Sources

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

**ACTION:** Announcement of public hearing.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a public hearing for the proposed rule titled, "Revisions to Test Methods, Performance Specifications, and Testing Regulations for Air Emission Sources," that was published in the **Federal Register** on September 8, 2015. The hearing will be held in Research Triangle Park, North Carolina. The EPA is proposing technical and editorial corrections and revisions to regulations related to source testing of emissions. The EPA is proposing to make corrections and updates to testing provisions that contain inaccuracies and outdated procedures, and to provide alternatives to existing testing regulations. The revisions will improve the quality of data and provide testers flexibility to use recently-approved alternative procedures. Many of the changes were suggested by testers and other end-users and will not impose new substantive requirements on source owners or operators.

**DATES:** The public hearing will be held on October 8, 2015, in Research Triangle Park. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearing.

**ADDRESSES:** The hearing will be held at the Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

Written comments on the proposed rule may also be submitted to the EPA electronically by mail, by facsimile, or through hand delivery/courier. Please refer to the proposed rule for the addresses and detailed instructions.

A complete set of documents related to the proposed rule is available for public inspection at the EPA Docket Center located at Docket ID No. EPA-HQ-OAR-2014-0292, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Avenue 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. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at [www.regulations.gov](http://www.regulations.gov).

The proposal and information about the public hearing, can be found at <http://www.epa.gov/ttn/emc/proposed.html>.



**FOR FURTHER INFORMATION CONTACT:** If you would like to speak at the public hearing or have questions concerning the public hearing or proposed rule, please contact Ms. Lula Melton, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143-02), Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone: (919) 541-2910; fax number: (919) 541-0516; email address: [melton.lula@epa.gov](mailto:melton.lula@epa.gov).

**SUPPLEMENTARY INFORMATION:** The proposed rule for which the EPA is holding the public hearing was published in the **Federal Register** on September 8, 2015 (80 FR 54146), and is available at <http://www.epa.gov/ttn/emc/proposed.html>. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be postmarked by the last day of the comment period, November 9, 2015, as specified in the proposed rule.

The public hearing will be held in Research Triangle Park, North Carolina, and will begin at 1:00 p.m. (local time) and continue until 4:00 p.m. (local time). The EPA will make every effort to accommodate all speakers that arrive and register before 1:00 p.m. Please note that the hearing is being held at a U.S. government facility, and individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the building. The REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect July 21, 2014. If your driver's license is issued by American Samoa, Louisiana, Minnesota, New Hampshire, or New York, you must present an additional form of identification to enter the federal building in Research Triangle Park, North Carolina where the public hearing will be held. Acceptable alternative forms of identification include federal employee badges, passports, enhanced driver's licenses, military identification cards, birth certificates, social security cards, voter registration cards, and U.S. citizen ID cards. In addition, you will need to obtain a property pass for any

personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

If you would like to present oral testimony at the hearing, please notify Ms. Lula Melton, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code: E143-02, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone: (919) 541-2910; fax number: (919) 541-0516; email address: [melton.lula@epa.gov](mailto:melton.lula@epa.gov) (preferred method for registering) no later than October 5, 2015. Ms. Melton will arrange a general time slot for you to speak. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing.

Oral testimony will be limited to 5 minutes for each commenter to address the proposed revisions. The EPA will not provide audiovisual equipment for presentations unless we receive special requests in advance. Commenters should notify Ms. Melton if they will need specific equipment and/or specific translation services for non-English speaking commenters. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD-ROM, or in paper copy.

The hearing schedule, including lists of speakers, will be posted at <http://www.epa.gov/ttn/emc/proposed.html> prior to the hearings. Verbatim transcripts of the hearings and written statements will be included in the rulemaking docket.

#### **How can I get copies of this document and other related information?**

The EPA has established the official public docket for the proposed rule under Docket ID No. EPA-HQ-OAR-2014-0292. Please refer to the proposed rule (80 FR 54146, September 8, 2015) for detailed information on accessing information related to the proposed rule.

Dated: September 18, 2015.

**Michael Koerber,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 2015-24859 Filed 9-29-15; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R09-OAR-2015-0570; FRL-9934-43-Region 9]

#### **Approval of California Air Plan Revisions, San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO<sub>x</sub>), and particulate matter (PM) from wood burning devices. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by October 30, 2015.

**ADDRESSES:** Submit comments, identified by docket ID number EPA-R09-OAR-2015-0570, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *Email:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to the EPA, your email address will be automatically captured and included as part of the public comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider

your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy

materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Rynda Kay, EPA Region IX, (415) 947-4118, [kay.rynda@epa.gov](mailto:kay.rynda@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board.

**TABLE 1—SUBMITTED RULE**

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD .....	4901	Wood Burning Fireplaces and Wood Burning Heaters .....	09/18/14	11/06/14

On December 18, 2014, the EPA determined that the submittal for SJVUAPCD Rule 4901 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are there other versions of this rule?*

We approved an earlier version of Rule 4901 into the SIP on October 11, 2009 (74 FR 57907). The SJVUAPCD adopted revisions to the SIP-approved version on September 18, 2014 and CARB submitted them to us on November 6, 2014. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

*C. What is the purpose of the submitted rule revision?*

VOCs help produce ground-level ozone, smog and PM, which harm human health and the environment. NO<sub>x</sub> helps produce ground-level ozone, smog and PM, which harm human health and the environment. PM, including PM equal to or less than 2.5 microns in diameter (PM<sub>2.5</sub>) and PM equal to or less than 10 microns in diameter (PM<sub>10</sub>), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOC, NO<sub>x</sub>, and PM emissions.

Rule 4901 is designed to limit emissions of these pollutants generated by the use of wood burning fireplaces, wood burning heaters, and outdoor

wood burning devices. The rule establishes requirements for the sale/transfer, operation, and installation of wood burning devices and on the advertising of wood for sale intended for burning in a wood burning fireplace, wood burning heater, or outdoor wood burning device within the San Joaquin Valley Air Basin (San Joaquin Valley).

The SIP-approved rule was modified to replace the existing episodic curtailment requirement, which required declaration of a mandatory wood burning curtailment day whenever the PM<sub>2.5</sub> concentration was forecasted to be greater than or equal to 30 micrograms per cubic meter (µg/m<sup>3</sup>) or the PM<sub>10</sub> concentration was forecasted to be greater than or equal to 135 µg/m<sup>3</sup>, with a new two-tiered curtailment program. During a Level One Episodic Wood Burning Curtailment, which is triggered when the PM<sub>2.5</sub> concentration is forecasted to be between 20–65 µg/m<sup>3</sup>, operation of wood burning fireplaces and unregistered wood burning heaters is prohibited, but properly operated, wood burning heaters that meet certification requirements and have a current registration with the District may be used. Specific certification and registration requirements are outlined in the rule. During a Level Two Episodic Wood Burning Curtailment, which is triggered when the PM<sub>2.5</sub> concentration is forecasted to be above 65 µg/m<sup>3</sup> or the PM<sub>10</sub> concentration is forecasted to be above 135 µg/m<sup>3</sup>, operation of any wood burning device is prohibited.<sup>1</sup>

<sup>1</sup> Locations where natural gas service is not available or where a wood burning device is the

The two-tiered curtailment program also replaces a contingency measure provision which would have been implemented in the event that the EPA finalized a rulemaking finding San Joaquin Valley had failed to attain the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) by the applicable deadline. The provision would have required a ban on the operation of all wood burning devices when the PM<sub>2.5</sub> concentration was predicted to be greater than or equal to 20 µg/m<sup>3</sup> or the PM<sub>10</sub> concentration was predicted to be greater than or equal to 135 µg/m<sup>3</sup>.

Additionally, the revised rule adds outdoor wood burning heaters to the applicability paragraph, explicitly references to the New Source Performance Standard (NSPS) for New Residential Wood Heaters (40 CFR part 60, subpart AAA) to assure compliance with the latest Federal requirements, and includes other editorial revisions to improve rule clarity.

The EPA’s technical support document (TSD) has more information about this rule.

**II. The EPA’s Evaluation and Action**

*A. How is the EPA evaluating the rule?*

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater

sole source of heat in a residence are exempt from both levels of curtailment.

emissions reductions (see CAA section 193).

The San Joaquin Valley is currently designated and classified as an extreme 1-hour ozone nonattainment area and an extreme 8-hour ozone nonattainment area under both the 1997 and 2008 8-hour ozone standards (40 CFR 81.305). CAA section 172(c)(1) requires ozone nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. Therefore, SJVUAPCD must implement RACM for ozone precursors. While our stringency discussion below focuses on PM emissions, we are not aware of reasonably available controls for these sources for ozone precursors that are not also reasonably available controls for PM. In addition, because residential wood burning takes place in the winter months when ozone concentrations are lower and the probability of exceeding the ozone NAAQS is low, we do not believe it is necessary to assess RACM/RACT for ozone and its precursors independently from our assessment of RACM/RACT for PM.

San Joaquin Valley is designated and classified as a moderate nonattainment area for the 2006 24-hour PM<sub>2.5</sub> standard (40 CFR 81.305). CAA sections 172(c)(1) and 189(a)(1)(C) require moderate PM<sub>2.5</sub> nonattainment areas to implement RACM and RACT as expeditiously as practicable. Therefore, SJVUAPCD must implement RACM, including RACT, for PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors.

San Joaquin Valley is designated and classified as a serious nonattainment area for the 1997 annual and 1997 24-hour PM<sub>2.5</sub> standards (40 CFR 81.305). CAA section 189(b)(1)(B) requires serious PM<sub>2.5</sub> nonattainment areas to implement best available control measures (BACM), including best available control technology (BACT), within 4 years after reclassification of the area to serious. Therefore, SJVUAPCD must implement BACM, including BACT, for PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors.

San Joaquin Valley is currently designated attainment for PM<sub>10</sub> (40 CFR 81.305). Accordingly, SJVUAPCD is not required to implement RACM/RACT or BACM/BACT for PM<sub>10</sub> and PM<sub>10</sub> precursors. Therefore, we are not evaluating Rule 4901 for compliance with RACM or BACM requirements for PM<sub>10</sub>.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency

requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Restatement to Update of EPA's SSM Policy Applicable to SIPs", 80 FR 33839, June 12, 2015.
4. "Strategies for Reducing Residential Wood Smoke", EPA-456/B-13-001, March 2013.

#### *B. Does the rule meet the evaluation criteria?*

We believe this rule is consistent with CAA requirements and relevant guidance regarding enforceability, SIP revisions, and RACM/RACT and BACM/BACT.

The rule requirements and applicability are clear, and the monitoring, recordkeeping, reporting and other provisions sufficiently ensure that affected sources and regulators can evaluate and determine compliance with Rule 4901 consistently. Additionally, Rule 4901 includes several provisions that together provide continuous control of PM emissions consistent with the CAA and EPA guidance on start-up, shut-down, and malfunction, including an episodic curtailment program, certification and registration requirements, restrictions concerning materials that can be burned, and a limit on visible emissions from residential chimneys.

The District estimates that the new tiered curtailment program described in Rule 4901, Paragraph 5.6, would reduce average winter burning season emissions by 3.27 tons per day (tpd) PM<sub>2.5</sub> and would reduce annual average emissions by 1.09 tpd PM<sub>2.5</sub>, when compared to the current SIP-approved version of Rule 4901. The District states that allowing registered devices to operate on additional days (*i.e.*, during Level One Curtailment days) and subsidizing change-outs for cleaner burning devices would provide significant incentive for residents to transition from higher polluting devices and result in additional emission reductions beyond 3.27 tpd PM<sub>2.5</sub>.

We propose to determine that our approval of the submittal would comply with CAA section 110(l), because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment are met and the submitted SIP revision is at least as stringent as the rule previously approved into the SIP. CAA section 193 does not apply to this

action because the submitted SIP revision does not weaken any SIP control requirement in effect before November 15, 1990.

We assess whether Rule 4901 implements BACM/BACT for PM<sub>2.5</sub>,<sup>2</sup> by using an analysis provided by the District and comparing provisions found in Rule 4901 with the EPA document "Strategies for Reducing Residential Wood Smoke", EPA-456/B-13-001, March 2013 and current State and District wood burning rules. This evaluation is described in the TSD. Based on this evaluation, we believe the September 18, 2014 version of Rule 4901 implements BACM/BACT for wood burning devices in the San Joaquin Valley considering technological and economic feasibility.

#### *C. EPA Recommendations to Further Improve the Rule*

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule but are not currently the basis for rule disapproval.

#### *D. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because we believe it fulfills all relevant requirements. We will accept comments from the public on this proposal until October 30, 2015. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SJVUAPCD rule described in Table 1 of this notice. The EPA has made, and will continue to make, these documents available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

<sup>2</sup> Because RACM/RACT represents a less stringent level of control than BACM/BACT, we have not separately evaluated the rule with respect to RACM/RACT.

provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 14, 2015.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2015-24870 Filed 9-29-15; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2015-0633; FRL-9934-94-Region 9]

### PM<sub>10</sub> Plans and Redesignation Request; Truckee Meadows, Nevada; Deletion of TSP Area Designation

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve two revisions to the Nevada state implementation plan (SIP). The first revision provides a demonstration of implementation of best available control measures (BACM) for control of particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM<sub>10</sub>) within Truckee Meadows. The second revision is a plan that provides for the maintenance of the national ambient air quality standard for PM<sub>10</sub> in Truckee Meadows through 2030, includes an emissions inventory consistent with attainment, and establishes motor vehicle emissions budgets. In connection with these proposed approvals, the EPA is proposing to determine that major stationary sources of PM<sub>10</sub> precursors do not contribute significantly to elevated PM<sub>10</sub> levels in the area. Also, based in part on the proposed approvals of the BACM demonstration and maintenance plan and proposed determination regarding PM<sub>10</sub> precursors, the EPA is proposing to approve the State of Nevada's request for redesignation of the Truckee Meadows nonattainment area to attainment for the PM<sub>10</sub> standard. Lastly, the EPA is proposing to delete the area designation for Truckee Meadows for the revoked national ambient air quality standard for total suspended particulate (TSP). The EPA is proposing these actions because the SIP revisions meet the applicable statutory and regulatory requirements for such plans and related motor vehicle

emissions budgets and because the area meets the Clean Air Act requirements for redesignation of nonattainment areas to attainment.

**DATES:** Comments must be received on or before October 30, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R09-OAR-2015-0633, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *Email:* [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov).

3. *Mail or deliver:* John Ungvarsky (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or email. <http://www.regulations.gov> is an anonymous access system, and the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment.

*Docket:* The index to the docket and documents in the docket for this action are generally available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, Air Planning Office (AIR-2), U.S. Environmental Protection Agency,

Region IX, (415) 972-3963,  
ungvarsky.john@epa.gov.

#### SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us,” or “our” is used, we mean the EPA. This supplementary information section is arranged as follows:

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#### I. Background

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act (CAA), as amended in 1970, the EPA promulgated the original national ambient air quality standards (NAAQS or “standards”) for the “criteria” pollutants, which included carbon monoxide, hydrocarbons, nitrogen dioxide, photochemical oxidant, sulfur

dioxide, and particulate matter.<sup>1</sup> The NAAQS are set at concentrations intended to protect public health and welfare. The original NAAQS for particulate matter were defined in terms of a reference method that called for measuring particulate matter up to a nominal size of 25 to 45 micrometers or microns. This fraction of total ambient particulate matter is referred to as “total suspended particulate” or TSP. Within nine months of promulgation of the original NAAQS, each state was required under section 110 of the 1970 amended Act to adopt and submit to the EPA a plan, referred to as a SIP, which provides for the implementation, maintenance, and enforcement of each of the NAAQS within each State. The State of Nevada submitted its SIP on January 28, 1972, and the EPA took action on it later that year. 37 FR 10842 (May 31, 1972).

Generally, SIPs were to provide for attainment of the NAAQS within three years after EPA approval of the plan. However, many areas of the country did not attain the NAAQS within the statutory period. In response, Congress amended the Act in 1977 to establish a new approach, based on area designations, for attaining the NAAQS. Under section 107(d) of the 1977 amended Act, states were to make recommendations for all areas within their borders as attainment, nonattainment, or unclassifiable for each of the NAAQS, including TSP, and the EPA was to designate areas based on those recommendations, as modified if appropriate. For the State of Nevada, the state recommended, and the EPA approved, the use of hydrographic areas as the geographic basis for designating air quality planning areas. 67 FR 12474 (March 19, 2002). For the TSP NAAQS, the EPA designated a number of areas in Nevada as “nonattainment,” including Truckee Meadows<sup>2</sup> (hydrographic area

<sup>1</sup> Particulate matter is the generic term for a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. Particles originate from a variety of anthropogenic stationary and mobile sources as well as from natural sources. Particles may be emitted directly or form in the atmosphere by transformations of gaseous emissions such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), and volatile organic compounds (VOC). The chemical and physical properties of particulate matter vary greatly with time, region, meteorology, and source category. SO<sub>x</sub>, NO<sub>x</sub>, and VOC are referred to as PM<sub>10</sub> precursors. As discussed later in this proposed rule, precursor emissions do not contribute significantly to elevated ambient PM<sub>10</sub> concentrations in Truckee Meadows.

<sup>2</sup> Truckee Meadows, also referred to as the “Reno planning area,” lies in the far southern part of Washoe County. Washoe County is located in the northwestern portion of Nevada and is bordered by the State of California to the west and the State of

(HA) #87). 43 FR 8962, at 9012 (March 3, 1978). The area designations for air quality planning purposes within the State of Nevada are codified at 40 CFR 81.329.

As amended in 1977, the CAA required states to revise their SIPs by January 1979 for all designated nonattainment areas. The various local entities and the State of Nevada responded by developing and submitting attainment plans for the TSP nonattainment areas, including Truckee Meadows,<sup>3</sup> and in 1981, the EPA approved these plans on condition that the State submit, within a prescribed period of time, revisions to correct certain deficiencies. 46 FR 21758 (April 14, 1981). In 1982, we found that the state had submitted the required revisions correcting the identified deficiencies, and we revoked the conditions placed on our approval of the TSP plans. 47 FR 15790 (April 13, 1982).

In 1987, the EPA revised the NAAQS for particulate matter, eliminating TSP as the indicator for the NAAQS and replacing it with the “PM<sub>10</sub>” indicator. 52 FR 24634 (July 1, 1987). PM<sub>10</sub> refers to particles with an aerodynamic diameter less than or equal to a nominal 10 microns. At that time, EPA established two PM<sub>10</sub> standards: A 24-hour standard of 150 micrograms per cubic meter (µg/m<sup>3</sup>) and an annual standard of 50 µg/m<sup>3</sup>.<sup>4</sup> We indicated in the preamble to our regulations implementing the then-new PM<sub>10</sub> NAAQS that we would consider

Oregon to the north. Within the State of Nevada, the counties of Humboldt, Pershing, Storey, Churchill, Lyon, and the city of Carson City bound Washoe County to the east and south. Located at an average elevation of 4,500 feet above sea level, Truckee Meadows encompasses a land area of approximately 200 square miles and is surrounded by mountain ranges, which can lead to persistent wintertime temperature inversions where a layer of cold air is trapped in the valley. Warmer air above the inversion acts as a lid, containing and concentrating air pollutants at ground level. Approximately two-thirds of Washoe County’s population lives in the Truckee Meadows area. Anthropogenic activities, such as automobile use and residential wood combustion, are also concentrated here. Washoe County has experienced significant growth in population since 1990, with an increase in population from approximately 257,000 in 1990 to approximately 422,000 in 2011, an increase of 64 percent over that 21-year period. The two major cities in Truckee Meadows are Reno and Sparks.

<sup>3</sup> The reference here is to the TSP portions of the *Truckee Meadows Air Quality Implementation Plan* (December 6, 1978).

<sup>4</sup> In 2006, the EPA retained the 24-hour PM<sub>10</sub> standard but revoked the annual PM<sub>10</sub> standard. 71 FR 61144 (October 17, 2006). More recently, as part of the Agency’s periodic review of the NAAQS, EPA reaffirmed the 24-hour PM<sub>10</sub> NAAQS. 78 FR 3086 (January 15, 2013). See 40 CFR 50.6 (“National primary and secondary ambient air quality standards for PM<sub>10</sub>”).

deletion of TSP area designations once the EPA had reviewed and approved revised SIPs that include control strategies for the PM<sub>10</sub> NAAQS and once the EPA had promulgated PM<sub>10</sub> increments for the prevention of significant deterioration (PSD) program. 52 FR 24672, at 24682 (July 1, 1987).

Under our regulations for implementing the revised particulate matter NAAQS (*i.e.*, the PM<sub>10</sub> NAAQS), the EPA did not designate areas as nonattainment, attainment, or unclassifiable but categorized areas into three groups, referred to as Group I, Group II, or Group III. Group I areas were those that had a probability of not attaining the PM<sub>10</sub> NAAQS (based on existing TSP data) of at least 90%. Group I areas were required to submit SIP revisions that contain full PM<sub>10</sub> control strategies including a demonstration of attainment. 52 FR 24672, at 24681 (July 1, 1987). We identified the Las Vegas (HA #212) and Reno (HA #87, *i.e.*, Truckee Meadows) planning areas as Group I areas. 52 FR 29383 (August 7, 1987) and 55 FR 45799 (October 31, 1990).

The CAA was significantly amended in 1990. Under the 1990 amended Act, Congress replaced the PM<sub>10</sub> regulatory approach established by the EPA in 1987 with the area designation concept and designated former “Group I” areas and certain other areas as nonattainment areas for PM<sub>10</sub> by operation of law. *See* CAA section 107(d)(4)(B). As former “Group I” areas, the Reno planning area (*i.e.*, Truckee Meadows) was designated as a nonattainment area for PM<sub>10</sub> by operation of law. 56 FR 11101 (March 15, 1991). Truckee Meadows was initially classified as a “Moderate” PM<sub>10</sub> nonattainment area with an applicable attainment date of December 31, 1994, but despite improvements in ambient particulate conditions, Truckee Meadows was later reclassified by operation of law to “Serious” upon the EPA’s determination that the area had failed to attain the standard by the “Moderate” area attainment date (*i.e.*, based on ambient PM<sub>10</sub> data for the 1992–1994 period). 66 FR 1268 (January 8, 2001). States with “Serious” PM<sub>10</sub> nonattainment areas were required under the CAA, as amended in 1990, to submit revisions to their SIPs to, among other things, demonstrate attainment of the PM<sub>10</sub> standard as expeditiously as practicable, but no later than December 31, 2001. *See* CAA section 188(c). Despite further improvements, Truckee Meadows failed to attain the December 31, 2001 attainment date based on ambient PM<sub>10</sub> data for the 1999–2001 period. Such areas are required to submit an attainment plan under CAA

section 189(d) (referred to as a “Five Percent” plan), but the SIP submittal requirement for a Five Percent plan for Truckee Meadows was suspended by a “clean data” determination by the EPA based on ambient PM<sub>10</sub> data for the 2007–2009 period. 76 FR 21807 (April 19, 2011).

The 1990 Act Amendments also provided for the continued transition from TSP to PM<sub>10</sub>. Specifically, section 107(d)(4)(B) states in relevant part: “Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before November 15, 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 163(b) of this title, until the Administrator determines that such designation is no longer necessary for that purpose.”

Section 166(f) of the 1990 amended Act authorizes the EPA to replace the TSP increments with PM<sub>10</sub> increments, and in 1993, the EPA promulgated the PM<sub>10</sub> increments and revised the PSD regulations accordingly. 58 FR 31622 (June 3, 1993). In our June 1993 final rule, we indicated that the replacement of the TSP increments with PM<sub>10</sub> increments negates the need for the TSP *attainment or unclassifiable* area designations to be retained. We also indicated that we would delete such TSP designations in 40 CFR part 81 upon the occurrence of, among other circumstances, the EPA’s approval of a State’s or local agency’s revised PSD program containing the PM<sub>10</sub> increments. 58 FR 31622, at 31635 (June 3, 1993).

In November 2002, we deleted the TSP attainment or unclassifiable area designations throughout the State of Nevada, except for those in Clark County. 67 FR 68769 (November 13, 2002). In April 2013, we deleted the TSP attainment or unclassifiable area designations within Clark County and also deleted the TSP *nonattainment* area designations for all of the Nevada TSP nonattainment areas, except for Las Vegas Valley and Truckee Meadows.<sup>5</sup> 78

<sup>5</sup> In June 1992, the State of Nevada requested that we reclassify the eight existing TSP nonattainment areas in Nevada to “unclassifiable” status. *See* letter from L.H. Dodgion, Administrator, NDEP, to Daniel W. McGovern, Regional Administrator, EPA Region IX, dated June 15, 1992. We believe that deletion of the TSP nonattainment designations is administratively more efficient than redesignation of the area to unclassifiable. As noted above, we have already deleted seven of the TSP nonattainment area designations and are proposing to delete the one for Truckee Meadows herein.

FR 22425 (April 16, 2013). In July 2014, we deleted the TSP nonattainment area designation for Las Vegas Valley, and in today’s proposed rule, we are proposing to delete the TSP nonattainment area designation for Truckee Meadows.

## II. The State’s Submittals

The Nevada Division of Environmental Protection (NDEP) is the state agency with overall responsibility for the Nevada SIP and is the designated agency for submitting SIPs and SIP revisions to the EPA for approval. The Washoe County District Board of Health (“Health District”), which administers air quality programs through the Health District’s Air Quality Management Division (“WCAQMD”), is empowered under state law to develop air quality plans within Washoe County. The Health District is also empowered under state law to regulate stationary sources within Washoe County with the exception of certain types of power plants, which lie exclusively within the jurisdiction of the NDEP. After it adopts an air quality plan for Washoe County, the Health District submits the plan to NDEP for adoption as part of the Nevada SIP and then for submittal to the EPA for approval.

As noted above, the Health District adopted, and the EPA approved, an air quality plan in the 1970s to provide for attainment of the TSP standard in Truckee Meadows. Another plan was required for Truckee Meadows in response to the area’s classification as a “Moderate” nonattainment area for PM<sub>10</sub> under the Clean Air Act Amendments of 1990. On April 15, 1991, the NDEP submitted certain District regulations intended to reduce PM<sub>10</sub> emissions in Truckee Meadows to the EPA. On October 30, 1991, the state submitted “Nevada State Implementation Plan for the Truckee Meadows Air Basin, Particulate Matter (PM<sub>10</sub>)” (“1991 PM<sub>10</sub> Attainment Plan”), a PM<sub>10</sub> plan for the Truckee Meadows area to address the requirements in CAA section 189(a) for “Moderate” PM<sub>10</sub> nonattainment areas. The 1991 PM<sub>10</sub> Attainment Plan included a demonstration that the attainment deadline for the Truckee Meadows moderate nonattainment area (December 31, 1994) was not practicably achievable, and carried forward the District regulations that had been submitted previously on April 15, 1991. On March 7, 1994, the NDEP submitted amended District regulations that were intended to address deficiencies that the EPA had identified through its review of the regulations submitted in April 1991 and the 1991 PM<sub>10</sub> Attainment Plan submitted in October 1991.

As noted above, in 2001, the EPA reclassified the Truckee Meadows area to “Serious” nonattainment for the PM<sub>10</sub> NAAQS, triggering the requirement for a new attainment plan, and on August 5, 2002, the NDEP submitted a PM<sub>10</sub> plan for Truckee Meadows to address the requirements in CAA section 189(b) for “Serious” PM<sub>10</sub> nonattainment areas. See “Revisions to the Nevada Particulate Matter (PM<sub>10</sub>) State Implementation Plan for the Truckee Meadows Air Basin,” August 2002 (“2002 PM<sub>10</sub> Attainment Plan”). Generally, each subsequent air quality plan builds upon the foundation established by earlier plans, and, in this instance, the 2002 PM<sub>10</sub> Attainment Plan built upon and superseded the earlier “Moderate” area plans. The 2002 PM<sub>10</sub> Attainment Plan included an analysis of BACM for the Truckee Meadows area and regulations to control PM<sub>10</sub> emissions from all significant PM<sub>10</sub> sources identified in that BACM analysis—*i.e.*, street sanding and sweeping operations, fugitive dust-generating activities, and residential wood combustion. The District Regulations submitted as part of the 2002 PM<sub>10</sub> Attainment Plan superseded those that had been submitted in April 1991 and those submitted in March 1994. The EPA has approved the various District regulations submitted in connection with the 2002 PM<sub>10</sub> Attainment Plan, but has not otherwise taken action on the “Moderate” or “Serious” area attainment plans.

In 2009, based on ambient PM<sub>10</sub> monitoring data showing that the area had attained the PM<sub>10</sub> NAAQS, the WCAQMD developed a maintenance plan, and the NDEP submitted the plan to the EPA for approval along with a request to redesignate Truckee Meadows from nonattainment to attainment for the PM<sub>10</sub> standard. See “Redesignation Request and Maintenance Plan for the Truckee Meadows 24-Hour PM<sub>10</sub> Non-Attainment Area,” May 28, 2009 (“2009 PM<sub>10</sub> Maintenance Plan”). The 2009 PM<sub>10</sub> Maintenance Plan included motor vehicle emissions budgets (MVEBs) for the Truckee Meadows area, and the EPA found that MVEBs for PM<sub>10</sub> contained in the 2009 PM<sub>10</sub> Maintenance Plan were adequate for transportation conformity purposes. 75 FR 27776 (May 18, 2010). The WCAQMD subsequently revised the 2009 PM<sub>10</sub> Maintenance Plan in response to the EPA’s review of the plan, and on November 7, 2014, the NDEP submitted a new maintenance plan, “Redesignation Request and Maintenance Plan for the Truckee Meadows 24-Hour PM<sub>10</sub> Non-Attainment Area,” August 28, 2014

(“2014 PM<sub>10</sub> Maintenance Plan” or “Plan”) for EPA approval. The 2014 PM<sub>10</sub> Maintenance Plan supersedes the 2009 PM<sub>10</sub> Maintenance Plan, and includes a revised maintenance plan under CAA section 175A, an updated emissions inventory under CAA section 172(c)(3), and revised MVEBs for the Truckee Meadows area.

In this proposed rule, we are proposing to approve the 2014 PM<sub>10</sub> Maintenance Plan, including the emissions inventory, maintenance demonstration, and related MVEBs. Additionally, we are proposing to approve the BACM demonstration from the 2002 PM<sub>10</sub> Attainment Plan but consider the rest of the 2002 PM<sub>10</sub> Attainment Plan to be superseded by the 2014 PM<sub>10</sub> Maintenance Plan.

### III. Procedural Requirements for Adoption and Submittal of SIP Revisions

Section 110(l) of the CAA requires states to provide reasonable notice and public hearing prior to adoption of SIP revisions. In this action, we are proposing action on the NDEP’s submittal of the 2014 PM<sub>10</sub> Maintenance Plan as a revision to the Nevada SIP. The 2014 PM<sub>10</sub> Maintenance Plan contains evidence that reasonable notice of a public hearing was provided to the public (via newspaper advertisement) and that a public hearing was conducted prior to adoption by the Health District. More specifically, the Plan provides evidence that the Health District published a notice of the availability of the draft 2014 PM<sub>10</sub> Maintenance Plan and of a public hearing to be held on August 28, 2014 in the Reno Gazette-Journal on July 25, August 11, and August 22, 2014. Following adoption by the Health District on August 28, 2014, the Health District forwarded the 2014 PM<sub>10</sub> Maintenance Plan to the NDEP. The NDEP then submitted the SIP revision to the EPA for approval on November 7, 2014.

In this action, we also proposed to approve an element (*i.e.*, the BACM demonstration) of the 2002 PM<sub>10</sub> Attainment Plan, and it too contains evidence that reasonable notice of a public hearing was provided to the public (via newspaper advertisement) and that a public hearing was conducted. Following adoption by the Health District on July 26, 2002, the Health District forwarded the 2002 PM<sub>10</sub> Attainment Plan to the NDEP, which then submitted the SIP revision to the EPA for approval. Thus, we find that both the 2014 PM<sub>10</sub> Plan and the 2002 PM<sub>10</sub> Plan satisfy the procedural requirements of section 110(l) of the Act for revising SIPs.

### IV. Clean Air Act Requirements for Redesignation to Attainment

The CAA establishes the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) the EPA determines that the area has attained the applicable NAAQS; (2) the EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) the EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; (4) the EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

The EPA provided guidance on redesignations in the form of a General Preamble for the Implementation of Title I of the CAA Amendments of 1990 published in the **Federal Register** on April 16, 1992 (57 FR 13498), as supplemented on April 28, 1992 (57 FR 18070) (“General Preamble”). Other relevant EPA guidance documents include: “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, September 4, 1992 (“Calcagni Memo”); “Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 (“Nichols Memo”); and “State Implementation Plans for Serious PM<sub>10</sub> Nonattainment Areas, and Attainment Date Waivers for PM<sub>10</sub> Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 59 FR 41998 (August 16, 1994) (“PM<sub>10</sub> Addendum”).

For the reasons set forth below in section V of this document, we are proposing to approve the NDEP’s request for redesignation of the Truckee Meadows nonattainment area to attainment for the PM<sub>10</sub> NAAQS based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied.

## V. Evaluation of the State's Redesignation Request for Truckee Meadows

### A. The Area Has Attained the PM<sub>10</sub> NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the EPA must determine that the area has attained the applicable NAAQS. In this case, the applicable NAAQS is the PM<sub>10</sub> NAAQS. As noted above, in 2011 (76 FR 21807, April 19, 2011), the EPA determined that Truckee Meadows had attained the PM<sub>10</sub> standard based on 2007–2009 ambient data; however, to redesignate the area to attainment, it is necessary to update that determination based on the most current information to ensure that the area continues to attain the standard.

We generally determine whether an area's air quality meets the PM<sub>10</sub> standard based upon the most recent period of complete, quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the EPA AQS database. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in its AQS database when determining the attainment status of areas. See 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

The PM<sub>10</sub> standard is attained when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as "exceedance"),<sup>6</sup> as determined in accordance with 40 CFR part 50, appendix K, is equal to or less

<sup>6</sup> An exceedance is defined as a daily value that is above the level of the 24-hour standard (*i.e.*, 150 µg/m<sup>3</sup>) after rounding to the nearest 10 µg/m<sup>3</sup> (*i.e.*, values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 µg/m<sup>3</sup> would not be an exceedance since it would be rounded to 150 µg/m<sup>3</sup> whereas a recorded value of 155 µg/m<sup>3</sup> would be an exceedance since it would be rounded to 160 µg/m<sup>3</sup>. See 40 CFR part 50, appendix K, section 1.0.

than one.<sup>7</sup> See 40 CFR 50.6 and 40 CFR part 50, appendix K. For purposes of redesignation, the most recent three consecutive years of complete air quality data are necessary to show attainment of the 24-hour standard for PM<sub>10</sub>. See 40 CFR part 50, appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, includes all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days. *Id.*

The WCAQMD currently operates five SLAMS within the Truckee Meadows PM<sub>10</sub> nonattainment area, but operated six such stations over most of the 2012–2014 period. The locations of the five current PM<sub>10</sub> monitors in Truckee Meadows are as follows. In the City of Reno, the "Reno3" monitoring site is located in downtown Reno just south of Interstate 80; the "Plumb-Kit" site is in a graveled area close to residences, about half a mile west of Interstate 580 and the Reno-Tahoe International Airport; and the "Toll" site is located along State Route 341, at the corner of the Washoe County School District parking lot. In South Reno, the "South Reno" monitoring site is located in an unpaved, vegetated area at the northeast corner of the Nevada Energy campus. In the City of Sparks, the "Sparks" monitoring site is located along a paved parking lot about half a mile north of Interstate 80. The sixth monitoring site, the "Galletti" site, which was closed in mid-November 2014, was located in downtown Reno just south of Interstate 80.<sup>8</sup> The locations of the monitoring sites are illustrated in figure 2–1 in the 2014 PM<sub>10</sub> Maintenance Plan, and are described in more detail in "Washoe County Health District, Air Quality Management Division, 2015 Ambient

<sup>7</sup> The comparison with the allowable expected exceedance rate of one per year is made in terms of a number rounded to the nearest tenth (fractional values equal to or greater than 0.05 are to be rounded up; *e.g.*, an exceedance rate of 1.05 would be rounded to 1.1, which is the lowest rate for nonattainment). See 40 CFR part 50, appendix K, section 2.1(b).

<sup>8</sup> The WCAQMD closed the "Galletti" site in mid-November 2014 as a result of emergency construction at the location of the site. The EPA has approved WCAQMD's request to close the Galletti site, due to lease issues beyond their control as well as siting issues. See letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Daniel Inouye, Chief, Monitoring and Planning, WCAQMD, April 22, 2015.

Air Monitoring Network Plan," submitted to EPA Region IX July 1, 2015. All of the PM<sub>10</sub> monitor sites operate on a daily schedule using continuous monitors. *Id.* at 3. Despite the closure of the "Galletti" site, the WCAQMD PM<sub>10</sub> network continues to meet minimum monitoring requirements per appendix D to 40 CFR part 58.

WCAQMD reports the PM<sub>10</sub> data from its monitors to AQS on a quarterly basis as required under the EPA's monitoring regulations. The EPA has approved the WCAQMD's monitoring network as satisfying the network design and data adequacy requirements of 40 CFR part 58.<sup>9</sup> The EPA's most recent audit of WCAQMD's ambient air monitoring program found, generally, that the program is robust and meets EPA requirements.<sup>10</sup> As with any audit, the EPA uncovered some program areas that can be improved, but none are cause for data invalidation. The WCAQMD annually certifies that the data it submits to AQS are complete and quality-assured. See, *e.g.*, letter dated April 30, 2015, from Daniel Inouye, Branch Chief, Monitoring and Planning, WCAQMD, to Jared Blumenfeld, Regional Administrator, EPA Region IX, "Re: CY2014 Ambient Air Monitoring Data Certification."

Table 1 provides the highest measured PM<sub>10</sub> concentrations and the number of expected exceedances in Truckee Meadows during the 2010–2014 period. Table 1 shows generally that Truckee Meadows has continued to attain the PM<sub>10</sub> standard since the EPA made the determination of attainment in 2011 based on 2007–2009 data; however, a determination of attainment requires a more detailed examination of the data for the most recent three-year period. For the purposes of this action, we are focusing our evaluation on the most recent three-year period for which data is available, *i.e.*, 2012–2014.

<sup>9</sup> See letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Daniel Inouye, Director, WCAQMD, October 29, 2014.

<sup>10</sup> See letter from Deborah Jordan, Director, Air Division, EPA Region IX, to Charlene Albee, Director, WCAQMD, August 19, 2014 and enclosed report titled "Technical System Audit Report, Washoe County Health District Air Quality Management Division, Ambient Air Monitoring Program (September 4–6, 2013)," dated August 2014.



TABLE 1—MONITORED PM<sub>10</sub> CONCENTRATIONS AND EXPECTED EXCEEDANCES (2010–2014)

Monitoring site name and AQS No.	Maximum 24-hour (µg/m <sup>3</sup> )					Expected exceedances (calendar year)					Expected exceedances (3-year averages)		
	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014	2010– 2012	2011– 2013	2012– 2014
Reno3 (32–031–0016) .....	142	64	46	121	134	0	0	0	0	0	0	0	0
South Reno (32–031–0020) .....	52	63	61	133	106	0	0	0	0	0	0	0	0
Galletti (32–031–0022) .....	87	113	77	131	* 159	0	0	0	0	** 1	0	0	** 0.3
Toll (32–031–0025) .....	34	121	85	144	121	0	0	0	0	0	0	0	0
Plumb-Kit (32–031–0030) .....	77	71	92	127	136	0	0	0	0	0	0	0	0
Sparks (32–031–1005) .....	55	76	100	100	135	0	0	0	0	0	0	0	0

Source: EPA AQS database. August 7, 2015. Values shown in **bold** type represent exceedances of the PM<sub>10</sub> standard.

\* The exceedance occurred on September 18, 2014 and has been flagged by WCAQMD as an exceptional event. While the EPA has not concurred on the exceedance as an exceptional event nor excluded it from our proposed determination of attainment, the Agency recognizes that the exceedance was monitored during a period when a significant regional wildfire (the King Fire) burned tens of thousands of acres in the Sierra Nevada Mountains east of Sacramento, generally upwind of Truckee Meadows.

\*\* The Galletti site closed in mid-November 2014 as a result of emergency construction at the location of the site. The EPA approved the closure of the site in April 2015. The 2014 data is incomplete, however; the EPA has determined that the data remains valid for NAAQS comparison purposes.

For the 2012–2014 period, with one exception, the AQS database contains complete, quality-assured and certified data from the six PM<sub>10</sub> monitoring sites operating during this period within Truckee Meadows. The one exception relates to the “Galletti” site, which, as noted above, was closed in mid-November 2014 due to emergency construction at the site, and for which the fourth quarter’s 2014 data is incomplete. However, we find that the data from the “Galletti” site, while incomplete in one quarter of one year of the 2012–2014 period, remain valid for PM<sub>10</sub> NAAQS comparison purposes based on the statistical analysis prepared by the WCAQMD in its March 5, 2015 request for approval for closure of the “Galletti” site. The WCAQMD’s statistical analysis demonstrates, using the annual maximum 24-hour concentrations from 2009–2013, that there is just over a 10 percent probability of exceeding 80 percent of the PM<sub>10</sub> NAAQS at the “Galletti” site during the next three years (2014–2016), and the EPA cited this statistical analysis in its approval of the closure of the Galletti site.<sup>11</sup>

Based on our review of the quality-assured, certified, and complete (or otherwise validated) PM<sub>10</sub> data for the six PM<sub>10</sub> monitoring sites, we find that the expected number of days per calendar year with an exceedance is less than 1.0 at all six sites over the most recent three-year period (2012–2014). See table 1 above. Preliminary data for calendar year 2015 indicate that there has been only one measured exceedance of the PM<sub>10</sub> standard (on February 6, 2015 at the Toll site), but this exceedance does not result in a violation of the standard at that site given that it has no other recorded

exceedances since 2002. See table 1, above, and our proposed determination of attainment at 76 FR 10817 (February 28, 2011). Thus, we find that preliminary 2015 data is consistent with continued attainment. As such, we find that Truckee Meadows is attaining the PM<sub>10</sub> standard and thereby meets the criterion for redesignation in CAA section 107(d)(3)(E)(i).

*B. The Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA and Has a Fully Approved Applicable Implementation Plan Under Section 110(k) of the CAA*

Section 107(d)(3)(E)(ii) and (v) require the EPA to determine that the area has a fully-approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation. The EPA may rely on prior SIP approvals in approving a redesignation request, Calcagni Memo at 3; *Wall v. EPA*, F.3d 416 (6th Cir. 2001), *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), as well as any additional measure it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. In this instance, we are proposing to approve several part D elements as part of this action [*i.e.*, emissions inventory under CAA section 172(c)(3) and the BACM demonstration under CAA section 189(b)(1)(B)]. With full approval of those two elements, the Truckee Meadows portion of the Nevada SIP will be fully approved under section 110(k) of the Act with respect to all SIP elements that are applicable for the purposes of redesignation of the area to attainment.

1. Basic SIP Requirements Under CAA Section 110

The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements for Prevention of Significant Deterioration (PSD); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

We note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with CAA section 107(d)(3)(E)(ii). The section 110 and part D requirements that are linked to a particular nonattainment area’s designation and classification are the relevant measures to evaluate in reviewing a redesignation request. Requirements that apply regardless of the designation of any particular area in the state are not applicable requirements for purposes of redesignation, and the state will remain subject to these requirements after the nonattainment area is redesignated to attainment.

Thus, for example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state, known as “transport SIPs.” Because the section 110(a)(2)(D) requirements for transport SIPs are not linked to a particular nonattainment area’s designation and classification but rather apply regardless of attainment status, these are not applicable requirements for purposes of redesignation under

<sup>11</sup> See letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Daniel Inouye, Chief, Monitoring and Planning, WCAQMD, April 22, 2015, page 2.

CAA section 107(d)(3)(E). This policy is consistent with EPA's existing policy on applicability of the conformity SIP requirement (*i.e.*, for redesignations). See discussion in 75 FR 36023, 36026 (June 24, 2010) (proposed rule to redesignate Coso Junction, California, to attainment for the PM<sub>10</sub> NAAQS) and related citations.

On numerous occasions over the past 40 years, NDEP has submitted, and we have approved, provisions addressing the basic CAA section 110 provisions for Truckee Meadows. See, *e.g.*, 37 FR 15080 (July 27, 1972); 77 FR 60915 (October 5, 2012); and 77 FR 64737 (October 23, 2012). The Truckee Meadows portion of the Nevada SIP contains enforceable emission limitations; requires monitoring, compiling and analyzing of ambient air quality data; requires preconstruction review of new or modified stationary sources; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and provides the necessary assurances that the state maintains responsibility for ensuring that the CAA requirements are satisfied in the event that the Health District is unable to meet its CAA obligations.<sup>12</sup> Based on our review of the Nevada SIP, we have concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation of Truckee Meadows to attainment for the PM<sub>10</sub> standard.

## 2. SIP Requirements Under Part D

Subparts 1 and 4 of part D, title I of the CAA contain air quality planning requirements for PM<sub>10</sub> nonattainment areas. Subpart 1 contains general requirements for all nonattainment areas of any pollutant, including PM<sub>10</sub>, governed by a NAAQS. The subpart 1 requirements include, in relevant part, provisions for implementation of reasonably available control measures (RACM), a demonstration of reasonable further progress (RFP), emissions inventories, a program for preconstruction review and permitting of new or modified major stationary sources, contingency measures, conformity, and, for areas that fail to attain the standard by the applicable attainment date, a plan meeting the requirements of section 179(d).

Subpart 4 contains specific SIP requirements for PM<sub>10</sub> nonattainment areas. The requirements set forth in CAA section 189(a), (c), and (e) apply

specifically to "Moderate" PM<sub>10</sub> nonattainment areas and include, in relevant part: (1) Provisions for implementation of reasonably available control measures (RACM); (2) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date; and (3) provisions to ensure that the control requirements applicable to major stationary sources of PM<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors except where the EPA has determined that such sources do not contribute significantly to PM<sub>10</sub> levels that exceed the NAAQS in the area. Under CAA section 189(b), "Serious" PM<sub>10</sub> nonattainment areas, such as Truckee Meadows, must meet the subpart 1 and "Moderate" area requirements discussed above and, in addition, must develop and submit provisions to assure the implementation of BACM for the control of PM<sub>10</sub>. In addition, under CAA section 189(d), "Serious" PM<sub>10</sub> nonattainment areas that fail to attain the standard by the applicable attainment date, such as Truckee Meadows, must develop and submit plan revisions which provide for attainment of the PM<sub>10</sub> standard, and from the date of such submission until attainment, for an annual reduction in PM<sub>10</sub> within the area of not less than 5 percent of the amount of such emissions.

However, we have determined that, in accordance with our Clean Data Policy, the obligation to submit the following CAA requirements for Truckee Meadows is not applicable for so long as the area continues to attain the PM<sub>10</sub> standard: The part D, subpart 4 obligations to provide the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), the requirement for a section 189(d) plan, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act, and requirements for additional plan provisions in section 179(d) of the Act. 76 FR 21807 (April 19, 2011). As discussed above in section V.A, Truckee Meadows has continued to attain the PM<sub>10</sub> standard since the EPA's 2011 determination of attainment, which was based on 2007–2009 data, and we are specifically proposing to determine that the area currently meets the standard based on the most recent three-year period (2012–2014). As such, the part D SIP submittal requirements suspended by our 2011 "clean data" determination do not apply for the purposes of evaluating Truckee Meadows' eligibility

for redesignation under CAA section 107(d)(3)(E)(v).<sup>13</sup>

Moreover, in the context of evaluating the area's eligibility for redesignation, there is a separate and additional justification for finding that requirements associated with attainment are not applicable for purposes of redesignation. Prior to and independently of the Clean Data Policy, and specifically in the context of redesignations, the EPA interpreted attainment-linked requirements as not applicable for purposes of redesignation. In the General Preamble, the EPA stated:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans \* \* \* provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. General Preamble, 57 FR 13498 at 13564 (April 16, 1992).

See also Calcagni memorandum at 6 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard."). Thus, even if the requirements associated with attainment had not previously been suspended, they would not apply for purposes of evaluating whether an area that has attained the standard qualifies for redesignation. The EPA has enunciated this position since the General Preamble was published more than twenty years ago, and it represents the Agency's interpretation of what constitutes applicable requirements under section 107(d)(3)(E). The Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

The remaining applicable part D requirements for serious PM<sub>10</sub> nonattainment areas are: (1) An emissions inventory under section 172(c)(3); (2) a permit program for the construction and operation of new and modified major stationary sources of PM<sub>10</sub> under sections 172(c)(5) and

<sup>13</sup> The suspended SIP planning requirements will cease to apply to the Truckee Meadows area upon the effective date of redesignation to attainment for the PM<sub>10</sub> standard. For another rulemaking action citing the "clean data policy" in the context of evaluating a redesignation request of a PM<sub>10</sub> nonattainment area under CAA section 107(d)(3)(E)(v), see 75 FR 36023, at 36027 (June 24, 2010) and 75 FR 54031 (September 3, 2010) (proposed and final redesignation for Coso Junction, California). See also, 40 CFR 51.918.

<sup>12</sup> The applicable Nevada SIP can be found at <http://yosemite.epa.gov/r9/r9sips.nsf/allsips?readform&state=Nevada>.

189(a)(1)(A), including a major source threshold of 70 tons per year as required by section 189(b)(3); (3) provisions to assure implementation of BACM for the control of PM<sub>10</sub> under section 189(b)(1)(B); (4) control requirements for major stationary sources of PM<sub>10</sub> precursors under section 189(e), except where the EPA determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area; and (5) provisions to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP under section 176(c). We discuss each of these requirements below.

#### a. Emissions Inventory

Section 172(c)(3) of the Act requires the state to submit a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant(s) in the nonattainment area, including periodic updates as required by the EPA. We interpret the Act such that the emission inventory requirement of section 172(c)(3) is satisfied by the inventory requirement of the maintenance plan. See 57 FR 13498 at 13564 (April 16, 1992). In this action, the EPA is proposing to approve the 2011 attainment inventory submitted in the 2014 PM<sub>10</sub> Maintenance Plan as meeting the emission inventory requirement under section 172(c)(3). See discussion below in section V.D.1.

#### b. Permits for New and Modified Stationary Sources

Sections 172(c)(5) and 189(a)(1)(A) of the CAA require the state to submit SIP revisions that establish certain requirements for new or modified stationary sources in nonattainment areas, including provisions to ensure that major new or modified sources of nonattainment pollutants comply with the lowest achievable emission rate (LAER), and that increases in emissions from such stationary sources are offset so as to provide for reasonable further progress towards attainment in the nonattainment area. For “Moderate” PM<sub>10</sub> areas that are reclassified as “Serious,” such as Truckee Meadows, the “major source” threshold is reduced from 100 to 70 tons per year of PM<sub>10</sub>. The process for reviewing permit applications and issuing permits for new major sources or major modifications to such sources in nonattainment areas is referred to as “nonattainment New Source Review” (“nonattainment NSR” or simply “NSR”).

EPA-approved District regulations include rules for the review of

applications for new or modified stationary sources; however, the EPA has not approved District regulations specifically meeting the NSR requirements of sections 172(c)(5) and 189(a)(1)(A). However, the EPA interprets section 107(d)(3)(E)(v) of the CAA such that final approval of a NSR program is not a prerequisite to approving the state’s redesignation request. The EPA has determined in past redesignations that a NSR program does not have to be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR requirements in effect. See generally Nichols Memo; see also the more detailed explanations in the following redesignation rulemakings: Detroit, Michigan (60 FR 12467–12468, March 7, 1996); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996); and San Joaquin Valley, California (73 FR 22307, 22313, April 25, 2008 and 73 FR 66759, 66766–67, November 12, 2008).

The demonstration of maintenance of the standard in the 2014 PM<sub>10</sub> Maintenance Plan relies on projections of future emissions based on various growth factors. For the types of stationary sources that are subject to District permitting requirements, future emissions are projected based on employment growth projections and do not take credit for future control technology requirements, such as LAER, or for imposition of emissions offsets. See appendix B of the 2014 PM<sub>10</sub> Maintenance Plan. Thus, we find that the maintenance demonstration for the Truckee Meadows PM<sub>10</sub> nonattainment area does not rely on an NSR program, and that the area need not have a fully-approved nonattainment NSR program prior to approval of the PM<sub>10</sub> redesignation request.

Once Truckee Meadows has been redesignated to attainment, the requirements of the PSD program set forth at 40 CFR 52.21 will apply with respect to PM<sub>10</sub> (PSD already applies with respect to the other pollutants in Truckee Meadows). See 40 CFR 52.1485. Thus, new major sources of PM<sub>10</sub> emissions and major modifications at existing major sources, as defined in 40 CFR 52.21, will be required to obtain a PSD permit before constructing. Currently, the WCAQMD has full responsibility for implementing and enforcing the Federal PSD regulations in 40 CFR 52.21 for sources within its jurisdiction throughout Washoe County, including the Truckee Meadows area,

under a delegation agreement with the EPA. See “Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9, to the Washoe County District Health Department,” dated March 13, 2008. The NDEP has permitting jurisdiction over certain types of power plants located anywhere within the State of Nevada, and if such a source were to locate within Truckee Meadows, the PSD regulations at 40 CFR 52.21 would still apply but would be implemented and enforced by the NDEP, which also administers the program through a delegation agreement with the EPA.

#### c. Best Available Control Measures

Section 189(b)(1)(B) of the Act requires for any “Serious” PM<sub>10</sub> nonattainment area that the state submit provisions to assure that BACM for the control of PM<sub>10</sub> will be implemented no later than four years after the date the area is classified (or reclassified) as a “Serious” area. The PM<sub>10</sub> Addendum (59 FR 41998, August 16, 1994) provides preliminary guidance on meeting this BACM requirement. Even though the EPA previously determined that Truckee Meadows is attaining the PM<sub>10</sub> 24-hour standard (76 FR 21807, April 19, 2011), the overall structure and purpose of title I of the CAA Amendments of 1990, the standard suggested by the word “best,” and the differences in the statute between the requirements for BACM as compared to those for RACM, lead the EPA to believe that, unlike RACM, BACM are to be established generally independent of an analysis of the attainment needs of the “Serious” area. PM<sub>10</sub> Addendum, at 42011. Thus, unlike RACM, BACM remains an applicable requirement for the purposes of evaluating a redesignation request even though the area is attaining the standard.

The EPA defines BACM as, among other things, the maximum degree of emissions reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts. See *id.* at 42010, 42013. BACM must be implemented for all categories of sources in a “Serious” PM<sub>10</sub> nonattainment area unless the state adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the PM<sub>10</sub> standard. See *id.* at 42011, 42012. The PM<sub>10</sub> Addendum discusses the following steps for determining BACM:

• Inventory the sources of PM<sub>10</sub> and PM<sub>10</sub> precursors<sup>14</sup> and determine which source categories are significant;

• Evaluate alternative control techniques and their technological feasibility; and evaluate the costs of control measures or their economic feasibility.

See PM<sub>10</sub> Addendum, at 42012–42014.

BACM must be applied to each significant (*i.e.*, non-de minimis) source category. PM<sub>10</sub> Addendum at 42011. In guidance, we have established a presumption that a “significant” source category is one that contributes 5 µg/m<sup>3</sup> or more of PM<sub>10</sub> to a location of a violation of the 24-hour standard. PM<sub>10</sub> Addendum at 42011. However, whether the threshold should be lower than this in any particular area depends upon the specific facts of that area’s nonattainment problem. Specifically, it depends on whether requiring the application of BACM on source categories below a proposed de minimis level would meaningfully expedite attainment. Once these analyses are complete, the individual measures must then be converted into a legally enforceable vehicle (*e.g.*, a regulation or permit process) to ensure BACM implementation. Also, the regulations or other measures should meet the EPA’s criteria regarding the enforceability of SIPs and SIP revisions. CAA sections 172(c)(6) and 110(a)(2)(A). We use these steps as guidelines in our evaluation of the BACM analysis in the 2002 PM<sub>10</sub> Attainment Plan.

The first step in the BACM analysis is to develop a detailed emissions inventory of PM<sub>10</sub> sources and source categories that can be used in modeling to determine their impact on ambient air quality. PM<sub>10</sub> Addendum at 42012. The second step is to use this inventory in air quality modeling to evaluate the impact on PM<sub>10</sub> concentrations over the standards of the various sources and source categories to determine which are significant.

The 2002 PM<sub>10</sub> Attainment Plan contains a detailed inventory of direct PM<sub>10</sub> sources and source categories and, based on the percent contributions of the various source categories to the design day inventory, divides the design day concentration (of 215 µg/m<sup>3</sup>) into source category components, as follows:

- Paved streets/reentrained dust/street sanding (142 µg/m<sup>3</sup>)
- Residential wood combustion (36 µg/m<sup>3</sup>)

<sup>14</sup> As described further in section V.B.2.d of this document, we find that PM<sub>10</sub> precursors (NO<sub>x</sub>, SO<sub>x</sub>, and VOC) do not significantly impact ambient PM<sub>10</sub> concentrations in Truckee Meadows.

- Fugitive dust from construction activities (15 µg/m<sup>3</sup>)
- Stationary/industrial processes (9 µg/m<sup>3</sup>)
- Mobile on-road (4 µg/m<sup>3</sup>)
- Mobile non-road (3 µg/m<sup>3</sup>)
- Unpaved streets (2 µg/m<sup>3</sup>)
- Other fuel combustion and miscellaneous Area (2 µg/m<sup>3</sup>)
- Charbroilers (1 µg/m<sup>3</sup>)

Based on the estimated contribution of the various source categories to the design-day concentration, the following source categories are considered significant, *i.e.*, contribute 5 µg/m<sup>3</sup> or more to the exceedance: (1) Paved streets/reentrained dust/street sanding, (2) residential wood combustion, (3) fugitive dust from construction activities, and (4) other stationary/industrial processes.<sup>15</sup> We believe that the 2002 PM<sub>10</sub> Attainment Plan presents an acceptable methodology to evaluate the impact of various PM<sub>10</sub> sources and source categories on PM<sub>10</sub> levels and to derive a comprehensive list of significant source categories.

In preparing the list of candidate BACM to reduce emissions from the various significant source categories, the WCAQMD reviewed our guidance documents on BACM, other EPA documents on PM<sub>10</sub> control, as well as PM<sub>10</sub> plans and measures from other “Serious” PM<sub>10</sub> areas in the United States. The WCAQMD also evaluated controls proposed during public comment, sought input from work groups (*e.g.*, Road Sanding and Sweeping Working Group) and requested review and comment by the EPA on individual measures to help ensure that their adopted measures would constitute BACM. The processes that the WCAQMD used to identify BACM are described in section V of the 2002 PM<sub>10</sub> Attainment Plan. We believe that, based on the description of the process in the 2002 PM<sub>10</sub> Attainment Plan, the WCAQMD appropriately screened the list of candidate BACM to eliminate certain measures and appropriately identified and evaluated potential BACM for the Truckee Meadows area consistent with our guidance.

Since 1988, the Health District has adopted and strengthened a number of regulations to reduce PM<sub>10</sub> emissions from the significant source categories in Truckee Meadows. See 2002 PM<sub>10</sub> Attainment Plan at 10–17. The District

<sup>15</sup> The stationary/industrial processes category includes a disparate group of source subcategories (*e.g.*, concrete production, sand and gravel operations, asphalt production, etc.). For a complete list of the subcategories included in the stationary/industrial processes category, see table 1–2 in appendix B of the 2002 PM<sub>10</sub> Attainment Plan.

PM<sub>10</sub> regulations were originally submitted to the EPA in 1991, but in the wake of the reclassification of Truckee Meadows to “Serious,” the Health District strengthened them to assure implementation of BACM. See *id.* Each of the Health District regulations intended to implement BACM was effective in Truckee Meadows on or before February 7, 2005 (*i.e.*, within four years of the area’s reclassification to serious nonattainment on February 7, 2001), and the EPA has approved all of these regulations as satisfying BACM control requirements.

Specifically, we have approved the following Health District regulations as satisfying BACM control requirements:

- District Regulation 040.005 (“Visible Air Contaminants”) (72 FR 33397, June 18, 2007) (stationary/industrial processes);
- District Regulation 040.030, “Dust Control” (72 FR 25969, May 8, 2007) (fugitive dust from construction activities and stationary/industrial processes);
- District Regulation 040.031, “Street Sanding Operations” (71 FR 14386, March 22, 2006) (paved streets/reentrained dust/street sanding);
- District Regulation 040.032, “Street Sweeping Operations” (71 FR 14386, March 22, 2006) (paved streets/reentrained dust/street sanding);
- District Regulation 040.051, “Wood Stove/Fireplace Insert Emissions” (72 FR 33397, June 18, 2007) (residential wood combustion); and
- District Regulation 050.001, “Emergency Episode Plan,” (72 FR 33397, June 18, 2007) (residential wood combustion).<sup>16</sup>

Based on our prior approval of these regulations and our conclusion that they cover all significant PM<sub>10</sub> source categories in the Truckee Meadows nonattainment area, we propose approval of the WCAQMD’s demonstration in Section V (“Control Strategies”) of the 2002 PM<sub>10</sub> Attainment Plan as satisfying the requirement to assure implementation of BACM under CAA section 189(b) (1) (B).<sup>17</sup>

<sup>16</sup> On August 22, 2013, the WCAQMD amended regulation 040.051, and the amendment was submitted to the EPA on November 26, 2013. The EPA is currently reviewing the submittal and preparing to act on it. The 2014 PM<sub>10</sub> Maintenance Plan does not rely on emissions reductions from the amendments to the rule.

<sup>17</sup> After BACM is applied to the significant source categories, the significant categories still account for approximately 75 percent of the WCAQMD’s remaining 2011 attainment year inventory of daily emissions during the PM<sub>10</sub> season (November, December, and January). See 2014 PM<sub>10</sub> Maintenance Plan at Appendix C (“Truckee Meadows Projected PM<sub>10</sub> Seasonal Emissions (lbs/

#### d. Control Requirements for PM<sub>10</sub> Precursors

Section 189(e) of the CAA requires that the control requirements applicable under part D (of title I of the CAA) for major stationary sources of PM<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors, except where the EPA determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area. In general, a major stationary source in a PM<sub>10</sub> “Serious” area includes any stationary source that emits, or has the potential to emit, 70 tons per year of PM<sub>10</sub>.

The 1991 PM<sub>10</sub> Attainment Plan concluded that major stationary sources of PM<sub>10</sub> precursors do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in Truckee Meadows based on technical study conducted by the Desert Research Institute (DRI) intended to identify the sources of ambient PM<sub>10</sub> in Truckee Meadows. In its February 1988 report, *PM<sub>10</sub> Source Apportionment the Truckee Meadows, Nevada, for State Implementation Plan Development, Volume I: Modeling Methods and Results, Final Report (“DRI Report”)*, submitted as appendix B to the 1991 PM<sub>10</sub> Attainment Plan, the DRI performed over 300 chemical mass balance source apportionments on fine and coarse particle fractions from three sites within the Truckee Meadows nonattainment area. The source apportionments found that that the PM<sub>10</sub> contribution from precursors (*i.e.*, ammonium nitrates and ammonium sulfates) was very small (*i.e.*, approximately 5–6%) compared to the contributions from wood/vegetative burning (*i.e.*, residential wood stoves and fireplaces), mobile source exhaust (*e.g.*, diesel powered vehicles), and geologic materials (*e.g.*, road dust, sand/salt used for deicing).

We also note that more recent stationary source inventory data and ambient PM<sub>2.5</sub> speciation data for Truckee Meadows continue to support the WCAQMD’s 1991 conclusion regarding the (less-than-significant) contribution to elevated ambient PM<sub>10</sub> concentrations from major stationary sources of PM<sub>10</sub> precursors. First, based on the *2011 Periodic Emissions Inventory*, there are no stationary sources in Truckee Meadows that emit more than 100 tons per year of NO<sub>x</sub> or

day”). Based on a review of the remaining source categories in the 2011 inventory, no new significant source categories (*i.e.*, above the de minimis threshold) were identified, and, therefore, no additional sources are subject to BACM requirements.

SO<sub>2</sub>, and only two such sources that emit more than 100 tons per year of VOC. Second, ammonium nitrate and ammonium sulfate contributed only about 11% to the total ambient PM<sub>10</sub> based on the averages for the five highest PM<sub>10</sub> measurements collected during the winter of 2013 at the Reno3 monitoring site (which is the only site operated by the WCAQMD with speciation capability).

Based on the DRI Report and the more recent inventory and monitoring data, we propose to make the finding authorized under CAA section 189(e) and to determine that major sources of PM<sub>10</sub> precursor emissions do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the Truckee Meadows area.

#### e. Transportation Conformity

Under the Clean Air Act, as amended in 1990, section 176(c) of the CAA required the states to revise their SIPs to establish criteria and procedures to ensure that federally supported or funded projects in nonattainment and formerly nonattainment areas subject to a maintenance plan (referred to as “maintenance” areas) “conform” to the air quality planning goals in the applicable SIP. SIP revisions intended to meet the conformity requirement in section 176(c) are referred to as “conformity SIPs.” The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (“transportation conformity”) as well as to other federally supported or funded projects (“general conformity”). In 2005, Congress amended section 176(c), and under the amended conformity provisions, states are no longer required to submit conformity SIPs for “general conformity,” and the conformity SIP requirements for “transportation conformity” have been reduced to include only those relating to consultation, enforcement and enforceability. CAA section 176(c) (4) (E).

On July 31, 1995, the NDEP submitted the general and transportation conformity procedures and criteria for Truckee Meadows as a revision to the Nevada SIP. Given the 2005 amendments to the CAA, the NDEP has withdrawn the earlier conformity SIP submittal, and on March 21, 2013, submitted the *Washoe County Transportation Conformity Plan* as a replacement for the earlier submittal. We have not taken action on the March 21, 2013 SIP revision submittal. However, the EPA believes it is

reasonable to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d) (3) (E) (v) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F. 3d 426 (6th Cir. 2001), upholding this interpretation. *See also* 60 FR 62748 (December 7, 1995).

#### 3. Conclusion With Respect to Section 110 and Part D Requirements

Therefore, based on the evaluation presented above, and based on our proposed approval of the 2011 emissions inventory submitted as part of the 2014 PM<sub>10</sub> Maintenance Plan (see section V.D.1 of this document), our proposed approval of the BACM demonstration submitted as part of the 2002 PM<sub>10</sub> Attainment Plan, and in light of our proposed determination that major stationary sources of PM<sub>10</sub> precursors do not contribute significantly to PM<sub>10</sub> exceedances in the area, we find that that the state has met all requirements applicable to the Truckee Meadows PM<sub>10</sub> nonattainment area under section 110 and part D (of title I) of the CAA and has therefore met the redesignation criterion set forth in CAA section 107(d) (3) (E) (v).

#### C. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

Section 107(d)(3)(E)(iii) of the CAA requires the EPA, in order to approve a redesignation to attainment, to determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollution control regulations and other permanent and enforceable regulations. Improvement should not be a result of temporary reductions (*e.g.*, economic downturns or shutdowns) or unusually favorable meteorology. Calcagni Memo at 4.

PM<sub>10</sub> levels in Truckee Meadows are driven primarily by direct PM<sub>10</sub> emissions from re-entrained dust from paved roads, residential wood combustion, fugitive dust from construction activities, and emissions from industrial sources. *See* 2002 PM<sub>10</sub> Attainment Plan at 7; and appendix C to the 2014 PM<sub>10</sub> Maintenance Plan. The peak PM<sub>10</sub> season in Truckee Meadows occurs during the winter months (*i.e.*, November, December, and January), due in large part to increased residential wood combustion and application of sanding material to paved roads for wintertime traction control. In addition,

because Truckee Meadows sits in a valley surrounded by mountain ranges, cold winter nights create temperature inversions that trap pollutants in a layer of cold air beneath a layer of warmer air above. 2014 PM<sub>10</sub> Maintenance Plan at 13.

The 2014 PM<sub>10</sub> Maintenance Plan describes long-term air quality improvements implemented in the Truckee Meadows area during the 1999 to 2011 time frame. The improvements in air quality occurred despite substantial growth in population, economic activity, and vehicle miles traveled (VMT) between 1990 and 2011, suggesting that the air quality improvements were not due to temporary reductions in emission rates or unusual meteorology but, instead, resulted from implementation of federally-enforceable PM<sub>10</sub> control measures. The Plan describes the significant source categories of PM<sub>10</sub> emissions in the Truckee Meadows area and the SIP-approved regulations that have significantly reduced PM<sub>10</sub> emissions from these and other emission sources. According to the 2014 PM<sub>10</sub> Maintenance Plan, SIP-approved regulations collectively reduced daily PM<sub>10</sub> emissions from residential wood combustion and street sanding and sweeping, and construction activities during the 2011 PM<sub>10</sub> season by approximately 68 percent. See table 4–1 of the 2014 PM<sub>10</sub> Maintenance Plan.

First, the 2014 PM<sub>10</sub> Maintenance Plan cites the Health District's residential wood combustion program (RWC) as a significant source of emissions reductions in Truckee Meadows. The program relies on two regulations as well as a public outreach program. District Regulation 040.051, "Wood Stove/Fireplace Insert Emissions," limits PM<sub>10</sub> emissions throughout Washoe County by, among other things: (1) Establishing wood stove and fireplace insert control areas; (2) requiring use of seasoned wood; (3) requiring the removal or upgrade of existing solid fuel combustion devices upon the sale of real estate; and (4) establishing a mandatory burning curtailment during Stage 1 episodes.<sup>18</sup> District Regulation 050.001, "Emergency Episode Plan," requires that the WCAQMD take certain actions when 24-hour PM<sub>10</sub> concentrations reach or are predicted to reach "Stage 1" levels (154 µg/m<sup>3</sup>), such as: (1) Implementing procedures to notify the public of

potential health problems; (2) prohibiting all open and prescribed burning; (3) prohibiting the use of permitted incinerators, crematoriums, and pathological incinerators; (4) prohibiting the use of solid fuel burning devices; and (5) activating control plans for the largest PM<sub>10</sub> sources in Washoe County. 2014 PM<sub>10</sub> Maintenance Plan at 11.

In addition, the WCAQMD implements a "Keep it Clean, Know the Code" public outreach program (formerly known as the "Green, Yellow, Red" program), which runs from November through February and which consists in part of a daily burn code that provides the community a recommendation on whether RWC will impact air quality in Washoe County. The program also commits the WCAQMD to conduct an RWC survey at least once every three years to track the effectiveness of the public outreach program. The EPA has approved District Regulations 040.051 and 050.001, and the commitment to conduct the RWC survey as revisions of the Nevada SIP, making them permanent and enforceable for the purposes of CAA section 107(d)(3)(E)(iii). See 72 FR 33397 (June 18, 2007) and 73 FR 38124, at 38127 (July 3, 2008). According to the 2014 PM<sub>10</sub> Maintenance Plan, District Regulations 040.051 and 050.001 (as implemented in part through the public outreach program) reduced PM<sub>10</sub> emissions in the Truckee Meadows area on a "typical PM<sub>10</sub> Season Day" during 2011 by approximately 800 lbs/day and approximately 4,300 lbs/day, respectively. 2014 PM<sub>10</sub> Maintenance Plan at 10, 12 (Table 4–1).

Second, the 2014 PM<sub>10</sub> Maintenance Plan cites the Health District's street sanding and sweeping program as a source of significant emissions reductions in Truckee Meadows. PM<sub>10</sub> emissions from street sanding and sweeping are generated directly from application of traction control material (*i.e.*, sand, salt, and chlorides) and indirectly from increased silt loading on paved streets. Motor vehicle traffic grinds and re-entrains the material into the ambient air. 2014 PM<sub>10</sub> Maintenance Plan at 11. The Health District adopted Regulation 040.031, "Street Sanding Operations," and Regulation 040.032, "Street Sweeping Operations," to limit PM<sub>10</sub> emissions from street standing and sweeping activities throughout the urbanized portions of Washoe County south of Township 22N, which includes the cities of Reno and Sparks. See 2014 PM<sub>10</sub> Maintenance Plan at 11; 2002 PM<sub>10</sub> Attainment Plan at 12–16.

These regulations require, among other things, that municipalities: (1) Use

a harder and cleaner type of sand on paved roads following snow storms; (2) reduce the sand application rate by 50 percent compared to 1999 rates; (3) remove the sand within four days after a storm event; and (4) only purchase new sweepers that are PM<sub>10</sub> certified. The EPA approved District Regulations 040.031 and 040.032 as revisions of the Nevada SIP in 2006, making them permanent and enforceable for the purposes of CAA section 107(d)(3)(E)(iii). 71 FR 14386 (March 22, 2006). According to the 2014 PM<sub>10</sub> Maintenance Plan, District Regulations 040.031 and 040.032 reduced PM<sub>10</sub> emissions in the Truckee Meadows area on a "typical PM<sub>10</sub> Season Day" during 2011 by approximately 1,600 lbs/day. 2014 PM<sub>10</sub> Maintenance Plan at 11, 12 (Table 4–1).

Third, the 2014 PM<sub>10</sub> Maintenance Plan cites District Regulation 040.030, "Dust Control," as another source of significant emissions reductions in Truckee Meadows. District Regulation 040.030 limits emissions of fugitive dust from a variety of dust generating activities, including, but not limited to, public or private construction; mining; processing of sand, gravel, or dirt; and operation and use of unpaved parking facilities. See section A of District Regulation 040.030. Specifically, District Regulation 040.030 establishes (1) stabilization requirements for unpaved parking lots/staging areas, unpaved haul/access roads, and open, vacant, or disturbed areas, and open storage piles; (2) work practice requirements for bulk material hauling, and spillage, carry-out, erosion and/or trackout; and (3) dust control permit requirements for dust generating activities. The EPA approved District Regulation 040.030 as a revision of the Nevada SIP in 2007 making it permanent and enforceable for the purposes of CAA section 107(d)(3)(E)(iii). 72 FR 25969 (May 8, 2007). According to the 2014 PM<sub>10</sub> Maintenance Plan, District Regulation 040.030 reduced PM<sub>10</sub> emissions in the Truckee Meadows area on a "typical PM<sub>10</sub> Season Day" during 2011 by approximately 400 lbs/day. 2014 PM<sub>10</sub> Maintenance Plan at 11, 12 (Table 4–1).

The 2014 PM<sub>10</sub> Maintenance Plan also provides an analysis of economic and meteorological conditions in Washoe County during the 1990 to 2011 period to demonstrate that the emission reductions in the Truckee Meadows area did not result from temporary reductions (*e.g.*, economic downturns or shutdowns) or unusually favorable meteorology. According to the plan, demographic and economic indicators such as population, full-time

<sup>18</sup> Regulation 040.051 defines "Stage 1 alert" by reference to the Health District's Emergency Episode Plan (*i.e.*, District Regulation 050.001), which establishes a "Stage 1 (alert)" episode criteria level of 154 µg/m<sup>3</sup>. See District Regulation 040.051 at Section E.5 and Regulation 050.001 at Table 1.

employment, total industry earnings, and VMT demonstrated steady, positive growth during this period. See 2014 PM<sub>10</sub> Plan at 13, Table 4–2 (“Washoe County Demographic and Economic Indicators (1990–2011)”). For example, during the 1990–2011 period in Washoe County, growth in several key economic indicators (*i.e.*, population 64%, full-time employment 41%, total industry earnings 158%, and VMT<sup>19</sup> 86%) coincided with improved air quality. *Id.* With respect to meteorological conditions, the 2014 PM<sub>10</sub> Maintenance Plan presents data from the 1990–2011 period that indicate that wintertime precipitation, wind speed, and barometric pressure levels fluctuated above and below historic averages throughout that period. *Id.* at 14–16.

Thus, we find that the improvements in PM<sub>10</sub> air quality during the 1990–2011 period resulted from implementation of permanent and enforceable control measures that significantly reduced PM<sub>10</sub> emissions in the Truckee Meadows area, rather than from temporary emission reductions or unusually favorable meteorology. During the 2011 PM<sub>10</sub> season, implementation of these SIP-approved measures reduced daily PM<sub>10</sub> emission levels by approximately 68 percent, indicating that these SIP control measures countered the emissions increases that otherwise would have occurred due to steady growth in the area during this period. As such, we find that the criterion for redesignation in CAA section 107(d)(3)(E)(iii) has been met.

#### D. The Area Has a Fully-Approved Maintenance Plan, Including a Contingency Plan, Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA requires the EPA, in order to approve a redesignation to attainment, to fully approve a maintenance plan for the area as meeting the requirements of section 175A of the Act. Section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We interpret this section of the Act to

require, in general, the following core elements:

- An attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS;
- A demonstration of maintenance of the NAAQS for at least 10 years after redesignation;
- Provisions for continued operation of an air quality monitoring network;
- Provisions to verify continued attainment; and
- Contingency provisions that the EPA deems necessary to assure that the state will promptly correct any violation of the NAAQS that occurs after redesignation of the area.

See Calcagni Memo at 7–12. We discuss below how each of these core elements is addressed in the 2014 PM<sub>10</sub> Maintenance Plan.

#### 1. Attainment Inventory

A maintenance plan for the PM<sub>10</sub> standard must include an inventory of emissions of PM<sub>10</sub> in the area to identify a level of emissions sufficient to attain the PM<sub>10</sub> NAAQS.<sup>20</sup> This inventory must be consistent with the EPA’s most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary sources, area sources, nonroad mobile sources and on-road mobile sources, and must be based on actual emissions during the appropriate season or episode, if applicable. See CAA section 172(c)(3). EPA’s primary guidance for developing PM<sub>10</sub> emissions inventories is a document titled, “PM<sub>10</sub> Emissions Inventory Requirements,” EPA–454/R–94–033 (September 1994).

The 2014 PM<sub>10</sub> Maintenance Plan provides an emissions inventory of actual emissions from all direct PM<sub>10</sub> sources within Truckee Meadows on an average day during the winter season

<sup>20</sup> PM<sub>10</sub> precursor emissions may also be required depending upon the contribution of secondarily-formed particulate matter to ambient PM<sub>10</sub> concentrations. As discussed above, a 1988 DRI study concluded that the PM<sub>10</sub> contribution from precursors (*i.e.*, ammonium nitrates and ammonium sulfates) was very small (*i.e.*, approximately 5–6%) compared to the contributions of other direct PM<sub>10</sub> sources in Truckee Meadows. As such, we find that the absence of PM<sub>10</sub> precursors from the attainment inventory in the 2014 PM<sub>10</sub> Maintenance Plan to be acceptable.

during year 2011. See table 2 below. The WCAQMD developed this inventory based on the methods and assumptions presented in detail in the WCAQMD’s 2011 *Periodic Emissions Inventory* (November 2012), with the following adjustments:

- Paved road fugitive dust was re-calculated based on the most recent VMT estimates provided by the Regional Transportation Commission of Washoe County (RTC) and the most recent version of EPA emission factors published in AP–42,<sup>21</sup> section 13.2.1 (“Paved Roads”), dated January 2011, whereas the corresponding estimates in the 2011 *Periodic Emissions Inventory* relied on earlier VMT estimates and an earlier version of AP–42 section 13.2.1 (dated November 2006);
- Unpaved road fugitive dust was re-calculated based on the most recent VMT estimates provided by the RTC and updated silt loading factors; and
- On-road mobile source emissions (combustion, brake and tire wear) were re-calculated based on the most recent VMT estimates provided by the RTC and a different traffic demand model.

In addition to showing the estimated actual emissions in 2011, table 2 below also the baseline maintenance plan inventory used by the 2014 PM<sub>10</sub> Maintenance Plan to demonstrate maintenance through 2030. The only difference between the 2011 actuals and the maintenance plan baseline is in the wildfire source category. An unusually high number of wildfires occurred during the winter of 2011, which greatly increased the contribution of wildfires to the overall 2011 PM<sub>10</sub> inventory, and thus, for the purposes of developing a baseline attainment inventory for maintenance plan purposes, the WCAQMD replaced the actual PM<sub>10</sub> emissions from wildfires in 2011 with the average of wildfire emissions from the four previous inventory years (1999, 2002, 2005, and 2008). 2014 PM<sub>10</sub> Maintenance Plan at 25. We find that adjustment to be reasonable. Even with the adjustment for wildfires, over 85 percent of direct PM<sub>10</sub> emissions is attributed to nonpoint sources.

<sup>21</sup> AP–42, *Compilation of Air Pollutant Emission Factors*, is a document published by the EPA as the primary collection of EPA approved emission factor information. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

<sup>19</sup> The VMT data in this table are expressed in miles per day and represent only the Truckee Meadows portion of Washoe County. See 2011 PM<sub>10</sub> Maintenance Plan at 13, Table 4–2 (“Washoe County Demographic and Economic Indicators (1990–2011)”).

TABLE 2—TRUCKEE MEADOWS 2011 WINTER-SEASON EMISSION INVENTORY FOR DIRECT PM<sub>10</sub>  
[lbs/day]

Category	Subcategory	Estimated actual emissions	Maintenance plan baseline
Point Sources	All	25	25
Nonpoint Sources	Fuel Combustion	111	111
	Residential Wood Combustion	5,888	5,888
	Construction <sup>a</sup>	460	460
	Non-Construction Industrial Processes	929	929
	Paved Roads—Fugitive Dust	1,453	1,453
	Paved Road—Sanding and Salting	339	339
	Unpaved Roads—Fugitive Dust	2,623	2,623
	Wildfires	10,947	21
	All Other Nonpoint	61	61
	Subtotal—Nonpoint	22,812	11,885
Non-road Mobile	All	606	606
Onroad Mobile	All	1,183	1,183
Totals		24,626	13,700

<sup>a</sup> Construction-related emissions represents a sum of several different types of construction. One such type, road construction (178 lbs/day), is included in the motor vehicle emissions budget (MVEB) discussed in section V.D.6 of this proposed rule (along with paved road fugitive dust, unpaved road fugitive dust, and on-road mobile sources).

Source: 2014 PM<sub>10</sub> Maintenance Plan, appendix C.

Totals may not add up due to rounding.

The EPA believes that the selection of 2011 as the attainment year inventory is appropriate given that it represents emissions from an attainment year and the year for which the most recent emissions inventory information was available at the time of preparation of the maintenance plan. Moreover, preparation of a seasonal (winter) inventory in this instance is appropriate given that winter is typically the season when the highest ambient PM<sub>10</sub> concentrations are monitored in Truckee Meadows. We find that the WCAQMD's 2011 emissions inventory for direct PM<sub>10</sub> is based upon reasonable assumptions and methodologies, as described in the 2014 PM<sub>10</sub> Maintenance Plan and 2011 Periodic Emissions Inventory,<sup>22</sup> and that the inventory is comprehensive, current and accurate. We therefore propose to approve the inventory of actual emissions in 2011 as meeting the requirements of CAA section 172(c)(3) and find the 2011 inventory, as adjusted to discount 2011 wildfire emissions,

acceptable for use in demonstrating maintenance of the PM<sub>10</sub> standard in the future.

2. Maintenance Demonstration

Section 175A of the CAA requires a demonstration of maintenance of the NAAQS for at least 10 years after redesignation. A state may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future anticipated mix of sources and emission rates will not cause a violation of the NAAQS. See Calcagni Memo at 9–11.

The 2014 PM<sub>10</sub> Maintenance Plan demonstrates that the Truckee Meadows area will maintain the PM<sub>10</sub> NAAQS through 2030 by comparing the adjusted 2011 attainment inventory (also referred to as the maintenance plan baseline) against the projected emissions for 2015, 2020, 2025, and 2030. See 2014 PM<sub>10</sub> Maintenance Plan at 26–28 (Tables 6–4 and 6–5) and Appendix C (“Truckee

Meadows Projected PM<sub>10</sub> Seasonal Emissions (lbs/day)”). Using the adjusted 2011 emissions inventory as a baseline and appropriate growth factors described in appendix B of the 2014 PM<sub>10</sub> Maintenance Plan, the WCAQMD projected emissions inventories for 2015, 2020, 2025, and 2030. These projections were based on Washoe County's forecasts of population, employment, and VMT (see 2014 PM<sub>10</sub> Maintenance Plan at appendix B, table B–2), consistent with the forecasts used by the local metropolitan planning organization (MPO); the EPA nonroad and on-road emissions models (i.e., NONROAD2008a and MOVES2010a) that the WCAQMD used to calculate the 2011 emissions inventory; and a survey of RWC activities that the WCAQMD conducts at least once every three years. See 2014 PM<sub>10</sub> Plan at appendix B (“Growth Factors for 2015, 2020, 2025, and 2030 Projections”). The WCAQMD's projected PM<sub>10</sub> emission levels for 2015, 2020, 2025, and 2030 are shown in table 3.

TABLE 3—TRUCKEE MEADOWS PM<sub>10</sub> MAINTENANCE PLAN PROJECTIONS FOR 2015, 2020, 2025, AND 2030  
[Average winter day, lbs/day]

Category	Maintenance plan baseline—2011	2015	2020	2025	2030
Point Sources	25	28	32	37	42

<sup>22</sup> The WCAQMD's 2011 Periodic Emissions Inventory, dated November 2012 and submitted to the EPA for purposes of meeting the AERR requirements, provides significant detail regarding

the assumptions and methodologies used to develop the 2011 PM<sub>10</sub> inventory used in the 2014 PM<sub>10</sub> Maintenance Plan. The 2011 Periodic Emissions Inventory also includes emissions

inventories for VOCs, NO<sub>x</sub>, SO<sub>x</sub>, and ammonia. AERR requires state, local and tribal agencies to collect and submit emissions data for criteria pollutants to EPA's Emissions Inventory System.



TABLE 3—TRUCKEE MEADOWS PM<sub>10</sub> MAINTENANCE PLAN PROJECTIONS FOR 2015, 2020, 2025, AND 2030—Continued  
[Average winter day, lbs/day]

Category	Maintenance plan baseline—2011	2015	2020	2025	2030
Nonpoint Sources .....	11,885	11,510	11,379	11,361	11,512
Non-road Mobile .....	606	501	386	328	307
Onroad Mobile .....	1,183	953	839	828	883
Totals .....	13,700	12,992	12,637	12,554	12,744

Source: 2014 PM<sub>10</sub> Plan at 27, Table 6–4.

Despite expected growth in the area, the maintenance plan's projected PM<sub>10</sub> emissions in Truckee Meadows for 2015, 2020, 2025, and 2030 are below the 2011 maintenance inventory of 13,700 lbs/day. The downward trend in PM<sub>10</sub> emissions reflects the offsetting effects of the WCAQMD's RWC program and the gradual replacement over time of older motor vehicle and nonroad equipment with newer models that are designed to meet more stringent emissions standards than had applied to the older models. Based on our review, we find that the methods, growth factors, and assumptions used by the WCAQMD to project emissions to 2015, 2020, 2025 and 2030 levels are reasonable. Given that the projections (summarized in table 3 above) show future emissions in 2015, 2020, 2025, and 2030 to be below those in 2011 (and that reflect attainment conditions), we find that the projections provide an adequate basis to demonstrate maintenance of the PM<sub>10</sub> standard within Truckee Meadow through 2030. Also, as described further in section V.D.6 of this document, the WCAQMD has chosen to include "safety margins" in the motor vehicle emissions budgets for 2015 (708 lbs/day), 2020 (1,063 lbs/day), 2025 (1,146 lbs/day), and 2030 (955 lbs/day), but we find that the overall emissions projections, including the safety margins, continue to demonstrate maintenance because they do not exceed the emissions in 2011, and thus, the safety margins are consistent with maintenance through 2030.

Section 175A requires that the EPA approve a plan providing for maintenance in the area for at least ten years after redesignation. If this redesignation becomes effective in 2015, the projected 2030 inventory demonstrates that Truckee Meadows will maintain the PM<sub>10</sub> NAAQS for more than 10 years beyond redesignation. Moreover, the projected emissions inventories for 2015, 2020, and 2025, *i.e.*, milestone years between the attainment inventory and the

maintenance plan horizon year, sufficiently demonstrate that Truckee Meadows will maintain the standard *throughout* the period from redesignation through 2030. As such, the EPA concludes that the 2014 PM<sub>10</sub> Maintenance Plan adequately demonstrates maintenance of the standard through 2030.

### 3. Monitoring Network

Continued ambient monitoring within an area is required over the maintenance period. *See* Calcagni Memo at 11. In the 2014 PM<sub>10</sub> Maintenance Plan, the WCAQMD indicates its intention to continue to operate an air quality monitoring network consistent with 40 CFR part 58 to verify the attainment status. 2014 PM<sub>10</sub> Maintenance Plan at 29. The plan also notes that Washoe County's PM<sub>10</sub> monitoring network will be reviewed annually pursuant to 40 CFR 58.10 to ensure the network meets the monitoring objectives defined in 40 CFR part 58, appendix D. As discussed above in section V.A, the WCAQMD operates an EPA-approved air quality monitoring network. The WCAQMD obtains funding to meet the requirements of part 58 primarily from CAA section 105 grants and from the Nevada Department of Motor Vehicles. For these reasons, we find that the 2014 PM<sub>10</sub> Maintenance Plan provides adequately for continued ambient PM<sub>10</sub> monitoring through the maintenance period.

### 4. Verification of Continued Attainment

Each state should ensure that it has the legal authority to implement and enforce all measures necessary to attain and maintain the NAAQS, including the acquisition of ambient and source emission data to demonstrate attainment and maintenance, pursuant to CAA sections 110(a)(2)(B) and (F). *See* Calcagni Memo at 11. The NDEP and the WCAQMD have the legal authority to implement and enforce the requirements of the 2014 PM<sub>10</sub> Maintenance Plan. This includes the authority to adopt, implement and

enforce any emission control contingency measures determined to be necessary to correct PM<sub>10</sub> NAAQS violations. As noted above, to implement the maintenance plan, the WCAQMD will continue to monitor PM<sub>10</sub> levels in Truckee Meadows. The WCAQMD will also continue to use three existing mechanisms to track emissions levels to screen for significant increases in actual PM<sub>10</sub> emissions.

First, the WCAQMD will continue to prepare and submit to the EPA comprehensive periodic PM<sub>10</sub> emissions inventories on a triennial schedule. Second, the WCAQMD will continue to submit regular updates of stationary and area sources within Washoe County, consistent with the requirements of EPA's Consolidated Emissions Reporting Rule (CERR) and AERR. Finally, the WCAQMD remains committed to conducting its residential wood use surveys at least once every three years, to estimate the number of devices (fireplaces, woodstoves, and pellet stoves), amounts of wood burned, and PM<sub>10</sub> emissions from these activities in Washoe County. *See* 2014 PM<sub>10</sub> Maintenance Plan at 29–30.

We find that the WCAQMD's commitments to verify continued attainment of the PM<sub>10</sub> NAAQS through continued ambient air monitoring and emissions tracking are acceptable.

### 5. Contingency Plan

Section 175A(d) of the CAA requires that maintenance plans include such contingency provisions as the EPA deems necessary to promptly correct any violations of the NAAQS that occur after redesignation of the area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9) in that they are not required to be fully adopted measures that will take effect without further action by the state. However, the contingency plan is an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified

event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the state. Contingency provisions should also identify indicators or triggers which will be used to determine when the contingency measures need to be implemented. The EPA evaluates contingency measures on a case-by-case basis.<sup>23</sup> Calcagni Memo at 12, 13.

The 2014 PM<sub>10</sub> Maintenance Plan contains a contingency plan that is triggered upon a violation of the PM<sub>10</sub> standard, that requires the WCAQMD to make certain recommendations to the Health District within a certain time

period after the triggering event, and that commits the Health District to adopting and implementing such recommendations as promptly and expeditiously as possible, but not later than the next PM<sub>10</sub> (*i.e.*, winter) season. 2014 PM<sub>10</sub> Maintenance Plan at 30–32.

More specifically, the contingency plan is triggered when any monitor operated by the WCAQMD records a violation of the PM<sub>10</sub> NAAQS, as defined by 40 CFR part 50, Appendix K (*i.e.*, when the expected number of exceedances at the monitoring site during the calendar year is greater than one).<sup>24</sup> If the contingency plan is triggered, the WCAQMD will provide recommendations for implementation of

specific contingency measures to the Washoe County District Board of Health (referred to herein as the “Health District.”). The recommendations must occur at the next regularly scheduled meeting but no later than 45 days after the violation. The recommendations will include a timeline for adoption and implementation as expeditiously as possible, but no later than the next PM<sub>10</sub> season (November, December, and January). The WCAQMD maintains a list of potential contingency measures, focusing on significant PM<sub>10</sub> emission sources, for recommendation in such events. Table 4 presents the WCAQMD’s current list of potential contingency measures.

TABLE 4—2014 PM<sub>10</sub> MAINTENANCE PLAN CONTINGENCY MEASURES

Category	Potential contingency measure
Paved Streets .....	<ul style="list-style-type: none"> <li>■ Increase stringency of street sanding and sweeping programs.</li> <li>■ Improve unpaved shoulders.</li> </ul>
Unpaved Streets .....	<ul style="list-style-type: none"> <li>■ Transportation control measures to reduce VMT.</li> <li>■ Improve unpaved streets and shoulders.</li> <li>■ Post speed limits to decrease vehicle speeds.</li> <li>■ Restrict access to decrease Average Daily Trips and VMT.</li> </ul>
Dust Control .....	<ul style="list-style-type: none"> <li>■ Phased mass grading.</li> <li>■ Mass grading allocation system.</li> <li>■ Stabilize projects during PM<sub>10</sub> season.</li> <li>■ Decrease one acre dust control permit exemption.</li> </ul>
Residential Wood Combustion .....	<ul style="list-style-type: none"> <li>■ Increase one acre lot size exemption.</li> <li>■ Mandatory curtailment at lower PM<sub>10</sub> concentrations.</li> <li>■ Change-out program to clean burning device.</li> </ul>
Mobile Sources (Diesel) .....	<ul style="list-style-type: none"> <li>■ Non-road diesel engine repowers and rebuilds.</li> <li>■ Non-road diesel tailpipe controls (<i>i.e.</i>, filters and catalysts).</li> <li>■ Truck Stop Electrification systems for heavy-duty vehicles.</li> <li>■ More stringent heavy-duty diesel vehicle idling limits.</li> <li>■ Fleet modernization.</li> <li>■ More stringent inspection &amp; maintenance program of light-duty, medium-duty, and heavy-duty vehicles</li> </ul>

Source: 2014 PM<sub>10</sub> Plan at 32, Table 6–7, “Potential PM<sub>10</sub> Contingency Measures.”

To address changes in growth and technology, which may alter the effectiveness of different measures over time, the WCAQMD will conduct a triennial review and reprioritization of these potential contingency measures in coordination with the periodic PM<sub>10</sub> emissions inventory. *See* 2014 PM<sub>10</sub> Plan at 31. The WCAQMD will notify EPA Region 9 within 30 days of implementation of a contingency measure. *Id.*

In addition to the contingency plan described above, the maintenance plan identifies a SIP-approved program that serves as an automatically triggered measure when 24-hour PM<sub>10</sub> concentrations reach or are predicted to

reach “Stage 1” levels (154 µg/m<sup>3</sup>). Specifically, District Regulation 050.001, “Emergency Episode Plan,” is a SIP-approved program that requires the WCAQMD to take certain actions when 24-hour PM<sub>10</sub> concentrations reach or are predicted to reach “Stage 1” levels such as: (1) Implementing procedures to notify the public of potential health problems; (2) prohibiting all open and prescribed burning; (3) prohibiting the use of permitted incinerators, crematoriums, and pathological incinerators; (4) prohibiting the use of solid fuel burning devices; and (5) activating control plans for the largest PM<sub>10</sub> sources in Washoe County. 2014 PM<sub>10</sub> Maintenance Plan at

11. As such, implementation of District Regulation 050.001 acts to reduce the chances that the contingency plan set forth in the 2014 PM<sub>10</sub> Maintenance Plan will be triggered.

Based on our review of the contingency provisions in the 2014 PM<sub>10</sub> Maintenance Plan, as described above, we find that they are adequate to ensure that the Health District will promptly correct any violation of the PM<sub>10</sub> NAAQS that occurs after redesignation, as required by CAA section 175A(d).

6. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the CAA. Our

<sup>23</sup> Section 175A(d) also requires contingency provisions to include a requirement that the state will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area to attainment. In this case,

no SIP measures for the control of PM<sub>10</sub> in Truckee Meadows are being rescinded or relaxed, and thus, the contingency provisions in the 2014 PM<sub>10</sub> Maintenance Plan need not address this requirement.

<sup>24</sup> An exceedance is defined as a daily value that is above the level of the 24-hour standard (*i.e.*, 150 µg/m<sup>3</sup>) after rounding to the nearest 10 µg/m<sup>3</sup> (*i.e.*, values ending in 5 or greater are to be rounded up).

transportation conformity rule (codified in 40 CFR part 93, subpart A) requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. In this context, “transportation activities” refers to plans, programs, and projects affecting the road network (paved and unpaved) and the public transit system in nonattainment areas and in former nonattainment areas that have been redesignated to attainment (commonly referred to as “maintenance” areas.).

PM<sub>10</sub> maintenance plan submittals must specify the maximum emissions of transportation-related PM<sub>10</sub> emissions<sup>25</sup> allowed in the last year of the maintenance period, *i.e.*, the motor vehicle emissions budgets (MVEBs). (MVEBs may also be specified for additional years during the maintenance period.) The MVEBs serve as a ceiling on emissions that would result from an area’s planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble describes how to establish MVEBs in the SIP and how to revise the MVEBs if needed.

The maintenance plan submittal must demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for

us to find these emissions levels or “budgets” adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/index.htm>. EPA’s process for determining adequacy of a MVEB consists of three basic steps: (1) Notifying the public of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) making a finding of adequacy or inadequacy. The process for determining the adequacy of a submitted MVEB is codified at 40 CFR 93.118(f).

On January 19, 2010, the EPA announced the availability of the Truckee Meadows 2009 PM<sub>10</sub> Maintenance Plan with MVEBs (for 2009, 2013, 2018, and 2020) and of a 30-day public comment period on the EPA’s Adequacy Web site at: <http://www.epa.gov/otaq/stateresources/transconf/currsubs.htm>. The comment period for this notification ended on February 19, 2010, and the EPA received no comments from the public. Later that year, the EPA found the MVEBs from the 2009 PM<sub>10</sub> Maintenance Plan adequate for transportation conformity purposes. 75 FR 27776 (May 18, 2010).

The 2014 PM<sub>10</sub> Maintenance Plan contains PM<sub>10</sub> MVEBs for Truckee

Meadows for 2015, 2020, 2025, and 2030. The MVEBs are the on-road mobile source primary PM<sub>10</sub> emissions inventory plus a safety margin for the Truckee Meadows nonattainment area for 2015, 2020, 2025, and 2030. The MVEBs in the 2014 PM<sub>10</sub> Maintenance Plan are presented in table 5 below. The derivation of the MVEBs is discussed on page 28 of the 2014 PM<sub>10</sub> Maintenance Plan and further described below.

TABLE 5—2014 PM<sub>10</sub> MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Average winter day, lbs/day]

Budget year	PM <sub>10</sub>
2015 .....	5,638
2020 .....	6,088
2025 .....	6,473
2030 .....	6,927

Source: 2014 PM<sub>10</sub> Maintenance Plan at table 6–6, page 28.

The WCAQMD developed the MVEBs in the 2014 PM<sub>10</sub> Maintenance Plan by using the on-road motor vehicle emission inventory factors in MOVES2010b and AP-42 and recent vehicle activity data from TransCAD, a travel demand model used by the RTC, which is the MPO for the area. The components of the MVEBs are shown in table 6 and are comprised of direct on-road mobile source emissions, road construction emissions, fugitive emissions from paved and unpaved roads, and safety margins.

TABLE 6—SOURCE CATEGORIES AND DIRECT PM<sub>10</sub> EMISSIONS COMPRISING THE MOTOR VEHICLE EMISSIONS BUDGETS (LBS PER DAY, AVERAGE WINTER DAY) IN THE 2014 PM<sub>10</sub> PLAN

Category	2015	2020	2025	2030
Diesel Idling .....	7	4	1	1
Paved Road—Fugitives .....	1,414	1,517	1,627	1,736
Unpaved Road—Fugitives .....	2,380	2,479	2,688	3,174
Road Construction .....	183	189	185	180
On-road Motor Vehicles <sup>a</sup> .....	946	835	825	880
Safety Margin .....	708	1,063	1,146	955
<b>Totals .....</b>	<b>5,638</b>	<b>6,088</b>	<b>6,473</b>	<b>6,927</b>

<sup>a</sup>On-road Motor Vehicles includes directly emitted PM<sub>10</sub> from combustion and also reflects tire and brake wear. Source: 2014 PM<sub>10</sub> Maintenance Plan at table 6–6, page 28.

A state may choose to apply a safety margin under our transportation conformity rule so long as such margins are explicitly quantified in the applicable plan and are shown to be

consistent with attainment or maintenance of the NAAQS (whichever is relevant to the particular plan). See 40 CFR 93.124(a). As shown in table 7 below, each safety margin was

calculated by subtracting a future inventory from the 2011 maintenance inventory. *Also, see* table 6–5 in the 2014 PM<sub>10</sub> Maintenance Plan. The safety margins equal the difference between

<sup>25</sup> Transportation-related emissions of volatile organic compounds (VOC) and/or oxides of nitrogen (NO<sub>x</sub>) emissions must also be specified in PM<sub>10</sub> areas if the EPA or the state finds that transportation-related emissions of one or both of these precursors within the nonattainment area are

a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the metropolitan planning organization (MPO) and the U.S. Department of Transportation (DOT), or if the applicable SIP revision or SIP revision submittal establishes an approved or adequate budget for such

emissions as part of the RFP, attainment or maintenance strategy. 40 CFR 93.102(b)(2)(iii). Neither of these conditions apply to Truckee Meadows.

the projected level of overall PM<sub>10</sub> emissions in Truckee Meadows in each of the maintenance years and the 2011

maintenance inventory. Each safety margin, when combined with its corresponding future-year inventory, is

consistent with continued maintenance of the PM<sub>10</sub> NAAQS through 2030.

TABLE 7—CALCULATION OF SAFETY MARGINS (LBS/DAY)

	2015	2020	2025	2030
2011 Maintenance Inventory .....	13,700	13,700	13,700	13,700
Future-Year Inventory .....	12,992	12,637	12,554	12,744
Safety Margin .....	708	1,063	1,146	955

Source: 2014 PM<sub>10</sub> Maintenance Plan at table 6–5, page 28.

With respect to the 2014 Plan and related MVEBs, we have evaluated the budgets against our adequacy criteria in 40 CFR 93.118(e)(4) and (5) as part of our review of the budgets' approvability and are completing the adequacy review of these budgets concurrent with our final action on the 2014 Plan.<sup>26</sup> The details of the EPA's evaluation of the MVEBs for compliance with the budget adequacy criteria of 40 CFR 93.118(e) are provided in the TSD for this proposed rulemaking. On September 10, 2015, the EPA announced the availability of the 2014 Plan with MVEBs and a 30-day public comment period. This announcement was posted on EPA's Adequacy Web site at: <http://www.epa.gov/otaq/stateresources/transconf/reg9sips.htm#nv>.

The EPA is proposing to approve the MVEBs for 2015, 2020, 2025 and 2030, shown in table 5 above, as part of our approval of 2014 PM<sub>10</sub> Maintenance Plan. The EPA has determined that the MVEB emission targets are consistent with emission control measures in the SIP and are consistent with maintenance of the PM<sub>10</sub> standard in Truckee Meadows through 2030.<sup>27</sup> As noted above, we found the MVEBs (for years 2009, 2013, 2018, and 2020) in the 2009 PM<sub>10</sub> Maintenance Plan to be adequate for transportation purposes, and those are the PM<sub>10</sub> MVEBs in effect for transportation conformity purposes today. If we finalize today's action, as

<sup>26</sup> Under the Transportation Conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

<sup>27</sup> On page 28 of the 2014 Plan, the WCAQMD explains "For years beyond 2030, the MVEB will remain at the 2030 level of 6,927 bs/day." This sentence refers to the fact that if the SIP does not have a budget in a particular analysis year, the budget established for the most recent prior year is used as described in 40 CFR 93.118(b)(ii). The 2014 Plan does not establish budgets for any subsequent year after 2030. To avoid any ambiguity about the intent of the language on page 28 of the 2014 Plan, WCAQMD staff clarified that "For years beyond 2030" means "For analysis years beyond 2030." See September 16, 2015 email from Daniel Inouye, WCAQMD, to John Ungvarsky, EPA Region 9.

proposed, the PM<sub>10</sub> MVEBs (for years 2015, 2020, 2025, and 2030) from the 2014 PM<sub>10</sub> Maintenance Plan would replace the PM<sub>10</sub> MVEBs previously found adequate. Any and all comments on the adequacy and approvability of the MVEBs in the 2014 PM<sub>10</sub> Maintenance Plan should be submitted during the comment period stated in the **DATES** section of this document.

#### 7. Conclusion

Based on the review presented above of the various elements of the state's submitted maintenance plan, we are proposing to approve the 2014 PM<sub>10</sub> Maintenance Plan as a revision to the Nevada SIP. In so doing, we find that the 2014 PM<sub>10</sub> Maintenance Plan, adopted on August 28, 2014 by the Health District and submitted by the NDEP to the EPA on November 7, 2014, satisfies the requirements of section 175A of the Act. If finalized as proposed, our approval of the 2014 PM<sub>10</sub> Maintenance Plan will satisfy the criterion for redesignation under CAA section 107(d)(3)(E)(iv).

### VI. Proposed Deletion of TSP Designation for Truckee Meadows

#### A. General Considerations

Consistent with CAA section 107(d)(4)(B), we have considered the continued necessity for retaining the remaining TSP area designation in Nevada, and as discussed below, we have decided that the TSP nonattainment designation for Truckee Meadows (HA #87) is no longer necessary. As a result, we are proposing to delete it from the TSP table in 40 CFR 81.329.

To evaluate whether the TSP area designation should be retained or can be deleted, we have relied upon the final rule implementing the PM<sub>10</sub> NAAQS (see 52 FR 24634, July 1, 1987), a policy memorandum on TSP redesignations (see memo dated May 20, 1992 from Joseph W. Paisie, Acting Chief, SO<sub>2</sub>/Particulate Matter Programs Branch, EPA Office of Air Quality Planning and Standards, to Chief, Air Branch, Regions I–X, entitled "TSP Redesignation

Request"), and our proposed and final rules establishing maximum allowable increases in concentrations (also known as "increments") for PM<sub>10</sub> (see the proposed rule at 54 FR 41218, October 5, 1989, and the final rule at 58 FR 31622, June 3, 1993).

Based on the above references, we believe that the relevant considerations for evaluating whether the necessity of retaining the TSP area designations depend upon the status of a given area with respect to TSP and PM<sub>10</sub>. For areas that are nonattainment for TSP but attainment for PM<sub>10</sub>, we generally find that the TSP designations are no longer necessary and can be deleted when the EPA (1) approves a state's revised PSD program containing the PM<sub>10</sub> increments, (2) promulgates the PM<sub>10</sub> increments into a state's SIP where the State chooses not to adopt the increments on their own, or (3) approves a state's request for delegation of PSD responsibility under 40 CFR 52.21(u). See 58 FR 31622, at 31635 (June 3, 1993).

For areas that are nonattainment for TSP and nonattainment for PM<sub>10</sub>, an additional consideration is whether deletion of the TSP designations would automatically relax any emissions limitations, control measures or programs approved into the SIP. If such a relaxation would occur automatically with deletion of the TSP area designations, then we will not delete the designations until we are satisfied that the resulting SIP relaxation would not interfere with any applicable requirement concerning attainment, reasonable further progress (RFP), or maintenance of the NAAQS or any other requirement of the Clean Air Act in the affected areas. See section 110(l) of the Act.

In the case of Truckee Meadows, we believe that the considerations for both types of areas described above are relevant because, although Truckee Meadows Valley is nonattainment for TSP and PM<sub>10</sub>, we are proposing to redesignate the area to attainment for PM<sub>10</sub> in today's action. Thus, we must take into account both the potential for

relaxation that would be inconsistent with continued maintenance of the PM<sub>10</sub> NAAQS as well as protection of the PM<sub>10</sub> increments (as applies in areas designated attainment or unclassifiable).

#### *B. Deletion of TSP Nonattainment Area Designation for Truckee Meadows*

With respect to protection of the PM<sub>10</sub> increments, the TSP nonattainment designation is no longer necessary in Truckee Meadows because, even though the WCAQMD does not currently have an approved PSD program, if the EPA finalizes the actions in today's proposed rulemaking, the federal PSD requirements under 40 CFR 52.21 (including the PM<sub>10</sub> increments) will apply to new major sources or major modifications to existing major sources of PM<sub>10</sub>. See 40 CFR 52.1485(b). The WCAQMD administers the PSD pre-construction permit program in 40 CFR 52.21 within Washoe County except for coal-fired power plants, which fall under the jurisdiction of NDEP. Both the WCAQMD and the NDEP administer the PSD permit program in 40 CFR 52.21 under delegation agreements with the EPA.

To ensure that deletion of the TSP nonattainment designation for Truckee Meadows would not result in any automatic relaxations in SIP emissions limitations, control measures or programs that would interfere with attainment, RFP or maintenance of the NAAQS (including PM<sub>10</sub>) or any other requirement of the Act, we reviewed the following portions of the Nevada SIP:

- The TSP portions of the Truckee Meadows Air Quality Implementation Plan (AQIP) adopted in response to the CAA, as amended in 1977;
- Washoe County stationary source rules, including section 040.005 ("Visible Air Contaminants"), section 040.010 ("Particulate Matter"), section 040.020 ("Dust and Fumes"), section 040.030 ("Dust Control"), section 040.031 ("Street Sanding Operations"), section 040.032 ("Street Sweeping Operations"), section 040.035 ("Open Fires"), section 040.040 ("Burning Permit Conditions"), section 040.045 ("Refuge Disposal"), section 040.050 ("Incinerator Emissions"), section 040.051 ("Wood Stove/Fireplace Insert Emissions"), and section 040.060 ("Sulfur Content of Fuel").

Based on our review of the TSP provisions in the Truckee Meadows AQIP and the various rules cited above, we find that none are contingent upon continuation of the TSP nonattainment designation, and thus deletion of the TSP designation would not automatically relax any standard.

In summary, because upon redesignation the PSD PM<sub>10</sub> increments will apply in Truckee Meadows and because the deletion of the TSP nonattainment designation for Truckee Meadows would not automatically relax any emissions limitation or control measure in the Nevada SIP, we find that the TSP nonattainment designation is no longer necessary and can be deleted. Based on the above discussion and evaluation, therefore, we are proposing to delete the TSP nonattainment area designation for Truckee Meadows (HA #87) from the "Nevada-TSP" table in 40 CFR 81.329.<sup>28</sup>

#### **VII. Proposed Actions and Request for Public Comment**

Under CAA section 110(k)(3), and for the reasons set forth above, the EPA is proposing to approve the BACM demonstration submitted by the NDEP on August 5, 2002 as part of the 2002 Truckee Meadows PM<sub>10</sub> Attainment Plan and the 2014 Truckee Meadows PM<sub>10</sub> Maintenance Plan submitted by the NDEP on November 7, 2014 as revisions of the Nevada SIP. In so doing, the EPA finds that the 2011 attainment inventory in the maintenance plan meets the requirements of CAA section 172(c)(3) and finds that the maintenance demonstration showing how Truckee Meadows will continue to attain the PM<sub>10</sub> standard through 2030, and the contingency provisions describing the actions that the WCAQMD will take in the event of a future monitored violation, meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. The EPA is also proposing to approve the motor vehicle emissions budgets in the 2014 PM<sub>10</sub> Maintenance Plan (and shown in table 5 above) because we find they meet the applicable adequacy criteria under 40 CFR 93.118(e).

In addition, under CAA section 107(d)(3)(D), we are proposing to approve the state's request, which accompanied the submittal of the 2014 PM<sub>10</sub> Maintenance Plan, to redesignate the Truckee Meadows PM<sub>10</sub> nonattainment area to attainment for the PM<sub>10</sub> standard. We are doing so based on our conclusion that the area has met, or will meet as part of this action, all of the criteria for redesignation under CAA section 107(d)(3)(E). More specifically, we propose to find that Truckee Meadows has attained the PM<sub>10</sub>

standard based on the most recent three-year period (2012–2014) of quality-assured, certified, and complete (or otherwise validated) PM<sub>10</sub> data; that relevant portions of the Nevada SIP are, or will be as part of this action, fully approved; that the improvement in air quality is due to permanent and enforceable reductions in emissions; that Nevada has met all requirements applicable to the Truckee Meadows PM<sub>10</sub> nonattainment area with respect to section 110 and part D of the CAA if we finalize our approvals of the BACM demonstration in the 2002 PM<sub>10</sub> Attainment Plan and the attainment inventory in the 2014 PM<sub>10</sub> Maintenance Plan, as proposed herein; and that Truckee Meadows will have a fully approved maintenance plan meeting the requirements of CAA section 175A if we finalize our approval of it, also as proposed herein.

In connection with the above proposed approvals and determinations, and as authorized under CAA section 189(e), we are proposing to determine that major stationary sources of PM<sub>10</sub> precursors do not contribute significantly to PM<sub>10</sub> exceedances in the Truckee Meadows area based on the information in the 1988 DRI Report and more recent inventory and speciation data available from the WCAQMD.

Lastly, the EPA is proposing to delete the nonattainment area designation for Truckee Meadows for the revoked national standard for total suspended particulate because we have concluded that the designation is no longer necessary.<sup>29</sup>

We are soliciting comments on these proposed actions. We will accept comments from the public on this proposal for 30 days following publication of this proposal in the **Federal Register**. We will consider these comments before taking final action.

#### **VIII. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to attainment and the

<sup>29</sup> If we finalize the proposed approval of the redesignation request for Truckee Meadows to attainment for the PM<sub>10</sub> standard and the proposed deletion of the TSP area designation for Truckee Meadows, as proposed, then all areas within the State of Nevada will be designated attainment or unclassifiable for all of the current NAAQS for particulate matter (*i.e.*, PM<sub>10</sub> and PM<sub>2.5</sub>). At that point, the EPA's finding at 40 CFR 52.1476(a) ("The requirements of subpart G of this chapter are not met since the plan does not provide for the attainment and maintenance of the national standards for particulate matter in the Northwest Nevada and Nevada Intrastate Regions.") promulgated at 37 FR 10842, 10879 (May 31, 1972), will become obsolete, and therefore, we intend to delete 40 CFR 52.1476(a) if we finalize this proposed rule, as proposed.

<sup>28</sup> Because the TSP area designation for Truckee Meadows is the last such designation for the State of Nevada in 40 CFR 81.329, we will delete the entire TSP table in 40 CFR 81.329 if we finalize our proposed deletion of the TSP area designation for Truckee Meadows.

accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely propose to approve a State plan and redesignation request as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For these reasons, these proposed actions:

- Are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and,

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

In addition, the State plan for which the EPA is proposing approval does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule, as it relates to the maintenance plan, does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). However, the EPA has contacted the Reno-Sparks Indian Colony and invited them to consult on today's action. The Reno-Sparks Indian Colony, which consists of members of three Great Basin Tribes—the Paiute, the Shoshone, and the Washo—and which has Indian country within the Truckee Meadows air quality planning area because the Indian country within the Truckee Meadows area would be redesignated to attainment along with State lands if the EPA were to finalize the proposed rules, as set forth herein.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 18, 2015.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2015-24854 Filed 9-29-15; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[EPA-HQ-SFUND-2015-0573, 0574, 0575, 0576, 0578, 0579 and 0580; FRL-9934-76-OSWER]**

**National Priorities List**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the agency") in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add seven sites to the General Superfund section of the NPL.

**DATES:** Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 30, 2015.

**ADDRESSES:** Identify the appropriate docket number from the table below.

**DOCKET IDENTIFICATION NUMBERS BY SITE**

Site name	City/county, state	Docket ID No.
PCE Former Dry Cleaner .....	Atlantic, IA .....	EPA-HQ-SFUND-2015-0573
Old American Zinc Plant .....	Fairmont City, IL .....	EPA-HQ-SFUND-2015-0574
West Vermont Drinking Water Contamination .....	Indianapolis, IN .....	EPA-HQ-SFUND-2015-0575
SBA Shipyard .....	Jennings, LA .....	EPA-HQ-SFUND-2015-0576
Iowa-Nebraska Light & Power Co .....	Norfolk, NE .....	EPA-HQ-SFUND-2015-0578
Former Kil-Tone Company .....	Vineland, NJ .....	EPA-HQ-SFUND-2015-0579
Lea and West Second Street .....	Roswell, NM .....	EPA-HQ-SFUND-2015-0580

Submit your comments, identified by Docket ID No. listed above to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

For additional docket addresses and further details on their contents, see section II, “Public Review/Public Comment,” of the Supplementary Information portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:**

Terry Jeng, phone: (703) 603–8852, email: [jeng.terry@epa.gov](mailto:jeng.terry@epa.gov), Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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**I. Background**

**A. What are CERCLA and SARA?**

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (“CERCLA” or “the Act”), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (“SARA”), Public Law 99–499, 100 Stat. 1613 *et seq.*

**B. What is the NCP?**

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and

Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes “criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.” “Removal” actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

**C. What is the National Priorities List (NPL)?**

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of “releases” and the highest priority “facilities” and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the “General Superfund section”), and one of sites that are owned or operated by other federal agencies (the “Federal Facilities section”). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987)

and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System ("HRS") score and determining whether the facility is placed on the NPL.

#### *D. How are sites listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

#### *E. What happens to sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established

under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. . . ." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

#### *F. Does the NPL define the boundaries of sites?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. Plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly

speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. Plant site," does not imply that the Jones Company is responsible for the contamination located on the plant site.

The EPA regulations provide that the remedial investigation ("RI") "is a process undertaken . . . to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

#### *G. How are sites removed from the NPL?*

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:



(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

#### H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

#### I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see the EPA's Internet site at <http://www.epa.gov/superfund/cleanup/ccl.htm>

#### J. What is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0-36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health

and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to [http://www.epa.gov/superfund/programs/recycle/pdf/sitewide\\_a.pdf](http://www.epa.gov/superfund/programs/recycle/pdf/sitewide_a.pdf)

#### K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following Web site: <http://www.epa.gov/superfund/sites/npl/hrsres/policy/govlet.pdf>. The EPA is improving the transparency of the process by which state and tribal input is solicited. The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, is available on the EPA's Web site at <http://www.epa.gov/superfund/sites/query/queryhtml/nplstcor.htm>

## II. Public Review/Public Comment

#### A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public dockets located both at the EPA Headquarters in Washington, DC, and in the regional offices. These documents are also available by electronic access at <http://www.regulations.gov> (see instructions in the "Addresses" section above).

#### B. How do I access the documents?

You may view the documents, by appointment only, in the Headquarters or the regional dockets after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding federal holidays. Please contact the regional dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office, 1301 Constitution Avenue NW., William Jefferson Clinton Building West, Room 3334, Washington, DC 20004; 202/566-0276. (Please note this is a visiting address only. Mail comments to the EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; 617/918-1413.

- Idefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; 212/637-4344.

- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814-3355.

- Jennifer Wendel, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562-8799.

- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC-7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886-4465.

- Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202-2733; 214/665-7436.

- Preston Law, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRERNB, Lenexa, KS 66219; 913/551-7097.

- Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; 303/312-6484.

- Sharon Murray, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6-1, San Francisco, CA 94105; 415/947-4250.

- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL-112, Seattle, WA 98101; 206/463-1349.

You may also request copies from the EPA Headquarters or the regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may be viewed only in-person;

since the EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the docket at <http://www.regulations.gov> to access documents in the Headquarters docket (see instructions included in the "Addresses" section above). Please note that there are differences between the Headquarters docket and the regional dockets and those differences are outlined below.

**C. What documents are available for public review at the headquarters docket?**

The Headquarters docket for this proposed rule contains the following for the sites proposed in this rule: HRS score sheets; documentation records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the documentation record.

**D. What documents are available for public review at the regional dockets?**

The regional dockets for this proposed rule contain all of the information in the Headquarters docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the regional dockets.

**E. How do I submit my comments?**

Comments must be submitted to the EPA Headquarters as detailed at the beginning of this preamble in the "Addresses" section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on

whether comments are sent by express mail or by postal mail.

**F. What happens to my comments?**

The EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that the EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

**G. What should I consider when preparing my comments?**

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). The EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

**H. May I submit comments after the public comment period is over?**

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

**I. May I view public comments submitted by others?**

During the comment period, comments are placed in the

Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public viewing in the electronic public docket at <http://www.regulations.gov> as the EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI) or other information whose disclosure is restricted by statute. Once in the public dockets system, select "search," then key in the appropriate docket ID number.

**J. May I submit comments regarding sites not currently proposed to the NPL?**

In certain instances, interested parties have written to the EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

**III. Contents of This Proposed Rule**

**A. Proposed Additions to the NPL**

In today's proposed rule, the EPA is proposing to add seven sites to the NPL, all to the General Superfund section. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above.

The sites are presented in the table below.

**GENERAL SUPERFUND SECTION**

State	Site name	City/County
IA .....	PCE Former Dry Cleaner .....	Atlantic
IL .....	Old American Zinc Plant .....	Fairmont City
IN .....	West Vermont Drinking Water Contamination .....	Indianapolis
LA .....	SBA Shipyard .....	Jennings
NE .....	Iowa-Nebraska Light & Power Co .....	Norfolk
NJ .....	Former Kil-Tone Company .....	Vineland
NM .....	Lea and West Second Street .....	Roswell

**IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

**A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review**

This action is not a significant regulatory action and was therefore not

submitted to the Office of Management and Budget (OMB) for review.

**B. Paperwork Reduction Act (PRA)**

This action does not impose an information collection burden under the PRA. This rule does not contain any

information collection requirements that require approval of the OMB.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

### E. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural

resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 21, 2015.

### Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2015–24318 Filed 9–29–15; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 2

[13XD4523WS DS10200000  
DWSN0000.000000 WBS DP10202]

RIN 1093–AA19

### Freedom of Information Act Regulations

**AGENCY:** Office of the Secretary, Interior.  
**ACTION:** Proposed rule.

**SUMMARY:** This rule would revise the regulations that the Department of the Interior (Department) follows in processing records under the Freedom of Information Act. The revisions clarify and update procedures for requesting information from the Department and procedures that the Department follows in responding to requests from the public.

**DATES:** Comments on the rulemaking must be submitted on or before November 30, 2015.

**ADDRESSES:** You may submit comments on the rulemaking by either of the methods listed below. Please use Regulation Identifier Number 1093–AA19 in your message.

1. *Federal eRulemaking Portal:*  
<http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.

2. *U.S. mail, courier, or hand delivery:*  
Executive Secretariat—FOIA regulations, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:**  
Cindy Cafaro, Office of Executive Secretariat and Regulatory Affairs, 202–208–5342.

**SUPPLEMENTARY INFORMATION:**

## I. Why We're Publishing This Rule and What It Does

In late 2012, the Department published a final rule updating and replacing the Department's previous Freedom of Information Act (FOIA) regulations. Since that time, in order to maintain the independence of the Office of Inspector General (OIG), the Department and the OIG have agreed to authorize the OIG to process their own FOIA appeals. Additionally, the Department has recently migrated its Web site to a new framework, leading to updated links. Finally, the Department has received feedback from its FOIA practitioners and requesters and identified areas where it would be possible to further update, clarify, and streamline the language of some procedural provisions. Therefore, the Department is proposing to make the following changes:

- Section 2.1(e) would be amended to identify the regulations applicable to Privacy Act requests.
- Section 2.5(d) would be amended to provide more guidance on what happens when a request does not reasonably describe the records sought.
- Portions of § 2.6 would be amended to make explicit that a fee waiver request is a valid way of responding to a request for additional fee information and to emphasize fee issues must be resolved before processing will begin.
- A sentence would be added to § 2.8(a) to require a bureau that cannot readily reproduce the requested record in the form or format requested to explain why it cannot.
- Section 2.9(b) would be amended to remove a superfluous introductory phrase.
- Section 2.10 would be amended to highlight the requirements a requester seeking expedited processing must meet and the consequences of not meeting those requirements.
- Section 2.11 would be amended to reduce the suggested contact information provided by requesters.
- Section 2.12(c) would be amended to emphasize that reasonable efforts must be made to search for requested records and to clarify when searching for requested records in electronic form or format will not occur.
- A sentence would be added to § 2.15(e) to require bureaus to provide more information to requesters when placing them in a different processing track than requested.
- Section 2.16(a) would be amended to clarify and streamline discussion of when the time period for responding to a request begins and ends.
- The introductory language of § 2.19(a) would be amended to clarify when bureaus may extend the basic time limit.
- Portions of § 2.20 would be amended to make explicit that expedited processing requests are only appropriate before the bureau issues its final response; to require bureaus to provide more information to requesters when denying expedited processing requests; and to clarify that the portion of an appeal that relates to an expedited processing denial, rather than the entire appeal, will be processed ahead of other appeals.
- Section 2.22(c) and (d) would be amended to clarify when records may be released to requesters.
- Section 2.23(a)(3) would be amended to add a clarifying phrase.
- Section 2.24(b) would be amended and enlarged to require bureaus to provide more information to requesters in denial notifications.
- Section 2.25(c) would be amended to clarify what information must be provided to requesters, and where, when portions of responsive records have been deleted.
- Section 2.26 and § 2.27(a) would be amended to provide more information on when submitter notification is required.
- One word in § 2.27(b) would be replaced to more closely track the language of Executive Order No. 12600, (52 FR 23781, published June 23, 1987).
- Section 2.28(a) would be amended to clarify that a general description of the request would suffice for submitter notices published under § 2.27(b).
- Section 2.31(a)(1) and (2) would be amended to clarify the information a submitter must provide when objecting to the release of responsive information under Exemption 4.
- Section 2.37(g) would be added and § 2.49(a)(1) would be amended so the concept that requesters generally will not be charged if the fee for processing their request is less than \$50 is introduced sooner.
- Section 2.37(h) would be added to make the consequences of failure to pay bills for FOIA-related fees explicit.
- Section 2.37(i) would be added to notify requesters they can seek assistance, when considering reformulating their request to meet their needs at a lower cost, from the bureau's designated FOIA contact or FOIA Public Liaison.
- A sentence would be added to § 2.38(b) to require bureaus to provide more information to requesters when placing them in a different fee category than requested.
- Section 2.39 would be amended to replace one word for the sake of grammatical consistency.

- Section 2.42(d) would be amended to further discuss the impact of requester preferences for paper and/or electronic formats.
- Section 2.44(b) would be amended to provide different examples of special services a requester might have to pay for.
- The introductory language of §§ 2.45(a) and 2.48(a) would be amended to clarify what a requester must demonstrate to be entitled to a fee waiver.
- Section 2.46(b) would be amended to clarify when fee waiver requests may be made.
- Minor grammatical changes would be made to § 2.47(a), (c), and (d) to allow a new § 2.47(e) to increase clarity and require bureaus to provide the requester with notice of anticipated fees when denying a request for a fee waiver.
- Section 2.48(a)(2)(v) would be amended to note that representatives of the news media will be presumed to have the ability and intent to disseminate the requested information to a reasonably broad audience of persons interested in the subject.
- Section 2.49(c) would be amended to allow requesters more flexibility in resolving fee issues.
- Portions of § 2.50 would be amended to clarify and streamline discussion of advance payments.
- Section 2.51(b)(3) would be amended to ensure consistent phrasing.
- Section 2.57(a)(5) and (6) would be amended to include minor, clarifying additions.
- Section 2.60 would be amended to reflect that the FOIA Appeals Officer would no longer be the deciding official for FOIA appeals arising from OIG FOIA responses, and small portions of §§ 2.20(c), 2.24(b)(5), 2.47(d), 2.62, and 2.63 would also be amended to reflect this change.
- Section 2.62 would be streamlined to follow the requirements of FOIA more closely.
- Section 2.66 would be amended to provide more information on the role played by FOIA Public Liaisons.
- A word would be added to the definition of "multitrack processing" in Section 2.70 to ensure it is consistent with Section 2.14.
- Section 2.1(d), 2.1(g), 2.3(c), 2.21(a), 2.41(c), 2.59(a), 2.65, and 2.70 would be amended to reflect updated Web site links.

## II. Compliance With Laws and Executive Orders

### 1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O) 12866 provides that the Office of Information and

Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

## 2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

## 3. Small Business Regulatory Enforcement Fairness Act

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

## 4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

## 5. Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

## 6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It would not substantially and directly affect the relationship between the Federal and state governments. A federalism summary impact statement is not required.

## 7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

## 8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

## 9. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

## 9. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Pursuant to Department Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject late to the NEPA process, either collectively or case-by-case."

## 10. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation's energy supply, distribution, or use.

## 11. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

## 12. 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.

## List of Subjects in 43 CFR Part 2

Freedom of information.

**Kristen J. Sarri,**

*Principal Deputy Assistant Secretary for Policy, Management, and Budget.*

For the reasons stated in the preamble, the Department of the Interior proposes to amend part 2 of title 43 of the Code of Federal Regulations as follows:

## **PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY**

- 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

Subpart A—Introduction

- 2. Amend § 2.1 by:
■ a. In paragraph (d), the second sentence, removing the Web site address "http://www.doi.gov/foia/guidance.cfm" and adding in its place the Web site address https://www.doi.gov/foia/news/guidance;
■ b. Revising paragraph (e); and
■ c. In paragraph (g), the first sentence, removing the Web site address "http://www.doi.gov/foia/libraries.cfm" and adding in its place the Web site address "http://www.doi.gov/foia/libraries".

The revision reads as follows:

§ 2.1 What should you know up front?

(e) The Department's regulations for requests made under the Privacy Act of 1974, 5 U.S.C. 552a, are located at subpart K of this part.

Subpart B—How To Make a Request

§ 2.3 [Amended]

- 3. Amend § 2.3(c), the second sentence, by:
■ a. Removing the Web site address "http://www.doi.gov/foia/index.cfm" and adding in its place the Web site address "https://www.doi.gov/foia"; and
■ b. Removing the Web site address "http://www.doi.gov/foia/contacts.cfm" and adding in its place the Web site address "http://www.doi.gov/foia/contacts".

- 4. In § 2.5, revise paragraph (d) to read as follows:

§ 2.5 How should you describe the records you seek?

(d) If the request does not reasonably describe the records sought, the bureau will inform you what additional information you need to provide in order to reasonably describe the records that you seek so the requested records can be located with a reasonable amount of effort. The bureau will also notify you that it will not be able to comply with your request unless the additional information it has requested is received from you in writing within 20 workdays and that you may appeal this determination. If you receive this type of notification, you may wish to discuss it with the bureau's designated FOIA contact or its FOIA Public Liaison (see § 2.66 of this part). If you do not provide the bureau with the additional information as discussed above, the bureau will presume that you are no longer interested in the records and will close the file on the request.

- 5. Amend § 2.6 by:
■ a. In paragraph (b) introductory text by adding the words "or request a fee waiver" after the words "pay processing fees"; and
■ b. Revising paragraphs (b)(3), (d), and (e).

The revisions read as follows:

§ 2.6 How will fee information affect the processing of your request?

- (b) \* \* \*
(3) That it will not be able to fully comply with your request unless you provide a fee waiver request and/or the requested written assurance or advance payment.

(d) If you are seeking a fee waiver, your request must include a justification that addresses and meets the criteria in §§ 2.45, 2.48, and 2.56 of this part. Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied. This allows the bureau to process the request for records while it considers your fee waiver request.

(e) The bureau will begin processing the request only after all issues regarding fees are resolved.

- 6. In § 2.8, add a sentence to the end of paragraph (a) to read as follows:

§ 2.8 Can you ask for records to be disclosed in a particular form or format?

(a) \* \* \* If the bureau cannot readily reproduce the record in that form or format, it must explain why it cannot.

- 7. In § 2.9, revise paragraph (b) to read as follows:

§ 2.9 What if your request seeks records about another person?

(b) The bureau can require you to supply additional information if necessary to verify that a particular person has consented to disclosure or is deceased.

- 8. Revise § 2.10 to read as follows:

§ 2.10 May you ask for the processing of your request to be expedited?

You may ask for the processing of your request to be expedited. If you are seeking expedited processing, your request must include a justification that addresses and meets the criteria in § 2.20 of this part. Failure to provide sufficient justification will result in a denial of the expedited processing request.

- 9. Revise § 2.11 to read as follows:

§ 2.11 What contact information should your request include?

A request should include your name and a way (such as a mailing or email address) for the bureau to send responsive records to you and to request additional information or clarification of your request. You may also wish to include a daytime telephone number (or the name and telephone number of an appropriate contact).

Subpart C—Processing Requests

- 10. In § 2.12, revise paragraph (c) to read as follows:

§ 2.12 What should you know about how bureaus process requests?

(c) The bureau will make reasonable efforts to search for the requested records. As part of its reasonable efforts, the bureau will search paper and/or electronic records (for example, emails), as appropriate. The bureau will not search for records in an electronic form or format if these efforts would significantly interfere with the operation of the bureau's automated information system.

Subpart D—Timing of Responses to Requests

- 11. In § 2.15, add a sentence to the end of paragraph (e) to read as follows:

§ 2.15 What is multitrack processing and how does it affect your request?

(e) \* \* \* If you request placement in a particular processing track but the bureau places you in a different processing track, the bureau will provide you with an explanation of why you were not placed in the processing track you requested.

- 12. In § 2.16, revise paragraph (a) to read as follows:

§ 2.16 What is the basic time limit for responding to a request?

(a) Ordinarily, the bureau has 20 workdays (including the date of receipt) to determine whether to comply with a request, but unusual circumstances may allow the bureau to take longer than 20 workdays (see § 2.19 of this subpart).

- 13. In § 2.19, revise paragraph (a) introductory text to read as follows:

§ 2.19 When may the bureau extend the basic time limit?

(a) The bureau may extend the basic time limit, if unusual circumstances exist, by notifying you in writing of:

■ 14. In § 2.20, revise paragraphs (c), (f), and (g) to read as follows:

**§ 2.20 When will expedited processing be provided and how will it affect your request?**

\* \* \* \* \*

(c) You may ask for expedited processing of your request by writing to the appropriate FOIA contact in the bureau that maintains the records requested any time before the bureau issues its final response to your request. When making a request for expedited processing of an administrative appeal, submit the request to the appropriate deciding official for FOIA appeals.

\* \* \* \* \*

(f) If expedited processing is denied, the bureau will:

(1) Inform you of the basis for the denial, including an explanation of why the expedited processing request does not meet the Department's expedited processing criteria under this section; and

(2) Notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

(g) If you appeal the bureau's expedited processing decision, this portion of your appeal (if it is properly formatted under § 2.59 of this part) will be processed before appeals that do not challenge expedited processing decisions.

\* \* \* \* \*

**Subpart E—Responses to Requests**

**§ 2.21—[Amended]**

■ 15. In § 2.21(a), the second sentence, remove the Web site address “<http://www.doi.gov/foia/news/guidance/index.cfm>” and add in its place the Web site address “<https://www.doi.gov/foia/news/guidance>”.

■ 16. Amend § 2.22 by:

- a. Revising paragraph (c); and
- b. In paragraph (d), adding the words “released or” after the words “the records will be”.

The revision reads as follows:

**§ 2.22 How will bureaus grant requests?**

\* \* \* \* \*

(c) The bureau will release records (or portions of records) to you promptly upon payment of any applicable fees (or before then, at its discretion).

\* \* \* \* \*

**§ 2.23—[Amended]**

■ 17. In § 2.23(a)(3), add the words “and/or control” after the words “bureau's possession”.

■ 18. In § 2.24, revise paragraph (b) to read as follows:

**§ 2.24 How will the bureau deny requests?**

\* \* \* \* \*

(b) The denial notification must include:

(1) The name and title or position of the person responsible for the denial, along with an office phone number or email address;

(2) A statement of the reasons for the denial;

(3) A reference to any FOIA exemption applied by the bureau to withhold records in full or in part;

(4) An estimate of the volume of any records withheld in full or in part (for example, by providing the number of pages or some other reasonable form of estimation), unless an estimate would harm an interest protected by an exemption used to withhold the records;

(5) The name and title of the Office of the Solicitor or Office of General Counsel attorney consulted (if the bureau is denying a fee waiver request or withholding all or part of a requested record); and

(6) A statement that the denial may be appealed under subpart H of this part and a description of the procedures in subpart H of this part.

■ 19. In § 2.25, revise paragraph (c) to read as follows:

**§ 2.25 What if the requested records contain both exempt and nonexempt material?**

\* \* \* \* \*

(c) If technically feasible, indicating the FOIA exemption under which the deletion of information was made, as required by paragraph (b) of this section, at the place in the record where the deletion was made.

**Subpart F—Handling Confidential Information**

■ 20. Revise § 2.26 to read as follows:

**§ 2.26 May submitters of possibly confidential information designate confidential information when making Departmental submissions?**

(a) The Department encourages, but does not require, submitters to designate confidential information in good faith (in other words, to identify specific information as information considered protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4)), at the time of submission or reasonably soon thereafter.

(b) The designations discussed in paragraph (a) of this section assist the bureau in determining whether information obtained from the submitter is confidential, but are not determinative; these designations therefore do not preempt the

requirement for bureau-provided notifications under § 2.27 of this subpart.

■ 21. Amend § 2.27 by:

- a. Revising paragraph (a); and
- b. In paragraph (b), removing the word “large” and adding in its place the word “voluminous”.

The revision reads as follows:

**§ 2.27 When will the bureau notify a submitter of a request for their possibly confidential information?**

(a) Except as outlined in § 2.29 of this subpart, a bureau must promptly notify a submitter in writing when it receives a FOIA request if:

(1) The requested information has been designated by the submitter under § 2.26(a) of this subpart; or

(2) The requested information has not been designated by the submitter under § 2.26(a) of this subpart, but the requested information may be protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4).

\* \* \* \* \*

■ 22. In § 2.28, revise paragraph (a) to read as follows:

**§ 2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?**

\* \* \* \* \*

(a) Either a copy of the request, the exact language of the request, or (for notices published under § 2.27(b) of this subpart) a general description of the request;

\* \* \* \* \*

■ 23. In § 2.31, revise paragraphs (a)(1) and (2) to read as follows:

**§ 2.31 What must a submitter include in a detailed Exemption 4 objection statement?**

(a) \* \* \*

(1) Whether the submitter provided the information voluntarily and, if so, how disclosure will impair the Government's ability to obtain similar information in the future and/or how the information fits into a category of information that the submitter does not customarily release to the public;

(2) Whether the Government required the information to be submitted, and if so, how disclosure will impair the Government's ability to obtain similar information in the future and/or how substantial competitive or other business harm would likely result from disclosure; and

\* \* \* \* \*

**Subpart G—Fees**

24. In § 2.37, add paragraphs (g), (h), and (i) to read as follows:

**§ 2.37 What general principles govern fees?**

\* \* \* \* \*

(g) If the fee for processing your request is less than \$50, you will not be charged unless multiple requests are aggregated under § 2.54 of this subpart to an amount that is \$50 or more.

(h) If you fail to pay any FOIA-related fee within 30 calendar days of the date of billing, the processing of any new or ongoing requests and/or appeals from you shall ordinarily be suspended.

(i) If you would like to reformulate your request so it will meet your needs at a lower cost, you may wish to seek assistance from the bureau's designated FOIA contact or its FOIA Public Liaison (see § 2.66 of this part).

■ 25. In § 2.38, add a sentence to the end of paragraph (b) to read as follows:

**§ 2.38 What are the requester fee categories?**

\* \* \* \* \*

(b) \* \* \* If you request placement in a particular fee category but the bureau places you in a different fee category, the bureau will provide you with an explanation of why you were not placed in the fee category you requested (for example, if you were placed in the commercial use requester category rather than the category you requested, the bureau will describe how the records would further your commercial, trade, or profit interests).

\* \* \* \* \*

**§ 2.39—[Amended]**

■ 26. In § 2.39, in the table in paragraph (a), remove the word “non-commercial” and add in its place the word “noncommercial.”

**§ 2.41—[Amended]**

■ 27. In § 2.41(c), remove the Web site address “<http://www.doi.gov/foia/fees-waivers.cfm>” and add in its place the Web site address “<http://www.doi.gov/foia/fees-waivers>”.

■ 28. In § 2.42, revise paragraph (d) to read as follows:

**§ 2.42 What duplication fees will you have to pay?**

\* \* \* \* \*

(d) If the bureau must scan paper records to accommodate your preference to receive records in an electronic format or print electronic records to accommodate your preference to receive records in a paper format, you will pay both the per page amount noted in Appendix A to this part and the time spent by personnel scanning or printing the requested records. For each quarter hour spent by personnel scanning or printing the requested records, the fees

will be the same as those charged for a search under § 2.41(b) of this subpart.

■ 29. In § 2.44, revise paragraph (b) to read as follows:

**§ 2.44 What fees for other services will you have to pay?**

\* \* \* \* \*

(b) Examples of these services include providing multiple copies of the same record, converting records that are not already maintained in a requested format to the requested format, obtaining research data under § 2.69 of this part, sending records by means other than first class mail, and conducting a search that requires the creation of a new computer search program to locate the requested records.

\* \* \* \* \*

**§ 2.45 [Amended]**

■ 30. In § 2.45, in paragraph (a) introductory text, remove the words “under the factors” and add in their place the words “by addressing and meeting each of the criteria”.

■ 31. In § 2.46, revise paragraph (b) to read as follows:

**§ 2.46 When may you ask the bureau for a fee waiver?**

\* \* \* \* \*

(b) You may submit a fee waiver request at a later time if the bureau has not yet completed processing your request.

■ 32. Amend § 2.47 by:

■ a. In paragraph (a), removing the period at the end of the paragraph and adding in its place a semicolon;

■ b. In paragraph (c), removing the word “and” at the end of the paragraph;

■ c. In paragraph (d), removing the period at the end of the paragraph and adding in its place “; and”; and

■ d. Adding paragraph (e).

The addition reads as follows:

**§ 2.47 How will the bureau notify you if it denies your fee waiver request?**

\* \* \* \* \*

(e) Your anticipated fees, in accordance with § 2.49 of this subpart.

■ 33. Amend § 2.48 by revising paragraph (a) introductory text and adding a sentence to the end of paragraph (a)(2)(v) to read as follows:

**§ 2.48 How will the bureau evaluate your fee waiver request?**

(a) In deciding whether your fee waiver request meets the requirements of § 2.45(a)(1) of this subpart, the bureau will consider the criteria listed in paragraphs (a)(1) through (4) of this section. You must address and meet each of these criteria in order to

demonstrate that you are entitled to a fee waiver.

\* \* \* \* \*

(2) \* \* \*

(v) \* \* \* If you are a representative of the news media, we will presume you have this ability and intent.

\* \* \* \* \*

■ 34. In § 2.49, revise paragraphs (a)(1) and (c) to read as follows:

**§ 2.49 When will you be notified of anticipated fees?**

(a) \* \* \*

(1) The anticipated fee is less than \$50 (see § 2.37(g) of this subpart).

\* \* \* \* \*

(c) The bureau must receive information from you that resolves any fee issues, in accordance with paragraphs (b)(2) and/or (4) of this section, within 20 workdays or the bureau will close the request.

\* \* \* \* \*

■ 35. In § 2.50, revise paragraph (a), paragraph (b) introductory text, and paragraphs (c) and (d) to read as follows:

**§ 2.50 When will the bureau require advance payment?**

(a) When a bureau determines or estimates that the total fee you will be charged under this subpart will exceed \$250, the bureau may require you to make an advance payment up to the amount of the entire anticipated fee before the bureau begins, or continues, to process your request. If you have a history of prompt payment of FOIA fees, a bureau may elect to process your request before collecting fees when you provide it with a satisfactory assurance of full payment.

(b) If the bureau believes that you did not pay a previous FOIA fee within 30 calendar days of the date of billing, the bureau will require you to either:

\* \* \* \* \*

(c) When the bureau notifies you that an advance payment is due under paragraph (a) of this section, it will give you an opportunity to reduce the fee by modifying the request.

(d) Your payment of the funds you owe the bureau for work it has already completed before records are sent to you is not an advance payment under § 2.50(a) of this subpart.

\* \* \* \* \*

**§ 2.51 [Amended]**

■ 36. In § 2.51(b)(3), remove the words “hears from you” and add in their place the words “receives a written response from you”.



**Subpart H—Administrative Appeals****§ 2.57 [Amended]**

■ 37. Amend § 2.57 by:

■ a. In paragraph (a)(5), adding the words “or you have been placed in the wrong fee category” after the word “calculated”; and

■ b. In paragraph (a)(6), adding the words “your request for” after the word “denied”.

**§ 2.59 [Amended]**

■ 38. In § 2.59(a), the first sentence, remove the Web site address “<http://www.doi.gov/foia/appeals.cfm>” and add in its place the Web site address “<http://www.doi.gov/foia/appeals>”.

■ 39. Revise § 2.60 to read as follows:

**§ 2.60 Who makes decisions on appeals?**

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals that do not appeal a decision of the Office of the Inspector General.

(b) The General Counsel is the deciding official for FOIA appeals that appeal a decision of the Office of the Inspector General.

(c) When necessary, the appropriate deciding official for FOIA appeals will consult other appropriate offices, including the Office of the Solicitor or Office of General Counsel for denials of records and fee waivers.

(d) The deciding official for FOIA appeals normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

■ 40. Revise § 2.62 to read as follows:

**§ 2.62 When can you expect a decision on your appeal?**

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.59 of this subpart.

(b) If the Department is unable to reach a decision on your appeal within the given time limit for response, the appropriate deciding official for FOIA appeals will notify you of your statutory right to seek review in a United States District Court.

**§ 2.63 [Amended]**

■ 41. In § 2.63, paragraphs (b) and (c), remove the words “FOIA Appeals Officer” and add in their place the words “appropriate deciding official for FOIA appeals”.

**Subpart I—General Information****§ 2.65 [Amended]**

■ 42. In § 2.65, the first sentence, remove the Web site address “<http://www.doi.gov/foia/libraries.cfm>” and add in its place the Web site address “<http://www.doi.gov/foia/libraries>”.

■ 43. In § 2.66, revise paragraph (a) to read as follows:

**§ 2.66 What are public liaisons?**

(a) Each bureau has a FOIA Public Liaison who can assist requesters who have concerns about the service they received when seeking records or who are seeking assistance under § 2.3(d) or § 2.37(i) of this part.

\* \* \* \* \*

**§ 2.70 [Amended]**

■ 44. Amend § 2.70 by:

■ a. In the definition of *Bureau*, removing the Web site address “<http://www.doi.gov/foia/contacts.cfm>” and adding in its place the Web site address <http://www.doi.gov/foia/contacts>; and

■ b. In the definition of *Multitrack processing*, the second sentence, adding the word “ordinarily” after the word “are”.

[FR Doc. 2015–24703 Filed 9–29–15; 8:45 am]

BILLING CODE 4310–10–P

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 219 and 252**

[Docket No. DARS 2015–0044]

RIN 0750–AI68

**Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Small Business Programs (DFARS Case 2015–D017)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify clauses and their prescriptions for small business programs and to create a basic and alternate clause structured in a manner to facilitate use of automated contract writing systems. The rule also includes the full text of the alternate, rather than only providing the paragraphs that differ from the basic clause. The rule also clarifies one clause that is an alternate to a Federal Acquisition Regulation (FAR) clause.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before November 30, 2015, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015–D017, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2015–D017” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2015–D017.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2015–D017” on your attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015–D017 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Julie Hammond, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Julie Hammond, telephone 571–372–6174.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD is issuing this proposed rule to clarify, in the small business programs clause prescriptions, the appropriate use of the basic clause and its alternate clause. This rule does not substantively change the text of any clause (basic or alternate) nor does it change the requirement for use of any clause.

**II. Discussion and Analysis**

This proposed rule addresses one DFARS part 219 clause that has an alternate and one clause that is an alternate to a FAR clause. The affected clauses are 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), with one alternate, and 252.219–7010, Alternate A.

This proposed rule provides a basic clause in full text and the alternate to the basic clause in full text for DFARS clause 252.219–7003 instead of only providing the paragraphs that are changed in the alternate. Each clause (basic and alternate) will have a separate prescription, stating the applicability of the clause. A separate DFARS clause has been modified to incorporate FAR clause 52.219–18 and its two alternates into 252.219–7010, now titled

“Notification of Competition Limited to Eligible 8(a) Concerns—Partnership Agreement.”

The proposed rule does not change the clause prescriptions, and only clarifies for contracting officers the applicability of the clause (basic and alternate). The introductory text for the alternate clause will continue to explain what portions of the alternate are different from the basic clause.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely revises the prescriptions for clarity and use of provisions and clauses in solicitation and contracts. The clauses with alternates are revised to include full text of the basic clause and the alternate clause for ease of use for the small businesses. However, an initial regulatory flexibility analysis has been performed and is summarized as follows: DFARS 252.219–7003 Small Business Subcontracting Plan (DoD Contracts) and its alternate are prescribed to be used with FAR 52.210–9 and its alternates. FAR 52.219–9 does not apply to small business concerns. Therefore there is no burden on any small business from this rule relative to the DFARS 252.219–7003 basic and alternate clauses.

DFARS 252.219–7010, Alternate A, is the alternate for FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns. DFARS 252.219–7010 will affect only those 8(a) concerns when competing for an 8(a) award. Currently there are approximately 8,567 active small business concerns in the 8(a) program. However, these entities

should not be economically impacted by the changes addressed in this proposed rule, since nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how clause alternates are presented in solicitations and contracts will be changed. This rule should result in potential benefits to offerors, including small businesses, resulting in offerors expending less time to review and understand the solicitation and contract. The rule anticipates saving contractors’ time by making all paragraph substitutions from the basic clause and by not requiring offerors to read inapplicable paragraphs contained in the basic clauses where alternates are also included in the solicitations and contracts.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D017), in correspondence.

### V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219 and 252 are proposed to be amended as follows:

- 1. The authority citation for parts 202 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### PART 219—SMALL BUSINESS PROGRAMS

- 2. In section 219.708, revise paragraph (b)(1)(A) to read as follows:

#### 219.708 Contract clauses.

(b)(1)(A) Use the basic or alternate clause at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that contain the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(1) Use the basic clause at 252.219–7003, when using the basic, alternate I, or alternate II of FAR 52.219–9.

(2) Use the alternate I clause at 252.219–7003, when using Alternate III of FAR 52.219–9.

\* \* \* \* \*

- 3. In section 219.811–3, revise paragraph (2) to read as follows:

#### 219.811–3 Contract clauses.

\* \* \* \* \*

(2) Use the clause at 252.219–7010, Notification of Competition Limited to Eligible 8(a) Concerns—Partnership Agreement, in lieu of the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of FAR 19.805 and processed in accordance with the PA cited in 219.800.

\* \* \* \* \*

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Amend section 252.219–7003 by—

- a. Revising the introductory text, clause title, and date;
- b. In paragraph (c)(2), removing “Section” and adding “section” in its place; and
- c. Revising Alternate I.

The revisions read as follows:

#### 252.219–7003 Small Business Subcontracting Plan (DoD Contracts).

*Basic.* As prescribed in 219.708(b)(1)(A) and (b)(1)(A)(1), use the following clause:

#### Small Business Subcontracting Plan (DOD Contracts)—Basic (Date)

\* \* \* \* \*

*Alternate I.* As prescribed in 219.708(b)(1)(A) and (b)(1)(A)(2), use the following clause, which uses a different paragraph (f) than the basic clause.

#### Small Business Subcontracting Plan (DOD Contracts)—Alternate I (Date)

This clause supplements the Federal Acquisition Regulation 52.219–9, Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Summary Subcontract Report (SSR) Coordinator*, as used in this clause, means the individual at the department or agency level who is registered in eSRS and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(b) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 8502–8504), may be counted toward the Contractor’s small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section

831 of Public Law 101–510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101–510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Standard Form 294, Subcontracting Report for Individual Contracts, shall be submitted in accordance with the instructions on that form.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency within DoD that administers the majority of the Contractor's individual subcontracting plans. An example would be Defense Finance and Accounting Service or Missile Defense Agency.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) Except as provided in paragraph (f)(2)(ii) of this clause, the authority to acknowledge receipt or reject SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Contractor's individual subcontracting plans.

(ii) The authority to acknowledge receipt or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

(End of clause)

■ 5. Revise section 252.219–7010 to read as follows:

**252.219–7010 Notification of Competition Limited to Eligible 8(a) Concerns—Partnership Agreement.**

As prescribed in 219.811–3(2), use the following clause:

**Notification of Competition Limited to Eligible 8(a) Concerns—Partnership Agreement (Date)**

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer:

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan.

(2) The Offeror is in conformance with the Business Activity Targets set forth in its

approved business plan or any remedial action directed by the SBA.

(3) If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, then the offeror's approved business plan is on the file and serviced by \_\_\_\_\_.

*[Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA.]*

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas, unless—

(i) The Small Business Administration has determined that there are no small business manufactures or processors in the Federal market place in accordance with FAR 19.502–2(c);

(ii) The acquisition is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, in which case a small business concern may furnish the product of any domestic firm; or

(iii) The acquisition is a construction or service contract.

(2) The \_\_\_\_\_ *[insert name of SBA's contractor]* will notify the \_\_\_\_\_ *[insert name of contracting agency]* Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

[FR Doc. 2015–24787 Filed 9–29–15; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 246 and 252**

[Docket No. DARS–2015–0054]

RIN 0750–AI39

**Defense Federal Acquisition Regulation Supplement: Warranty Tracking of Serialized Items (DFARS Case 2014–D026)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to require use of the electronic contract

attachments accessible via the Product Deficiency Reporting and Evaluation Program to record and track warranty data and source of repair information for serialized items.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before November 30, 2015, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2014–D026, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2014–D026” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2014–D026.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2014–D026” on your attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2014–D026 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kyoung Lee, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Kyoung Lee, telephone 571–372–6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 8, 2011, DoD published a final rule in the **Federal Register** (76 FR 33166) to establish the requirements and formats for tracking warranties for items subject to Item Unique Identification (IUID) in the IUID registry in the DFARS. The rule added the provision at DFARS 252.246–7005, Notice of Warranty Tracking of Serialized Items, and the clause at DFARS 252.246–7006, Warranty Tracking of Serialized Items, with standard contract attachments and instructions for reporting data necessary to track warranty information for each serialized item.

On April 12, 2012, the Director, Defense Procurement Acquisition Policy (DPAP), issued a memorandum entitled

“Implementation of Defense Federal Acquisition Regulation Supplement Provision and Clause for Warranty Tracking of Serialized Items” to encourage the use of a machine readable, fillable Adobe portable document format (PDF) for the electronic submission of warranty information required by the provision and clause. This memorandum also announced planned updates to the Product Deficiency Reporting and Evaluation Program (PDREP) to facilitate the electronic collection, storage and distribution of warranty data and provide for a common, searchable data source for enterprise warranty data.

## II. Discussion and Analysis

The electronic warranty attachments entitled “Warranty Tracking Information” and “Source of Repair Instructions” are now available in PDREP. The purpose of this proposed rule is to amend DFARS 246.710, DFARS clause 252.246–7005, Notice of Warranty Tracking of Serialized Items, and DFARS clause 252.246–7006, Warranty Tracking of Serialized Items, to make use of the electronic warranty attachments in PDREP mandatory for solicitations and contracts when warranty of serialized items is anticipated or required. This rule also clarifies the requirements for completion and submission of the warranty attachments.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD expects that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

The purpose of this proposed rule is to amend the DFARS to require the use of the electronic formats for the “Warranty Tracking Information” and “Source of Repair Instructions” attachments, required for use in tracking the warranties of serialized items by the provision at DFARS 252.246–7005, Notice of Warranty Tracking of Serialized Items, and the clause at DFARS 252.246–7006, Warranty Tracking of Serialized Items.

Use of the electronic formats will improve the process of collecting and sharing data on warranties provided by contractors on serialized items procured by DoD. Additionally, use of the electronic formats available via the Product Deficiency Reporting and Evaluation Program (PDREP) ensure the data elements for warranty terms are effectively transmitted through various systems such as: Electronic Document Access; Wide Area WorkFlow; the Invoice, Receipt, Acceptance and Property Transfer module; and the PDREP Warranty Tracking database.

According to data available in the Federal Procurement Data System, in fiscal year (FY) 2014 DoD awarded 5,807 contracts that contain one or more warranty clauses. Subject matter experts within DoD estimate that almost twice as many solicitations (11,500) issued by DoD in FY 2014 may have contained a warranty clause. It is also estimated that an average of four offers may have been received in response those solicitations, or 46,000 total offers. Of those responses, approximately 85%, or 39,100 responses, are estimated to be received from small businesses.

This rule does not create any new reporting or recordkeeping requirements. Offerors and contractors are already required to complete the attachments in accordance with the provision at DFARS 252.246–7005, Notice of Warranty Tracking of Serialized Items, and the clause at DFARS 252.246–7006, Warranty Tracking of Serialized Items. Rather, this rule requires contractors and offerors to complete the warranty attachments using the specified electronic formats.

It is estimated that fifty percent of the time (for approximately 5,750 solicitations) the Government will specify the desired warranty terms, in which case the contractor provides the remaining data elements on the “Warranty Tracking Information” attachment and the “Source of Repair Instructions” attachment with its proposal, at contract award, or at the point of delivery. The other fifty percent of the time, the Contractor will be required to specify all the warranty

terms on the “Warranty Tracking Information” attachment and the “Source of Repair Instructions” attachment.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014–D026), in correspondence.

## V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0481, entitled Warranty Tracking of Serialized Items.

## List of Subjects in 48 CFR Parts 246 and 252

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 246 and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 246 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 246—QUALITY ASSURANCE

- 2. Amend section 246.701 by—
- a. Revising the section heading.
  - b. Adding introductory text.
  - c. Removing “*Duration, enterprise, enterprise identifier, fixed expiration, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking*” are defined in the clause at 252.246–7006, Warranty Tracking of Serialized Items”; and
  - d. Adding, in alphabetical order, the definitions of *Enterprise, Enterprise identifier, Issuing agency, Serialized item, Unique item identifier, and Warranty tracking*.

The additions read as follows:

**246.701 Definitions.**

As used in this subpart—

\* \* \* \* \*

*Enterprise* means the entity (e.g., a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

*Enterprise identifier* means a code that is uniquely assigned to an enterprise by an issuing agency.

*Issuing agency* means an organization responsible for assigning a globally unique identifier to an enterprise (e.g., Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS-0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at [http://www.aimglobal.org/?Reg\\_Authority15459](http://www.aimglobal.org/?Reg_Authority15459).

*Serialized item* means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

*Unique item identifier* means a set of data elements marked on an item that is globally unique and unambiguous.

*Warranty tracking* means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

■ 3. Amend section 246.710 by revising paragraph (3) to read as follows:

**246.710 Solicitation provision and contract clauses.**

\* \* \* \* \*

(3) When the solicitation includes the clause at 252.211-7003, Item Unique Identification and Valuation, which is prescribed in 211.274-6(a), and it is anticipated that the resulting contract will include a warranty for serialized items—

(i) Use the provision at 252.246-7005, Notice of Warranty Tracking of Serialized Items, in the solicitation if the Government does not specify a warranty and offerors will be required to enter data with the offer;

(ii) Use the clause at 252.246-7006, Warranty Tracking of Serialized Items, in the solicitation and contract; and

(iii) Include the following warranty attachments, available at [https://www.pdrep.csd.disa.mil/pdrep\\_files/other/wsr.htm](https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm), in the solicitation and contract and see 246.710-70:

(A) Warranty Tracking Information.

(B) Source of Repair Instructions.

■ 4. Revise section 246.710-70 to read as follows:

**246.710-70 Warranty attachments.**

Follow the procedures at PGI 246.710-70 regarding warranty attachments.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES 252.211-7003 [AMENDED]**

■ 5. Amend section 252.211-7003 by—

■ a. Removing the clause date “(DEC 2013)” and adding “(DATE)” in its place; and

■ b. In paragraph (a), in the definition of “Issuing agency,” removing “<http://www.nen.nl/Normontwikkeling/Certificatieschemas-en-keurmerken/Schemabeheer/ISOIEC-15459.htm>” under “Register.” and adding “[http://www.aimglobal.org/?Reg\\_Authority15459](http://www.aimglobal.org/?Reg_Authority15459).” in its place.

■ 6. Amend section 252.246-7005 by—

■ a. In the introductory text, removing “246.710(3)(i)(A)” and adding “246.710(3)(i)” in its place;

■ b. Removing the clause date “(JUN 2011)” and adding “(DATE)” in its place; and

■ c. Revising paragraphs (a) and (b).

The revisions read as follows:

**252.246-7005 Notice of Warranty Tracking of Serialized Items.**

\* \* \* \* \*

(a) *Definitions.* *Duration*, *enterprise*, *enterprise identifier*, *fixed expiration*, *item type*, *serialized item*, *starting event*, *unique item identifier*, *usage*, *warranty administrator*, *warranty guarantor*, and *warranty tracking* are defined in the clause at 252.246-7006, Warranty Tracking of Serialized Items.

(b) *Reporting of data for warranty tracking and administration.* (1) The Offeror shall provide the information required by the attachment entitled “Warranty Tracking Information” on each contract line item number, subtitle item number, or exhibit line item number for warranted items with its offer. Information required in the

warranty attachment for each warranted item shall include such information as duration, fixed expiration, item type, starting event, usage, warranty administrator enterprise identifier, and warranty guarantor enterprise identifier.

(2) The successful offeror will be required to provide the following information no later than when the warranted items are presented for receipt and/or acceptance, in accordance with the clause at 252.246-7006—

(A) The unique item identifier for each warranted item required by the attachment entitled “Warranty Tracking Information;” and

(B) All information required by the attachment entitled “Source of Repair Instructions” for each warranted item.

(3) For additional information on warranty attachments, see the “Warranty and Source of Repair” training and “Warranty and Source of Repair Tracking User Guide” accessible on the Product Data Reporting and Evaluation Program (PDREP) Web site at [https://www.pdrep.csd.disa.mil/pdrep\\_files/other/wsr.htm](https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm).

(End of provision)

■ 7. Amend section 252.246-7006 by—

■ a. In the introductory text, removing “246.710(3)(i)(B)” and adding “246.710(3)(ii)” in its place;

■ b. Removing the clause date “(JUN 2011)” and adding “(DATE)” in its place;

■ c. In paragraph (a)—

■ i. In the definition of “Issuing agency,” removing “<http://www.nen.nl/Normontwikkeling/Certificatieschemas-en-keurmerken/Schemabeheer/ISOIEC-15459.htm>” and adding “[http://www.aimglobal.org/?Reg\\_Authority15459](http://www.aimglobal.org/?Reg_Authority15459)” in its place.

■ ii. In the definition of “Starting event,” adding “, such as first use or upon installation” after “warranty”; and

■ d. Revising paragraph (b).

The revision reads as follows:

**252.246-7006 Warranty Tracking of Serialized Items.**

\* \* \* \* \*

(b) *Reporting of data for warranty tracking and administration.* (1) The Contractor shall provide the information required by the attachment entitled “Warranty Tracking Information” on each contract line item number, subtitle item number, or exhibit line item number for warranted items no later than the time of award. Information required in the warranty attachment shall include such information as duration, fixed expiration, item type, starting event, usage, warranty administrator enterprise identifier, and warranty guarantor enterprise identifier.

(2) The Contractor shall provide the following information no later than when the warranted items are presented for receipt and/or acceptance—

(A) The unique item identifier for each warranted item required by the attachment entitled “Warranty Tracking Information;” and

(B) The warranty repair source information and instructions for each warranted item required by the attachment entitled “Source of Repair Instructions.”

(3) The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer Representative.

(4) For additional information on warranty attachments, see the “Warranty and Source of Repair” training and “Warranty and Source of Repair Tacking User Guide” accessible on the Product Data Reporting and Evaluation Program (PDREP) Web site at [https://www.pdrep.csd.disa.mil/pdrep\\_files/other/wsr.htm](https://www.pdrep.csd.disa.mil/pdrep_files/other/wsr.htm).

\* \* \* \* \*

[FR Doc. 2015-24784 Filed 9-29-15; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket. No. FWS-R4-ES-2015-0144; 4500030113]

RIN 1018-BA94

#### Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Elfin-woods Warbler

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the elfin-woods warbler (*Setophaga angelae*), a bird species in Puerto Rico, as a threatened species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act’s protections to this species.

**DATES:** We will accept comments received or postmarked on or before November 30, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER**

**INFORMATION CONTACT** by November 16, 2015.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2015-0144, which is the docket number for this rulemaking. Click the Search button. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R4-ES-2015-0144; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

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 *Public Comments*, below, for more information).

#### FOR FURTHER INFORMATION CONTACT:

Mareliisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km. 5.1, Boquerón, PR 00622; telephone 787-851-7297; facsimile 787-851-7440. 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

*Why we need to publish a rule.* Under the Endangered Species Act (Act), if we determine that a species is an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

*This rulemaking proposes the listing of the elfin-woods warbler (*Setophaga angelae*) as a threatened species. The elfin-woods warbler is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing rule has until now been precluded by other higher priority listing activities. We are also proposing a rule under section 4(d)*

of the Act to provide for conservation measures for the elfin-woods warbler.

*The basis for our action.* Under the Act, we may determine that a species is a 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. We propose to list this species, which is currently at risk throughout all of its range due to threats related to habitat modification on private lands under agricultural and other land use requiring vegetation clearance (Factor A). In addition, other natural or manmade factors, such as restricted distribution and lack of connectivity, genetic drift, hurricanes, and climate change, are considered threats (Factor E).

*We will seek peer review.* We will seek comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on this listing proposal.

#### Information Requested

##### Public Comments

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 governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The biology, range, and population trends of the elfin-woods warbler, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends (especially in El Yunque National Forest and Carite Commonwealth Forest); and

(e) Past and ongoing conservation measures for the species, its habitat or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing

regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) The appropriateness and scope of the proposed 4(d) rule, including any other actions that should be considered for inclusion.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) 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 this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Because we will consider all comments and information we receive during the comment period, our final

determination may differ from this proposal.

#### Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

#### Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of four appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses.

#### Previous Federal Action

The elfin-woods warbler was identified as a Category 2 species in the candidate notice of review (CNOR) published in the **Federal Register** on December 30, 1982 (47 FR 58454). Category 2 species were defined as species for which we had information that proposed listing was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. The species remained a Category 2 in subsequent annual CNORs (50 FR 37958, September 18, 1985; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). The February 28, 1996, CNOR (61 FR 7596) redefined candidates to include only species for which we have information needed to propose them for listing; as a result, elfin-woods warbler was removed from the candidate list.

On October 25, 1999, we published a CNOR in the **Federal Register** (64 FR 57535) again classifying the elfin-woods warbler as a candidate species. Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. The elfin-woods warbler was added to the

candidate list with a listing priority number (LPN) of 5, indicating that its threats were non-imminent, but high in magnitude. 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 elfin-woods warbler was included, and retained an LPN of 5, in our CNORs from 2001 through 2004 (66 FR 54808, October 30, 2001; 67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004).

On May 11, 2004, the Center for Biological Diversity (CBD) petitioned the Service to list the elfin-woods warbler as an endangered species under the Act (CBD 2004, pp. 34–38). The elfin-woods warbler was already considered a candidate species at the time the petition was received. Because the petition did not provide new information regarding the status of or threats to the species, the petition was addressed in the May 11, 2005 CNOR (70 FR 24870). An LPN of 5 was retained in the 2005 CNOR (70 FR 24870, May 11, 2005) and in subsequent CNORs through 2008 (71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008). The LPN was changed to 11 in the November 9, 2009, CNOR (74 FR 57804), reflecting that the magnitude of threats was moderate to low because the severity of threats to the species were not as strong as previously believed, and the threats were not currently occurring in most of the elfin-woods warbler’s habitat; hence, the threats were non-imminent. The elfin-woods warbler retained an LPN of 11 in the 2010 through 2014 CNORs (75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014).

The 2011 Multi-District Litigation (MDL) settlement agreement specified that the Service will systematically, over a period of 6 years, review and address the needs of 251 candidate species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. The elfin-woods warbler was on that list of candidate species. Therefore, the Service is making this proposed listing determination in order to comply with

the conditions outlined in the MDL agreement.

## Background

### Species Information

#### Species Description and Taxonomy

The elfin-woods warbler was originally classified under the genus *Dendroica*, but is now recognized as *Setophaga* (Lovette *et al.* 2010, p. 765). Angela and Cameron Kepler discovered the species in 1971, in the Dwarf forest type at El Yunque National Forest (EYNF) (Kepler and Parkes 1972, p. 3–5). The bird is about 12.5 centimeters (cm) (5 inches (in)) in length (Raffaele 1998, p. 406). The adult's upper body is predominantly black and white, with a stripe above the eyes, and conspicuous white patches on the ear coverts and sides of the neck. The elfin-woods warbler is often mistaken for the black and white warbler (*Mniotilta varia*), but the elfin-woods warbler is distinguished by its incomplete white eye-ring and entirely black crown. Immature elfin-woods warblers are similar to adults, except that they are grayish-green on the back, and yellowish-green on the head and underparts (Raffaele 1989, p. 168). The bird's call comprises a series of short, rapidly uttered, unmusical notes in one pitch, increasing in volume and ending with a short series of distinct double notes (Curson *et al.* 1994, p. 156).

#### Life History

Little detailed information has been published on the life history of the elfin-woods warbler. Some authors noted that the elfin-woods warbler is an extremely active warbler, moving among the dense vines of forest strata with more foliage cover or smaller branch tips, foraging insects, usually at intermediate foliage heights of 3 to 15 meter (m) (10 to 50 feet (ft)) (Colón-Merced 2013, p. 2). Opportunistic observations indicate the elfin-woods warbler feeds on moths, dragonflies, and other types of insects; however, its specific diet remains unknown (Colón-Merced 2013, p. 2). Raffaele *et al.* (1998, p. 406) indicated that the breeding season of the species occurs from March to June. Delannoy (2009, p. 1) reported that four pairs banded between 2004 and 2008 remained together in their territories in the Maricao Commonwealth Forest (MCF), suggesting that the species is monogamous. In addition, he reported that the elfin-woods warbler maintained territorial defense throughout the year and documented that calling activity increases from January to April and declines considerably during the time pairs are incubating eggs or brooding

nestlings. Arroyo-Vázquez (1992, p. 363) reported the first detailed observation of two nests found in March and April of 1990 in aerial leaf litter at heights between 1.3 to 7.6 m (4.3 to 25 ft) and documented a clutch size of two to three eggs. Also, he observed that the pair's cup nest was woven from rootlets and fibers obtained from tree ferns and lined with grass leaves and down feathers. Raffaele *et al.* (1998, p. 406) further described the nest of the elfin-woods warbler as a compact cup, usually close to the trunk and well-hidden among epiphytes of a small tree. Rodríguez-Mojica (2004, p. 22) reported the first nesting event inside a rotten tree stump of Palo Colorado (*Cyrilla racemiflora*) 7.0 m (23.3 ft) above ground in an abandoned camping area at the MCF. He described the nest structure as consisting of a tightly woven cup of fine plant fibers with dry leaves on its outside and noted that cavity-nesting is not common in warblers. Arroyo-Vázquez (1992, p. 363) and Rodríguez-Mojica (2004, p. 22) suggested that the species selected aerial leaf litter and cavity-nesting sites to avoid predation. Some authors have suggested that elfin-woods warbler nest predators may include the pearly-eyed thrasher (*Margarops fuscatus*), Puerto Rican tanager (*Nesospingus speculiferus*), Puerto Rican screech owls (*Megascops nudipes*), Puerto Rican boa (*Chilabothrus inornatus*, listed as *Epicrates inornatus*), Puerto Rican racer (*Alsophis portoricensis*), and feral cats (*Felis catus*) (Delannoy 2009, p. 2). Other potential predators of immature and adult individuals include the Indian mongoose (*Herpestes auropunctatus*) and black rat (*Rattus rattus*) (Arroyo-Vázquez 1992, p. 364).

#### Historical and Current Distribution

The elfin-woods warbler is endemic to the island of Puerto Rico and was initially thought to occur only in the Luquillo Mountains at EYNF in eastern Puerto Rico (Kepler and Parks 1972, pp. 5–6; Pérez-Rivera 1979, p. 58). During the early 1970s, the species was reported in the MCF in western Puerto Rico (Pérez-Rivera 1979, p. 58; Cruz and Delannoy 1984, p. 92). In addition, the elfin-woods warbler was reported in the Toro Negro Commonwealth Forest in the Cordillera Central (central mountain range) (Pérez-Rivera 1979, p.58), and in the area of Guavate in the Carite Commonwealth Forest in east-central Puerto Rico (Pérez-Rivera and Maldonado 1977, p. 134). More recently, Miranda-Castro *et al.* (2000, pp. 119–123) and Anadón-Irizarry (2006, p. 34) conducted elfin-woods warbler surveys in other forests of the Cordillera Central

(*i.e.*, Tres Picachos, Carite, Toro Negro, Susúa, and Guilarte Commonwealth Forests, and Bosque del Pueblo in Adjuntas), but did not detect the species.

Between 2011 and 2013, the Service, in collaboration with the Puerto Rican Ornithological Society, Inc., and BirdLife International, conducted a study using a habitat suitability model and a single-season occupancy modeling approach to assess the current geographic distribution of the elfin-woods warbler. The project included surveys during the species breeding season (between January and July) within habitat currently occupied by the species in the MCF and predicted habitat within the Cordillera Central (Anadón-Irizarry 2013, p. 2). The predicted habitat included public and private lands within the municipalities of Jayuya, Ciales, Adjuntas, Ponce, Orocovis, and Juana Diaz. The species was detected only in the MCF and adjacent private lands (Service 2014, p. 12).

The elfin-woods warbler is particularly difficult to survey because of its small size, its constant moving behavior, and the dense vegetation of areas where it is found (Raffaele 1989, p. 168). In fact, Kepler and Parkes (1972 pp. 5–6) attribute the belated discovery of elfin-woods warbler to the above factors and their similarity to the black and white warbler. Even the vocalization of the elfin-woods warbler can be easily mistaken with other species. Although the presence of the elfin-woods warbler in the forests of the Cordillera Central of Puerto Rico cannot be disregarded based on the previous facts, the available information suggests that the current distribution of the species is now restricted to two populations in (1) EYNF and (2) MCF and adjacent private lands (Anadón-Irizarry 2006, p. 5; Delannoy 2007, p. 4; González 2008, p. 19). The EYNF and the MCF are located about 150 kilometers (km) (93 miles (mi)) from each other (Arendt *et al.* 2013, p. 2). These habitats are considered essential to elfin-woods warbler abundance and are very important for maintaining healthy populations of the species (Delannoy 2007, p. 24) as they are the only currently known areas where the species still occurs. Although there is suitable habitat for the species between these two forests (Colón-Merced 2013, p.51), the probability of dispersal for the species is low because EYNF is isolated from the central mountain range of Puerto Rico. Urban areas around EYNF increased by more than 2,000 percent between 1936 and 1988, and continue to encroach on forested areas today



(Thomlinson and Rivera 2000, p. 17). Between 1988 and 1993, urbanization around this forest increased by 31 percent and represented a 5 percent loss in vegetative cover, more than 80 percent of which was dense forest (Thomlinson and Rivera 2000, p. 17).

#### Habitat

*El Yunque National Forest*—EYNF is located in the Sierra de Luquillo in eastern Puerto Rico and covers 11,310 hectares (ha) (28,000 acres (ac)) of the island's area (Weaver 2012, p. 1). This forest was proclaimed as a Crown Reserve by Spain in 1876, and as a Forest Reserve by the U.S. Government since 1903. It is considered the oldest forest reserve and largest protected area in Puerto Rico, and is managed by the U.S. Forest Service (USFS). Elevations of this forest range from 100 to 1,075 m (328 to 3,526 ft) and temperatures change with altitude, ranging between 23.5 and 27 degrees Celsius (°C) (74 to 81 degrees Fahrenheit (°F)) at the base of the mountain to between 17 and 20 °C (63 to 68 °F) on the mountain peaks (García-Martín *et al.* 1996, p. 414). Mean annual rainfall ranges from approximately 245 cm/year (96 in/year) at lower elevations to approximately 400 cm/year (157 in/year) at higher elevations (Brown *et al.* 1983, p. 11). The EYNF contains five of the six Holdridge Life Zones found in Puerto Rico (Ewel and Whitmore 1973, pp. 32–49). These five zones are the lower montane wet forest, lower montane rain forest, subtropical moist forest, subtropical wet forest, and subtropical rain forest. In 1951, Wadsworth recognized four major forest types at EYNF: Dwarf, Palo Colorado, Tabonuco, and Sierra Palm (Anadón-Irizarry 2006, p. 9).

At EYNF, the elfin-woods warbler was originally discovered in the Dwarf forest (Kepler and Parkes 1972, pp. 3–5). This forest type falls within the lower montane rain forest life zone (Ewel and Whitmore 1973, p. 49) and occupies 368 ha (909 ac) of EYNF (Weaver 2012, p. 5). It is found on exposed peaks with short, stunted vegetation above 900 m (2,952 ft) elevation (Weaver 2012, p. 58). In general, the Dwarf forest is not well populated with birds (Snyder *et al.* 1987, p. 61).

Later, the species was documented at lower elevations in the Palo Colorado, Tabonuco, and Sierra Palm forests (Wiley and Bauer 1985, pp. 12–18). The Palo Colorado forest occurs within the lower montane rain forest life zone, between approximately 600 and 900 m (1,968 and 2,952 ft) (Weaver 2012, p. 1). This forest type covers about 3,441 ha (8,502 ac) of the EYNF (Weaver 2012, p.

5). This forest is mainly composed of fast-growing trees with height not more than 24 m (78 ft) (Lugo 2005, p. 506).

The Tabonuco forest is found between 150 and 600 m (492 and 1,968 ft) elevation, and occupies 5,663 ha (13,993 ac) of the EYNF (Weaver 2012, p. 5). This forest is dominated by the Tabonuco tree (*Dacryodes excelsa*), which grows primarily on the subtropical wet forest life zones (Ewel and Whitmore 1973, p. 32). The understory of this forest is sparsely vegetated, and the canopy is rich in aerial plants (*e.g.*, bromeliads, orchids, vines, and arboreal ferns) (Ewel and Whitmore 1973, p. 32).

The Sierra Palm forest (also known as palm breaks) may reach canopy heights of 15 m (50 ft) with 17 cm (7 in) average diameters at breast height (dbh) and grows mainly on steep slopes at approximately 450 m (1,476 ft) elevation, covering about 1,838 ha (4,541 ac) of the EYNF (Weaver 2012, pp. 5 and 56). The Sierra Palm forest occurs on steep windward slopes and poorly drained riparian areas (Lugo 2005, p. 496). This forest is dominated by the Sierra palm (*Prestoea montana*) and occurs within the subtropical rain forest life zone (Ewel and Whitmore 1973, p. 4).

*Maricao Commonwealth Forest and Adjacent Lands*—The main population of the elfin-woods warbler in western Puerto Rico occurs within the MCF, located between the municipalities of Maricao, San Germán, Sabana Grande, and Mayagüez (Ricart-Pujals and Padrón-Vélez 2010, p. 1). This forest is currently administered by the Puerto Rico Department of Natural and Environmental Resources (PRDNER) and covers about 4,168 ha (10,543 ac) with elevations ranging between 150 and 875 m (492 and 2870 ft) above sea level. Annual average temperature is 21.7 °C (71 °F) and annual average rainfall is 233 cm/year (92 in/year) (Silander *et al.* 1986, p. 210). Three of the six life zones reported for Puerto Rico occur on the MCF: subtropical moist forest, subtropical wet forest, and lower montane wet forest (Ricart-Pujals and Padrón-Vélez 2010, p. 8). The habitats where the elfin-woods warbler has been found within the MCF include *Podocarpus* Forest, Exposed Woodland Forest, Timber Plantations, and Dry Slopes Forest.

The *Podocarpus* Forest occupies only 80 ha (197 ac) of the MCF and is located on the slopes and highest peaks (600–900 m (1,968–2,952 ft)) within the lower montane wet forest life zone (Department of Natural Resources (DNR) 1976, p. 185). *Podocarpus* Forest is dominated by *Podocarpus coriaceus*

and has closed canopies and well-developed understories composed of tree ferns (*Cyathea* spp.), Sierra palms, and vines (Tossas and Delannoy 2001, pp. 47–53; Anadón-Irizarry 2006, p. 53; González 2008, pp. 15–16).

The Exposed Woodland Forest occupies 2,711 ha (6,700 ac) of the MCF and is found in valleys, slopes, and shallow soils with a more or less continuous canopy (González 2008, pp. 15–16). These forest associations are found at elevations ranging from 470 to 800 m (1,542 to 2,624 ft) within the subtropical wet forest life zone (DNR 1976, p. 185).

Timber Plantations occupy approximately 1,111 ha (2,745 ac) of the MCF in elevations ranging from 630 to 840 m (2,066 to 2,755 ft) within the subtropical wet forest and the subtropical moist forest life zones (DNR 1976, p. 185). This habitat—dominated by the María trees (*Calophyllum calaba*), eucalyptus (*Eucalyptus robusta*), and Honduran pine (*Pinus caribaea*)—was planted in areas that were completely deforested for agriculture (Delannoy 2007, p. 9; González 2008 p. 5).

Dry Slopes Forest occupies approximately 1,367.3 ha (3,377 ac) of the MCF in elevations ranging from 120 to 300 m (394 to 984 ft) within the subtropical moist forest life zone (DNR 1976, p. 185). This habitat is found in shallow and excessively drained serpentine-derived soils dominated by xerophytic vegetation, thin trees and a low open canopy. This forest type is more common in the southern and southeastern slopes of the MCF (DNR 1976, p. 185).

Outside the MCF, the elfin-woods warbler has been detected within secondary forests and existing shade-grown coffee plantations (González 2008, pp. 15–16). Secondary forests are found at elevations ranging from 130 to 750 m (426 to 2,460 ft), and the shade-grown coffee plantations are found at elevations ranging from 300 to 600 m (984 to 1,968 ft) (Gonzalez 2008, p. 59; Puerto Rico Planning Board 2015). Also, the elfin-woods warbler has been documented at very low densities outside the MCF in pasturelands, Gallery forests, and rural residential areas, but not in sun-grown (unshaded) coffee plantations (González 2008, pp. 15–16). Young secondary forests developed as a result of abandonment of agriculture during the 20th century. These forests are less than 25 years old with an open canopy height of 12 to 15 m (40 to 50 ft) (González 2008, p. 6) and are found within the subtropical moist and subtropical wet forest life zones (DNR 1976, p. 185). Their understories

are well-developed and dominated by grasses, vines, and other early-successional species (González 2008, p. 6). Mature secondary forests are over 25 years old and develop on humid to very humid, moderate to steep slopes. They are characterized by their closed canopies, reaching heights of 20 to 30 m (66 to 100 ft), and sparse to abundant understories (González 2008, p. 6). Some of these forests were used in the past for cultivation of shade-grown coffee and survived untouched because landowners abandoned agriculture activities (Delannoy 2007, p. 10). The shade-grown coffee plantations are covered with tall mature forests dominated mostly by guaba (*Inga vera*) and guaraguao (*Guarea guidonia*) trees. Found on moderate to steep, humid mountain sides, these trees reach heights of 15 to 20 m (50 to 66 ft) and their understories constantly develop without grasses (González 2008, p. 6). Shade-grown coffee plantations are stable agro-ecosystems that provide habitat, nesting, and feeding for many native, endemic, and migratory species. Some of the best examples of this habitat are found in north, northwest, and northeast MCF (Delannoy 2007, p. 10). Studies have shown that biodiversity of plants, insects, reptiles, birds, and some mammals are higher in shade-grown than in sun-grown coffee plantations (Borkhataria *et al.* 2012, p. 165).

*Carite Commonwealth Forest*—The Carite Commonwealth Forest (CCF) is within the known historical range of the elfin-woods warbler; however, the species was last observed in this forest about 15 years ago (Pérez-Rivera 2014, pers. comm.). The CCF has been managed for conservation by PRDNER since 1975 (DNR 1976, p. 169). This forest covers about 2,709 ha (6,695 ac), and ranges between 620 and 900 m (2,034 and 2,952 ft) in elevation (DNR 1976, p. 169). The CCF contains four forest types: Dwarf, Palo Colorado, Plantations, and Secondary (Silander *et al.* 1986, p. 188). These forest types are similar to the forests utilized by elfin-woods warbler in EYNF and MCF.

Although the elfin-woods warbler has not been recently observed in this forest (Anadón-Irizarry 2006, p. 54; Anadón-Irizarry 2014, pers. comm.), the habitat suitability model developed for the species (Colón-Merced 2013, p. 51) suggests CCF still provides suitable habitat for the species due to its similarity in elevation, climatic conditions, and vegetation associations with EYNF and MCF. The CCF's similarity to EYNF and MCF suggests that this forest could provide habitat for the expansion of the elfin-woods

warbler's current range to maintain the species' historical geographical and ecological distribution.

#### Population Status

*El Yunque National Forest*—Kepler and Parkes (1972, p. 15) estimated the elfin-woods warbler population at fewer than 300 pairs occurring in 450 ha (1,111 acres) at EYNF. Waide (1995, p. 9) reported an estimated population of 138 pairs in 329 ha (812 ac) in the Dwarf forest at EYNF. According to Anadón-Irizarry (2006, p. 24), the species' mean abundance was highest (0.48 individuals (ind)/point count) in the Palo Colorado forest, slightly lower (0.42 ind/point count) in the Dwarf forest, lowest (0.01 ind/point count) in the Tabonuco forest, and none were recorded in Sierra Palm forest. Arendt *et al.* (2013, p. 8) conducted bird surveys approximately monthly from 1989 to 2006, and reported a decline of the elfin-woods warbler population in EYNF over that period of 17 years. The species showed a significant general decline from 0.2 ind/ha to 0.02 ind/ha in the Dwarf forest, and from 1 ind/ha to 0.2 ind/ha in the Palo Colorado forest (Arendt *et al.* 2013, p. 9).

*Maricao Commonwealth Forest and Adjacent Lands*—Cruz and Delannoy (1984, p. 92) suggested that the elfin-woods warbler was not uniformly distributed throughout the MCF and that it was found in different habitats within three studied sites. Anadón-Irizarry (2006, p. 27) conducted a survey from 2003 to 2004, in 102.4 ha (253 ac) of MCF and recorded 778 elfin-woods warblers in 18 counts for an average of 0.42 ind/ha/count. González (2008, pp. 23–28) reported the most recent population estimate for the elfin-woods warbler at the MCF and adjacent areas. González (2008, p. 18) estimated 97.67 elfin-woods warbler individuals in an area of 203.2 ha (0.48 ind/ha) within the MCF. In areas adjacent to the MCF, he estimated 43.02 individuals in an area of 374.4 ha (0.11 ind/ha).

Additionally, González (2008, p. 27) reported that the highest densities of elfin-woods warbler recorded per point-count stations in MCF were within the *Podocarpus* Forest (0.88 ind/ha). Moderate densities were recorded in Exposed Woodland (0.53 ind/ha), Timber Plantations (0.38 ind/ha), and Dry Slope Forest (0.06 ind/ha) (González 2008 p. 27). González (2008 p. 27) stated these results are similar to estimates obtained by previous studies in the same type of forests. In lands adjacent to the MCF, the shade-grown coffee plantations exhibited the highest elfin-woods warbler abundance (0.24 ind/ha) (González 2008, p. 24).

Based on the studies mentioned above, in 2010, BirdLife International estimated the overall elfin-woods warbler population in Puerto Rico to be at least 1,800 mature individuals (Arendt *et al.* 2013, p. 2).

*Carite Commonwealth Forest*—In 1977, Pérez-Rivera and Maldonado (1977, p. 134) reported the species for the first time in the CCF. Two years later, Pérez-Rivera (1979, pp. 5–8) indicated that the species was more common than was expected when discovered. However, he mentioned that because the species appeared to be specialized to certain types of habitats, any kind of habitat disturbance or modification would cause a rapid species decline (Pérez-Rivera 1979, p. 58). The species was later recorded by Pérez-Rivera during the 1980s and 1990s in the following areas: Cerro La Santa, Camino El Seis, first recreation area near the forest entrance, private land near Barrio Farallón, and Fincas Las 300 (Delannoy 2007, pp. 22–23). Based on Pérez-Rivera's observations within these areas, the species seemed to be an uncommon and rare in CCF (*i.e.*, 1 or 2 sightings every 10 visits) (Delannoy 2007, pp. 22–23). The species was later detected occasionally by Pérez-Rivera within the same areas until it was last observed by him more than 15 years ago (Pérez-Rivera 2014, pers. comm.).

The surveys conducted by Anadón-Irizarry between 2003 and 2004, and between 2012 and 2013, failed to detect the species within the CCF. The study conducted during the period of 2003–2004 (Anadón-Irizarry 2006, p. 54) included traditional areas previously searched by Pérez-Rivera, and the surveys were conducted along 5.0 km (3.1 mi) of existing trails. The most recent surveys, conducted between 2012 and 2013, avoided the use of existing trails and included nontraditional areas, but they also failed to detect the species (Anadón-Irizarry 2014, pers. comm.). However, during these surveys, the amount of surveyed area within nontraditional habitat was not significant (*i.e.*, 15 survey stations).

Although these studies failed to detect the species, Anadón-Irizarry (2006, p. 54; 2014, pers. comm.) suggested the possibility that the species is still present in isolated pockets of forest that were not searched during the studies (Delannoy 2007, p. 22). The apparent persistent and relatively sedentary behavior of this species to inhabit certain small and isolated pockets of the forest might have led these authors to suggest that it is possible that CCF may harbor undetected elfin-woods warblers (Anadón-Irizarry 2006, p. 54; Delannoy

2007, pp. 22–23; Pérez-Rivera 2014, pers. comm.). Anadón-Irizarry (2006, p. 54), Delannoy (2007, pp. 22–23), and Pérez-Rivera (2014, pers. comm.) have suggested that the species was extirpated from the traditional areas searched by them during the 1980s, 1990s, and between 2003 and 2004 due to habitat modification activities (*i.e.*, transmission antenna development and road development) that occurred in those years. If this is the case, a comprehensive assessment of the status of this population will require extensive searches covering a much larger area into the fragmented landscape of the CCF (Delannoy 2007, pp. 22–23). Therefore, the Service has contracted for a survey to include traditional and nontraditional areas within and beyond EYNF's and CCF's boundaries. These surveys will extend from September 2015 to March 2016, and will at least double the number of survey stations previously surveyed within CCF and will also include suitable habitat identified by the habitat suitability model outside EYNF and CCF.

#### Summary of Factors Affecting the Species

Section 4 of the Act, 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.

#### *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The majority of extant elfin-woods warbler populations are restricted to two disjunct primary habitats in montane forests at EYNF and at MCF and private lands adjacent to MCF. Although the elfin-woods warbler has not been recently observed in CCF, this forest and adjacent lands still contains suitable habitat for the species. The elfin-woods warbler needs suitable forested habitats for essential behaviors such as foraging, breeding, and

sheltering (Anadón-Irizarry 2006, pp. 5–8).

In the past, the majority of the forested areas in Puerto Rico, EYNF, MCF, and CCF were impacted by agricultural practices; extraction of timber for construction and charcoal (Dominguez-Cristobal 2000, pp. 370–373; Dominguez-Cristobal 2008, pp. 100–103); development of infrastructure for utilities and communications; and construction of roads, recreational facilities, and trails, negatively affecting elfin-woods warbler habitat (DNR 1976, p. 169; Waide 1995, p. 17; Delannoy 2007, p. 4; Anadón-Irizarry 2006, p. 28; Pérez-Rivera 2014, pers. comm.). Currently, each agency manages these forests for conservation purposes operating under its authorities and mandates to promote habitat conservation (see *Factor D. The Inadequacy of Existing Regulatory Mechanisms*, below); habitat modification pressures from agriculture practices and the development of new infrastructure within the forests are currently very low. However, typical forest management of existing disturbed areas (*e.g.*, trail maintenance, road maintenance, transmission antenna maintenance, and recreational facility improvements) and research activities (*e.g.*, species surveys, endangered species reintroductions) still occur within these forests. The maintenance performed on roads, trails, transmission antenna facilities, and recreational facilities is not presently affecting elfin-woods warbler habitat within these forests. When a management or research activity is conducted, both USFS and the PRDNER closely coordinate with the Service during design and planning stages. These planning efforts minimize possible adverse effects on the species and its habitat. However, in contrast, the expansion of existing facilities (*i.e.*, transmission antennas, access roads, access gates, administration buildings, utilities) within the forests is still a possibility and may result in the degradation of suitable habitat of elfin-woods warbler.

Although the threats to the species and its habitat have been minimized within the lands managed and administrated by USFS and PRDNER within EYNF, MCF, and CCF, respectively, the species is still also threatened with habitat destruction, fragmentation, and degradation in 15 percent of its suitable occupied habitat within private lands adjacent to MCF. The private lands adjacent to MCF are known to be susceptible to habitat modification caused by unsustainable agricultural practices and other land uses requiring vegetation clearance (*e.g.*,

deforestation, monoculture of minor fruits, livestock related activities, human-induced fires, residential use, road improvements). Although not known to be currently occupied, the areas outside EYNF and CCF are also vulnerable to these threats because they are not within the protected lands. In the Municipality of Maricao, the Puerto Rico Department of Agriculture (PRDA) has identified 301 properties (8,442 acres) with potential to be developed as agricultural lands for coffee and citrus plantations (Resolución Conjunta del Senado 2014, p. 2). Although the conversion of forested areas to sun-grown coffee plantations is still occurring on private lands adjacent to MCF, the magnitude of this activity is localized and at a lower level than it was in the past. However, PRDA has expressed their intentions to increase the acreages of coffee plantations in Puerto Rico to 16,000 acres by 2016 (PRDA 2015, no page number). PRDA's goal is to provide incentives to landowners (*i.e.*, \$1,300/acre) for the establishment of new planting areas of sun-grown or partially shaded coffee (*i.e.*, 1,000 coffee trees per acre) (Regulation 6372, p. 3–6; Regulation Governing the Incentives Programs of the Coffee Production Industry in Puerto Rico). Some of these areas, previously used for agriculture, were abandoned and are currently forested. The majority of the sun-grown coffee plantations were converted several decades ago, resulting in the elimination of native forest, thus reducing the habitat value for wildlife, including the elfin-woods warbler (Delannoy 2007, p. 20). The most recent studies conducted in MCF and adjacent lands (*i.e.*, Delannoy 2007, p. 15; González 2008, p. 59) did not detect elfin-woods warblers in sun-grown coffee plantations on privately owned lands adjacent to the forest. The establishment of a sun-grown coffee plantation requires the deforestation of the area, removing habitat that elfin-woods warblers are or could be using.

The increase of urban development in private lands adjacent to EYNF and CCF has negatively affected elfin-woods warbler suitable habitat around these forests. Gould *et al.* (2007, pp. 29–31) suggested there is an increasing urbanization trend of the limited land area of eastern Puerto Rico where these forests are located. Urban development in this region increased more than 15 percent between 1991 and 2003 (Gould *et al.* 2007, pp. 29–31). Martinuzzi *et al.* (2007, pp. 294–296) reported that almost 52 percent of the island is classified under either *Urban* use (*i.e.*, 16 percent; 142,562 ha) or *Densely Populated Rural*

use (*i.e.*, 36 percent; 320,219 ha) classes. The urban-use class enhances the contiguity between the compact urban areas across the island, and gives an accurate view of how an “urban ring” encircles interior mountainous and protected areas like EYNF and CCF (Martinuzzi *et al.* 2007, p. 294). The densely populated rural-use class surrounds the urban-use areas and represents most of the territory where human developments expand out from the urban centers following secondary routes (Martinuzzi *et al.* 2007, p. 294). Although the most evident land-use changes in the last 25 years have been the intensification of urbanization that surrounds these forests (Helmer 2004, pp. 33–35, Gould *et al.* 2007, pp. 29–31, Martinuzzi *et al.* 2007, p. 294), it is not known how much of these lands currently contain habitat suitable for elfin-woods warbler.

#### Conservation Efforts To Reduce the Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In 2014 the Service developed a candidate conservation agreement (CCA) with USFS and PRDNER to promote the conservation of the elfin-woods warbler. The purpose of the CCA is to implement measures to conserve, restore, and improve elfin-woods warbler habitat and populations within EYNF and MCF (Service 2014, p. 6). The CCA provides that PRDNER and USFS will promote, develop, and implement the best management practices to avoid any potential threat to suitable and occupied elfin-wood warbler habitat and populations. It also provides that both agencies will implement restoration and habitat enhancement efforts within degraded areas of EYNF and MCF. The agencies will also (1) determine the habitat use, movement, and activity patterns of the species; (2) design and establish long-term population monitoring programs; and (3) develop outreach and education programs to improve mechanisms to promote habitat conservation and restoration within private lands adjacent to both forests.

Although the elfin-woods warbler also occurs on privately owned lands not covered by the CCA, these areas adjacent to MCF are part of a habitat restoration initiative in southwestern Puerto Rico implemented by the Service since 2010, through the Partners for Fish and Wildlife (PFW) and Coastal (CP) Programs. The PFW and CP are voluntary programs that provide technical and financial assistance to landowners to implement restoration and conservation practices on their

lands for a particular amount of time. These programs promote the restoration of degraded habitat that was likely occupied by the species before the conversion to agricultural lands and that may be restored as suitable elfin-woods warbler habitat in the future. In some cases, occupied suitable habitat for the species is enhanced and protected through cooperative agreements with the private landowners.

Between 2010 and 2014, a total of 522 ha (1,290 acres) of degraded tropical upland forest and 21 km (13 miles) of riparian buffers have been restored and conserved through these programs in collaboration with the Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), PRDNER, Envirosurvey Inc. (a local nongovernmental organization), and other partners. Although this initiative promotes the restoration and enhancement of degraded habitat adjacent to the MCF and may potentially provide suitable habitat for the elfin-woods warbler, challenges such as limited resources and uncertainty about land owner participation may affect the implementation of management practices that mitigate impacts of agricultural practices.

#### Summary of Factor A

The elfin-woods warbler’s restricted distribution makes it vulnerable to habitat destruction and modification. The agricultural activities and development projects on private lands adjacent to EYNF, MCF, and CCF may result in the loss or fragmentation of the species’ suitable habitat. However, the elfin-woods warbler has been reported on private lands only outside MCF; private lands adjacent to EYNF and CCF need to be appropriately surveyed. The majority of extant elfin-woods warbler populations occur in public lands managed for conservation purposes where activities that may affect the species or its habitat are regulated, and measures to minimize or avoid those impacts are being implemented based on management plans or agencies management mandates. Therefore, we believe that habitat curtailment or modification is a threat to the elfin-woods warbler.

#### Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Based on the available information, this factor has not been documented as a threat to the elfin-woods warbler.

#### Factor C. Disease or Predation

Delannoy (2009, p. 2) indicated that Puerto Rican sharp-shinned hawk (*Accipiter striatus venator*) infrequently prey on elfin-woods warbler. Other potential elfin-woods warbler nest predators may include the pearly-eyed thrasher, Puerto Rican tanager, Puerto Rican screech owl, Puerto Rican boa, Puerto Rican racer, and feral cat (Delannoy 2009, p. 2). Additionally, Arroyo-Vázquez (1992, p. 364) noted that the Indian mongoose and black rat are potential egg and nestling predators. Nonetheless, we are not aware of any scientific or commercial information that predation of elfin-woods warblers is having an adverse effect on the species, and therefore we believe that predation is not a threat to the elfin-woods warbler. Similarly, we have no evidence of any disease affecting the species.

#### Factor D. The Inadequacy of Existing Regulatory Mechanisms

In 1999, the Commonwealth of Puerto Rico approved the Law No. 241 – 1999, known as the New Wildlife Law of Puerto Rico (*Nueva Ley de Vida Silvestre de Puerto Rico*). The purpose of this law is to, among other things, protect, conserve, and enhance both native and migratory wildlife species; declare as property of Puerto Rico all wildlife species within its jurisdiction; issue permits; regulate hunting activities; and regulate exotic species. In 2004, the Commonwealth of Puerto Rico approved the Regulation Governing the Management of Vulnerable and Endangered Species on the Commonwealth of Puerto Rico (Regulation 6766; *Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico*). Regulation 6766 prohibits collecting, killing, or harming species listed under Territorial law, as well as possessing, transporting, or selling items derived from listed species, and requires authorization from the PRDNER Secretary for any action that may affect designated critical habitat of listed species under this regulation (Departamento de Recursos Naturales y Ambientales 2004, pp. 9, 18). In 2004, the Commonwealth of Puerto Rico included the elfin-woods warbler in Regulation 6766 as a “vulnerable species” (a species that, although is not listed as endangered or critically endangered, faces a high risk of extinction in a foreseeable future).

In addition to laws that specifically protect the elfin-woods warbler, MCF and CCF are protected under Puerto Rico’s Forests Law (Law No. 133–1975;

*Ley de Bosques de Puerto Rico*), as amended in 2000, which prohibits causing damage to and collection of flora and fauna in public forests. Moreover, all Commonwealth forests are designated as Critical Wildlife Areas (CWA) by PRDNER. The CWA designation constitutes a special recognition by this agency with the purpose of providing information to other Commonwealth and Federal agencies about the conservation needs of these areas, and assisting permitting agencies in precluding negative impacts as a result of permit approvals or endorsements (PRDNER 2005, p. 6).

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) provides protection for the elfin-woods warbler, which is defined as a migratory bird under the MBTA. The MBTA makes it unlawful to pursue; hunt; take; capture; kill; attempt to take, capture, or kill; possess; offer for sale; sell; offer to barter; barter; offer to purchase; purchase; deliver for shipment; ship; export; import; cause to be shipped, exported, or imported; deliver for transportation; transport or cause to be transported; carry or cause to be carried; or receive for shipment, transportation, carriage, or export, any migratory bird, or any part, nest, or egg of such bird, or any product, whether or not manufactured, which consists of, or is comprised in whole or part, of any such bird, or any part, nest, or egg thereof. However, no provisions in the MBTA prevent habitat destruction unless direct mortality or destruction of active nests occurs.

Finally, the elfin-woods warbler co-occurs with other species that are listed under the Act. In the EYNF, the species co-occurs with the Puerto Rican sharp-shinned hawk (*Accipiter striatus venator*), Puerto Rican boa, Puerto Rican broad-winged hawk (*Buteo platypterus brunnescens*), Puerto Rican parrot (*Amazona vittata*), and several federally listed plants: *Styrax portoricensis*, *uvillo* (*Eugenia haematocarpa*), *Lepanthes eltoroensis*, *Pleodendron macranthum*, *capa rosa* (*Callicarpa ampla*), *Ternstroemia luquillensis*, *Ternstroemia subsessilis*, and *Ilex sintenisii*. In the MCF, the species co-occurs with the Puerto Rican sharp-shinned hawk, Puerto Rican boa, and several federally listed plants: *Cranichis ricartii*, *Gesneria pauciflora*, *palo de rosa* (*Ottoschulzia rhodoxylon*), *Ternstroemia luquillensis*, *higuero de sierra* (*Crescentia portoricensis*), and *Cordia bellonis*. Because of the occurrence of these federally listed species within the same habitat where elfin-woods warblers occur, any Federal action, funding, or permit within these

forests or in private lands adjacent to these forests that may affect these listed species requires a section 7 consultation under the Act. Therefore, the elfin-woods warbler may benefit from indirect protection of these listed species (*i.e.*, implementation of habitat restoration practices and habitat protection).

Based on the information currently available to us, the Federal and Commonwealth regulatory mechanisms are being implemented and are functioning as designed. Lack of enforcement of these laws and regulations has not been identified as having a negative impact to the species or exacerbating other negative effects to the species. Therefore, we do not find the existing regulations to be inadequate.

#### *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence*

##### Hurricanes and Climate Change

The geographic location of islands in the Caribbean Sea makes them prone to hurricane impacts (Wiley and Wunderle 1993, p. 320). In fact, the frequency of hurricane occurrences is higher in the southeastern United States and the Caribbean than other regions of the world (Wiley and Wunderle 1993, p. 320). Hurricanes can have both direct and indirect effects on bird populations, which may determine the characteristics of local avifauna (Wauer and Wunderle 1992, p. 656; Wunderle *et al.* 1992, p. 323). Arendt *et al.* (2013, p. 2) suggested that catastrophic weather events such as hurricanes can negatively affect the elfin-woods warbler due to its restricted distribution and low number of individuals. Some species may cope with hurricane-induced changes by selecting different prey items, while others may switch their foraging behavior and locations (Wauer and Wunderle 1992, p. 657; Wunderle *et al.* 1992, pp. 323–326).

The frequency of hurricane-induced damage equivalent to F3 (severe) on the Fujita scale (Fujita 1971) is at least three times greater in the northeastern quadrant of Puerto Rico, where EYNF and CCF are located, compared to the rest of the island (White *et al.* 2014, p. 30). In contrast, the western side of Puerto Rico, where MCF is located, is subject to different hurricane trajectories and risks than the eastern portion of the island (White *et al.* 2010, p. 16). For example, in 1998, Hurricane Georges struck MCF, which previously had been spared from hurricanes since 1932 (Tossas 2006, p. 81). Hence, studies of the effects of hurricanes on bird

populations in Puerto Rico are limited to the northeastern region and little is known about how bird species are affected elsewhere on the island (Tossas 2006, p. 81).

Delannoy (2007, p. 24) suggested that elfin-woods warbler populations at MCF appeared to be stable. However, studies conducted from 1989 to 2006 at EYNF documented a declining trend of the elfin-woods warbler population during the study period (Arendt *et al.* 2013, pp. 8–9). Arendt *et al.* (2013, p. 8) stated that this documented downward population trend could be related to intrinsic causes (*e.g.*, physiological, genetic). Nonetheless, they further suggest that it is more likely that natural habitat conversion and degradation, resulting from cyclonic events, are playing an important role in the species' decline at EYNF. Direct effects of hurricanes on habitat include massive defoliation, snapped and wind-thrown trees, massive tree mortality, and landslides (Lugo 2008, p. 368). For example, Hurricane Hugo (1989) and Hurricane Georges (1998) caused extensive damage in EYNF, which damage may have adversely impacted the elfin-woods warbler's primary habitat (Arendt *et al.* 2013, pp. 8–9). Arroyo (1991, p. 55) noted that the species was not recorded during 1990 from areas it was reported from previously at EYNF. This forest was heavily damaged by Hurricane Hugo, with more than 80 percent of the forest completely defoliated (Boucher 1990, p. 164). In contrast, at the MCF, Arroyo (1991, pp. 55–56) recorded an apparent vertical migration pattern of the species during months of heaviest rains. Moreover, Tossas (2006, p. 84) found that the elfin-woods warbler was one of two species that recovered within a year to pre-hurricane population levels after Hurricane Georges. This finding suggested that warblers abandoned defoliated sites immediately after the hurricane and shifted to protected patches with adequate foraging substrate and prey until the defoliated sites recovered (Tossas 2006, p. 84). Arendt *et al.* (2013, p. 9) indicated that these contrasting findings may be the result of disproportionate damage caused by storms in the respective forests. Moreover, the landscape at EYNF is different from that of the MCF in that at EYNF there is no continuous forested vegetation beyond the forest boundaries mainly due to conversion of agricultural lands and lowland broadleaf forests to urbanized areas (Lugo *et al.* 2004, p. 29). Therefore, the probability of dispersion to undamaged areas within and outside EYNF would be reduced for the elfin-

woods warbler depending on the damages to the vegetation. The lack of suitable habitat around the EYNF also reduces the probability of elfin-woods warbler re-colonization from the MCF, which is 150 km (93 mi) away (Arendt *et al.* 2013, p. 2).

Anadón-Irizarry (2006, p. 54), Delannoy (2007, p. 24), and Anadón-Irizarry (2014, pers. comm.) have suggested the elfin-woods warbler no longer exists within CCF. Pérez-Rivera (2014, pers. comm.) has suggested that the habitat modification caused by Hurricane Hugo and Hurricane Georges at CCF may have had a negative effect on the elfin-woods warbler. However, he acknowledged that before concluding the species was extirpated from the forest due to these climatological events, a formal and extensive survey should be conducted to include nontraditional areas within and outside of CCF (Pérez-Rivera 2014, pers. comm.). He suggested hurricanes might be detrimental to low densities and habitat-specialized species, but at the same time might benefit insectivorous species like the elfin-woods warbler. In 1989, a month after Hurricane Hugo, Pérez-Rivera (1991, pp. 474–475) recorded the Antillean euphonia (*Euphonia musica*) shifting its feeding and foraging behavior in CCF as a result of the habitat disturbance following the hurricane. Some authors (*i.e.*, Wauer and Wunderle 1992, p. 657; Wunderle *et al.* 1992, pp. 323–326) have suggested that the frequency of hurricanes in the Caribbean may be determining some of the characteristics of the local avifauna, such as the shifting into new habitats due to hurricane-induced changes.

Hurricanes can have positive effects on forest and bird ecology by temporarily increasing forest productivity (Wiley and Wunderle 1993, p. 337), particularly for species with ample distribution (White *et al.* 2014, p. 31). However, the immediate negative effects of these powerful atmospheric events for a species with demographically vulnerable populations, such as the elfin-woods warbler, outweigh the benefits accrued via short-term primary productivity of vegetation (White *et al.* 2014, p. 31). This might explain the declining elfin-woods warbler population trend documented by Arendt *et al.* (2013, pp. 8–9) at EYNF.

Studies predict an increase in hurricane intensity in the Atlantic, with higher wind speeds and greater amounts of precipitation, but a reduction in the overall number of storms (Jennings *et al.* 2014, p. 8). As mentioned above, hurricanes may result in direct negative effects to the species and its habitat.

Based on the above information, it is possible that the elfin-woods warbler could experience local extinction with these catastrophic weather events. While the species appears to have the ability to temporarily move to undisturbed areas and survive in MCF, such dispersal ability has not been documented at EYNF. Having two geographically separate populations on both ends of Puerto Rico may benefit the elfin-woods warbler since, based on the history of hurricanes striking the Island, it is unlikely for both EYNF and MCF to be impacted by the same weather system at once. However, the fact that there are only two known populations left makes the species more vulnerable to extinction if one is lost due to a catastrophic weather event. It is important to note, however, that there are no specific studies corroborating hurricanes as a main cause of elfin-woods warbler population declines at EYNF and MCF, nor that they caused the apparent extirpation of the species from CCF.

Regarding climate, general long-term changes have been observed, including changes in amount of precipitation, wind patterns, and extreme weather events (*e.g.*, droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones) (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 30). For example, projected decreases in precipitation in the Caribbean suggest drier wet seasons, and even drier dry seasons (Jennings *et al.* 2014, p. 1).

As previously mentioned, the elfin-woods warbler is currently known only from specific habitat types at EYNF and MCF, which makes the species susceptible to the effects of climate change. It has been stated that higher temperatures, changes in precipitation patterns, and any alteration in cloud cover will affect plant communities and ecosystem processes in EYNF (Lasso and Ackerman 2003, pp. 101–102). In fact, the distribution of tropical forest life zones in the Caribbean is expected to be altered due to both intensified extreme weather events and progressively drier summer months (Wunderle and Arendt 2011, p. 44). At EYNF, such alteration may allow low-elevation Tabonuco forest species to colonize areas currently occupied by Palo Colorado forest (Scatena and Lugo 1998, p. 196). Dwarf forests at EYNF also are very sensitive to climate change because of their occurrence in narrowly defined environmental conditions (Lasso and Ackerman 2003, p. 95). Dwarf forest epiphytes may experience moisture stress due to higher temperatures and less cloud cover with

a rising cloud base, affecting epiphyte growth and flowering (Nadkarni and Solano 2002, p. 584). As previously mentioned, both the Palo Colorado and Dwarf forests have been reported to have the highest elfin-woods warbler mean abundance (Anadón-Irizarry 2006, p. 24). Although the available information predicting changes in habitat due to climate change pertains to EYNF, similar changes would be expected for the MCF and CCF, which lies within two of the same life zones as EYNF.

As indicated above, such climate changes are likely to alter the structure and distribution of the habitat used by the elfin-woods warbler. According to Arendt *et al.* (2013, p. 9), approximately 50 percent of the Caribbean birds show medium to high vulnerability to climate change. Based on that information, species that are dependent on specific habitat types, and that have limited distribution or have become restricted in their range, like the elfin-woods warbler, will be most susceptible to the impacts of climate change. However, while continued change is expected, the magnitude and rate of that change is unknown in many cases. In tropical and subtropical forests, significant knowledge gaps exist in predicting the response of natural systems to climate change, and uncertainties exist with studies forecasting trends in climate (Jennings *et al.* 2014, p. 33). Moreover, regionally downscaled climate models projecting temperature and precipitation patterns at fine scales are not readily available for locations within the Caribbean region, including Puerto Rico (Jennings *et al.* 2014, p. 33). While existing large-scale global climate models are useful in determining potential future trends (Angeles *et al.* 2007, p. 556), the lack of fine-scale data in Puerto Rico's mountainous regions is especially troublesome, as variations in climate with elevation over short horizontal distances cannot be captured by existing climate models, especially in predictions of extreme events (Meehl *et al.* 2007, p. 477).

#### Human-Induced Fires

Fires are not part of the natural processes for subtropical and moist forests in Puerto Rico (Santiago-Garcia *et al.* 2008, p. 604). In fact, Méndez-Tejeda *et al.* (2015, p. 363) concluded that the majority of forests fires in Puerto Rico are produced by human actions. However, as annual rainfall decreases over time in the Caribbean region, longer periods of drought are expected in the future (Breshears *et al.* 2005, pp. 146–147; Larsen 2000, pp. 510–512). In 2000, Flannigan *et al.*

(2000, pp. 225–226) projected an increase of the global fire occurrence over the next century due to climate change. In Puerto Rico, historical evidence suggests fire frequency is increasing (Burney *et al.* 1994, p. 277; Robbins *et al.* 2008, pp. 530–531). Moreover, the interactions between climate warming and drying, and increased human development, are considered to have the potential to increase the effects of fires (Robbins *et al.* 2008, pp. 530–531).

In EYNF, CCF, and adjacent lands to these forests, fires are not considered common. The tropical rain and moist forest conditions of EYNF and CCF (*i.e.*, average annual rainfall of 304.8 cm (120 in) or more) and the very high humidity during most of the year are not conditions conducive to fires as they are in the dry, temperate climates encountered in other regions. The last fire incident in EYNF, recorded in 1994, was categorized as a “minimal fire” that was quickly controlled by USFS staff (USFS 2015, no page number). In the CCF area, fires are considered human-induced and occur in a low frequency along the road PR–184 (Monsegur 2015, pers. comm.). Although the road-side fires are considered minimal, they have the potential to extend to forested lands within CCF and adjacent private lands affecting suitable elfin-woods warbler habitat.

In the Maricao area (*i.e.*, Municipalities of Sabana Grande and San Germán), fires occur more frequently on the southern dry slopes of MCF and adjacent private lands, particularly during the dry season (Avila 2014, pers. comm.). Human-induced fires modify the landscape and ecological conditions of the habitat by promoting growth of nonnative trees and grasses (Brandeis and Woodall 2008, p. 557). These landscape modifications may reduce the quality and quantity of potential elfin-woods warbler habitat. Moreover, these fires alter the habitat, decreasing the ability of the species to disperse to other forested habitats. Although the primary habitat for the species in MCF (*i.e.*, *Podocarpus* forest) (González 2008, pp. 20–21) is not prone to fire disturbance because it is located on the highest peaks within the lower montane wet forest life zone, suitable habitat at lower elevations might be in danger if these fires extend to forested lands within the forest or private lands. Severe fires in moist tropical forests have the potential to alter microclimates, allowing atypical forest species to invade, increasing the chance of recurrent fires (Sherman *et al.* 2008, p. 536).

Based on the above information, other natural or manmade factors, such as hurricanes, climate change, and human-induced fires, are considered threats to the elfin-woods warbler.

#### Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting the Continued Existence of the Species

As discussed under Factor A above, a CCA was signed in 2014 by the Service, USFS, and PRDNER to implement strategic conservation actions. In the context of Factor E, these actions include the development and implementation of programmatic reforestation and habitat enhancement efforts within areas degraded by hurricanes to improve the recovery of the elfin-woods warbler within EYNF and MCF (Service 2014, pp. 18–19). Additionally, the CCA will help develop and design studies to gather information on the elfin-woods warbler (*e.g.*, habitat needs, habitat use, movement and activity patterns, responses to biotic and abiotic factors, and genetic variation) in order to better design and implement conservation strategies for the recovery of the species.

#### Summary of Factor E

Based on the information available and limited distribution of the elfin-woods warbler, we believe that this species is currently threatened by natural or manmade factors such as hurricanes and human-induced fire. Climate change may exacerbate these threats by increasing intensity and frequency of hurricanes and environmental effects, although information is lacking on the specific extent of these effects. Thus, we consider Factor E to be a threat to this species.

#### Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to elfin-woods warbler. Current available information indicates that the elfin-woods warbler has a limited distribution, with only two known populations occurring within EYNF and MCF, including the private lands adjacent to MCF, and at least one extirpated population from CCF. As discussed in the Summary of Factors Affecting the Species section of this proposed rule, threats to the elfin-woods warbler include loss, fragmentation, and degradation of habitat on private lands adjacent to MCF (Factor A). Some of these lands are subjected to habitat modification caused by unsustainable agricultural practices (*i.e.*, sun-grown coffee plantations), small residential

development, and livestock related activities. Moreover, the increase of urban development on private lands adjacent to EYNF and CCF has also negatively affected suitable elfin-woods warbler habitat around these forests. The activities result in the elimination of native forest, thus reducing the suitable habitat available and the habitat value for the elfin-woods warbler.

Other natural or manmade factors (*i.e.*, hurricanes, climate change, human-induced fires; Factor E) also have been identified as threats to the species. Elfin-woods warblers could experience local extinction as a result of catastrophic weather events such as hurricanes. While the species appears to have the ability to temporarily migrate to undisturbed areas and survive in MCF, such dispersal ability has not been documented at EYNF. Having two known elfin-woods warbler populations that are geographically separate may benefit the species to some degree, as it is unlikely that the same hurricane would affect both EYNF and MCF. However, the fact that there are only two known remaining populations makes the species more vulnerable to extinction if one is lost due to a catastrophic weather event.

Climate change also is expected to alter the structure and distribution of the habitat used by the elfin-woods warbler, which may be particularly susceptible because of the limited distribution and specific forest types used by the species. Available information indicates that while continued change is expected, the magnitude and rate of that change is currently unknown. Therefore, the immediate impact from climate change on the elfin-woods warbler is uncertain.

Human-induced fires have been reported in the Maricao area mostly within the lower southern slopes of the MCF and adjacent private lands, particularly during the dry season, and in the CCF area in a low frequency along the road PR–184. These fires can modify the landscape and ecological conditions, and reduce the quality and quantity of potential elfin-woods warbler habitat. Habitat disturbance caused by human-induced fires may also affect the ability of the species to disperse to other forested habitats. However, in MCF, the areas that are more prone to human-induced fires are not the primary habitat for the species, which is the *Podocarpus* forest. This forest type is not prone to fire disturbance because it is located on highest peaks within the lower montane wet forest life zone. Although the primary habitat for the species in MCF, EYNF, and CCF is not prone to fire disturbance, potential suitable habitat at

lower elevations might be in danger if these fires extend to forested lands within the forests or private lands.

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” We find that the elfin-woods warbler is not presently in danger of extinction throughout its entire range based on the low to moderate severity and non-immediacy of threats currently impacting the species. The available information indicates that elfin-woods warbler populations appear to be stable in MCF and that there are no immediate threats precipitating a demographic decline of the elfin-woods warbler in that forest. In Maricao, the species has been reported adjacent to the Commonwealth forest in shade-grown coffee plantations, demonstrating that the species may tolerate some degree of habitat disturbance. At EYNF, the most current information reported a declining trend of the elfin-woods warbler population, mainly attributed to hurricanes striking that forest. However, there are no specific studies corroborating that hurricanes are in fact the main cause of elfin-woods warbler population declines at EYNF and other factors may be influencing the decline (e.g., population low densities and patchy spatial arrangement). Although the species appears to be stable at the MCF, it may be declining at EYNF and extirpated from CCF. The cumulative effects of habitat modification by human actions (e.g., unsustainable agricultural practices) and natural events such as hurricanes would make the two known populations more vulnerable to extinction due to their restricted distribution, limited population numbers, and specific ecological requirements. Therefore, on the basis of the best available scientific and commercial information, we propose listing the elfin-woods warbler as threatened in accordance with sections 3(20) and 4(a)(1) of the Act. We find that an endangered species status is not appropriate for elfin-woods warbler because the species is not currently in imminent danger of extinction.

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. Because we have determined that elfin-woods warbler is threatened throughout all of its range, no portion of its range can be “significant” for purposes of the definitions of

“endangered species” and “threatened species.” See the Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species” (79 FR 37577; July 1, 2014).

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

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 calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species’ decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The plan may be revised to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened or for delisting 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

(composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. If this species is listed, the recovery outline, draft recovery plan, and the final recovery plan will be made available on our Web site (<http://www.fws.gov/endangered>), or from our Caribbean 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, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the Commonwealth of Puerto Rico would be eligible for Federal funds to implement management actions that promote the protection or recovery of the elfin-woods warbler. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the elfin-woods warbler is only proposed for listing as threatened under the Act at this time, please let us know if you are interested in participating in conservation efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for conservation planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species 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)(1) of the Act directs all Federal agencies to “utilize their authorities in furtherance of the



purposes of the Act by carrying out programs for the conservation of" endangered and threatened species. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the USFS; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

#### Proposed 4(d) Rule

Under section 4(d) of the Act, the Service has discretion to issue regulations that we find necessary and advisable to provide for the conservation of threatened wildlife. We may also prohibit by regulation, with respect to threatened wildlife, any act prohibited by section 9(a)(1) of the Act for endangered wildlife. 50 CFR 17.31(a) applies all the general prohibitions for endangered wildlife set forth at 50 CFR 17.21 to threatened wildlife; 50 CFR 17.31(c) states that whenever a 4(d) rule applies to a threatened species, the provisions of 17.31(a) do not apply to that species. Permit provisions for threatened species are set forth at 50 CFR 17.32.

Some activities that would normally be prohibited under 50 CFR 17.31 and 17.32 will contribute to the conservation of the elfin-woods warbler because habitats within some of the physically degraded private lands adjacent to elfin-woods warbler existing populations must be improved before they are suitable for the species. Therefore, for the elfin-woods warbler, the Service has determined that species-specific exceptions authorized under section 4(d) of the Act may be appropriate to promote the conservation of this species. Like the proposed listing rule,

this proposal will not be finalized until we have reviewed comments from the public and peer reviewers.

As discussed above in the Summary of Factors Affecting the Species section of this proposed listing rule, threats to the species include loss, fragmentation, and degradation of habitat due to unsustainable agricultural practices and land use requiring vegetation clearance. Agricultural practices occurring on private lands adjacent to MCF, especially those involving habitat modification (e.g., deforestation and conversion of shade-grown coffee to sun-grown coffee plantations), can result in vegetation removal and habitat alteration, thereby degrading habitats used by elfin-woods warbler for feeding, sheltering, and reproduction.

The private lands surrounding MCF are considered the most active coffee production lands in Puerto Rico. Sun-grown coffee plantations adjacent to MCF were converted several decades ago, resulting in the elimination of native forest overstory, reducing the habitat value for wildlife, including the elfin-woods warbler. Although the majority of the coffee-related agricultural lands were converted to sun-grown coffee plantations, several parcels of land surrounding MCF are currently part of a multi-agency habitat restoration initiative in southwestern Puerto Rico implemented by the Service and NRCS since 2010, through the PFW, CP, and U.S. Department of Agriculture Farm Bill Programs. Activities that improve or restore physical habitat quality, such as the conversion of sun-grown coffee to shade-grown coffee, reforestation with native trees, riparian buffering, and forested habitat enhancement (i.e., exotic species removal, and native tree planting), would have a positive effect on elfin-woods warbler populations and would provide an overall conservation benefit to the species. The NRCS conservation practices promoted under this initiative are the Multi-Story Cropping (Practice 379) and Tree/Shrub Establishment (Practice 612) (USFWS 2011). The Multi-Story Cropping practice promotes the establishment of stands of trees or shrubs that are managed as overstory with an understory of woody and/or non-woody plants that are grown for a variety of products. The purpose of this practice is to improve crop diversity by growing mixed but compatible crops having different heights in the same area. This will improve soil quality, reduce erosion, enhance degraded areas, and provide habitat for wildlife species such as the elfin-woods warbler. The Tree/Shrub Establishment Practice promotes the establishment of woody

plants by planting seedlings or cuttings, direct seeding, or natural regeneration. The purpose is to promote forest products such as timber, wildlife habitat, long-term erosion control, and improvement of water quality, and to improve or restore natural diversity.

#### Provisions of the Proposed 4(d) Rule

Under this proposed 4(d) rule, all of the prohibitions set forth at 50 CFR 17.31 and 17.32 would apply to the elfin-woods warbler, except that incidental take caused by the following activities conducted within habitats currently occupied by the elfin-woods warbler on private, Commonwealth, and Federal lands would not be prohibited, provided those activities (1) abide by the conservation measures in the rule, and (2) are conducted in accordance with applicable Commonwealth, Federal, and local laws and regulations:

(1) The conversion of sun-grown coffee to shade-grown coffee plantations by the restoration and maintenance (i.e., removal of invasive, exotic, and feral species; shade and coffee tree seasonal pruning; shade and coffee tree planting and replacement; coffee bean harvest by hands-on methods; and the use of standard pest control methods and fertilizers within the plantations) of shade-grown coffee plantations and native forests associated with this type of crop. To minimize disturbance to elfin-woods warbler, shade and coffee tree seasonal pruning must be conducted outside the peak of the elfin-woods warbler's breeding season (July 1 through February 28). The Service considers the use of pest control methods (e.g., pesticides, herbicides) and fertilizers "standard" when it is used only twice a year during the establishment period of shade and coffee trees (i.e., the first 2 years). During this period, the structure of the agroforestry system is not mature enough to sustain the occurrence of elfin-woods warblers within these areas.

Once the shade-grown coffee system reaches its functionality and structure (i.e., 3 to 4 years), little or no chemical fertilizers, herbicides, or pesticides are required, their use would be restricted under the proposed 4(d) rule. This is the time period when the shade-grown coffee system is mature enough to support the presence of wildlife species. Researchers have found that the number of species of birds in coffee plantations with structurally and floristically diverse canopies is similar to the number of species in natural forest habitat and is higher than other agricultural landscapes without trees (Perfecto *et al.* 1996, pp. 603–605).

The restoration of agricultural lands due to the planting of native trees to provide shade to coffee trees or by selective removal of exotic species creates physically stable and suitable habitats for the elfin-woods warbler. Moreover, the cultivation of shade-grown coffee has many other ecological and human-health benefits such as the reduction of soil erosion, moderation of soil temperatures, and reduced need for fertilizers and pesticides (Borkhataria *et al.* 2012, p.168). Therefore, restoration, conservation, and protection of shade-grown coffee plantations would provide suitable habitat for the feeding, sheltering, and reproduction activities of this species and may provide habitat to promote the elfin-woods warblers' dispersal and recolonization of lands adjacent to the existing populations.

(2) Riparian buffer establishment through the planting of native vegetation and removal of exotic species may improve the habitat conditions of Gallery forests along the sub-watersheds associated with lands adjacent to the elfin-woods warbler's existing populations. Gallery forests serve as biological corridors that maintain connectivity between forested lands and associated agricultural lands, reducing the fragmentation in the landscape.

(3) Reforestation and forested habitat enhancement projects within secondary forests (*i.e.*, young and mature) that promote the establishment or improvement of habitat conditions for the species by the planting of native trees, selective removal of native and exotic trees, seasonal pruning of native and exotic trees, or a combination of these.

The intent of these exceptions is to provide incentive for landowners to carry out these activities in a manner which we believe will provide benefits to the species such as (1) maintaining connectivity of suitable elfin-woods warbler habitats, allowing for dispersal between forested and agricultural lands; (2) minimizing habitat disturbance by conducting certain activities outside the peak of the elfin-woods warbler's breeding season (*i.e.*, July 1 to February 28); (3) maximizing the amount of habitat that is available for the species; and (4) improving habitat quality. While these activities may cause some temporary disturbance to the elfin-woods warbler or its habitat, we do not expect these activities to adversely affect the species' conservation efforts. In fact, we expect they will have a net beneficial effect on the species.

Based on the rationale above, the provisions included in this proposed rule authorized under section 4(d) of the Act are necessary and advisable to

provide for the conservation of the elfin-woods warbler. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, 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 elfin-woods warbler.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, economic hardship, zoological exhibition, educational purposes, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

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 (for this species, those section 9 prohibitions that would be adopted through the proposed 4(d) rule). The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements. This list is not comprehensive:

(1) Activities authorized, funded, or carried out by Federal or Commonwealth agencies (*e.g.*, expansion or construction of communication facilities; expansion of recreational facilities; pipeline construction; bridge construction; road rehabilitation and maintenance; expansion, construction, or maintenance of aqueduct facilities; habitat management; Federal and Commonwealth trust species reintroductions; trail maintenance; camping areas maintenance; research, repair, and restoration of landslides; etc.), when such activities are conducted in accordance with the consultation and planning requirements for listed species under section 7 of the Act; and

(2) Agricultural and silviculture practices implemented within existing

agricultural lands (*i.e.*, degraded habitat not suitable for the species) other than sun to shade-grown coffee conversion and maintenance, including herbicide, pesticide, and fertilizer use outside of coffee plantations, which are carried out in accordance with any Commonwealth and Federal existing regulations, permit and label requirements, and best management practices.

We believe the following activities may potentially result in a violation of section 9 the Act. This list is not comprehensive:

(1) Unauthorized collecting or handling of the species;

(2) Destruction/alteration/fragmentation of habitat essential to fulfilling the lifecycle of the species; and

(3) Introduction of nonnative species that compete with or prey upon the elfin-woods warbler.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed . . . 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 by the Secretary that such areas are essential for the conservation of the species. Section 3(3) of the Act (16 U.S.C. 1532(3)) defines the terms "conserve," "conserving," and "conservation" 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 this chapter Act are no longer necessary.

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 shall designate critical habitat at the time the 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

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.

As discussed under Factor B above, there is currently no imminent threat of take attributed to collection or vandalism for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. Therefore, 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, we must find that designation is prudent. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (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) reducing the potential for people to cause inadvertent harm to the species.

Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we determine that designation of critical habitat is prudent for the elfin-woods warbler.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. On the basis of a review of

available information, we find that critical habitat for elfin-woods warbler is not determinable because the specific information sufficient to perform the required analysis of the impacts of the designation is currently lacking.

**Required Determinations**

*Clarity of the Rulemaking*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESSES section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*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, 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).

**References Cited**

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Caribbean Ecological Services Field Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

- 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361 – 1407; 16 U.S.C. 1531 – 1544; 4201 – 4245, unless otherwise noted.

- 2. Amend § 17.11(h) by adding an entry for “Warbler, Elfin-woods” to the List of Endangered and Threatened Wildlife in alphabetical order under BIRDS to read as set forth below:

**§ 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							
*	*	*	*	*	*		*
Warbler, elfin-woods	<i>Setophaga angelae</i>	U.S.A. (PR) .....	Entire .....	T	.....	NA	17.41(e)
*	*	*	*	*	*		*

- 3. Amend § 17.41 by adding paragraph (e) to read as follows:

**§ 17.41 Special rules—birds.**

\* \* \* \* \*

(e) Elfin-woods warbler (*Setophaga angelae*). (1) *Prohibitions.* Except as noted in paragraph (e)(2) of this section, all prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to the elfin-woods warbler.

(2) *Exemptions from prohibitions.* Incidental take of the elfin-woods warbler will not be considered a violation of section 9 of the Act if the take results from any of the following when conducted within habitats currently occupied by elfin-woods

warbler provided these activities abide by the conservation measures set forth in this paragraph and are conducted in accordance with applicable State, Federal, and local laws and regulations:

(i) The conversion of sun-grown coffee to shade-grown coffee plantations by the restoration and maintenance (*i.e.*, removal of invasive, exotic, and feral species; shade and coffee tree seasonal pruning; shade and coffee tree planting and replacement; coffee bean harvest by hands-on methods; and the use of standard pest control methods and fertilizers within the plantations) of shade-grown coffee plantations and native forests associated with this type of crop. To minimize disturbance to elfin-woods warbler, shade and coffee tree seasonal pruning must be conducted outside the peak of the elfin-woods warbler's breeding season (*i.e.*, July through February). The Service considers the use of pest control methods (*e.g.*, pesticides, herbicides) and fertilizers "standard" when it is used only twice a year during the establishment period of shade and coffee trees (*i.e.*, the first 2 years). Once the shade-grown coffee system reaches its functionality and structure (*i.e.*, 3 to 4 years), little or no chemical fertilizers, herbicides, or pesticides may be used.

(ii) Riparian buffer establishment though the planting of native vegetation and selective removal of exotic species.

(iii) Reforestation and forested habitat enhancement projects within secondary forests (*i.e.*, young and mature) that promote the establishment or improvement of habitat conditions for the species by the planting of native trees, selective removal of native and exotic trees, seasonal pruning of native and exotic trees, or a combination of these.

\* \* \* \* \*

Dated: September 17, 2015.

**Stephen Guertin,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2015-24775 Filed 9-29-15; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R3-ES-2015-0145;4500030113]

RIN 1018-BA98

#### Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Eastern Massasauga Rattlesnake

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the eastern massasauga rattlesnake (*Sistrurus catenatus*), a rattlesnake species found in 10 States and 1 Canadian Province, as a threatened species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species. We have also determined that the designation of critical habitat for the eastern massasauga rattlesnake is not prudent.

**DATES:** We will accept comments received or postmarked on or before November 30, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 16, 2015.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R3-ES-2015-0145, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R3-ES-2015-0145, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

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 *Public Comments*, below, for more information).

#### FOR FURTHER INFORMATION CONTACT:

Louise Clemency, Field Supervisor, U.S. Fish and Wildlife Service, Chicago Ecological Services Field Office, 1250 S. Grove Ave., Suite 103, Barrington, IL 60010-5010; by telephone 847-381-2253. 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

*Why we need to publish a rule.* Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule. We have determined that designating critical habitat is not prudent for the eastern massasauga rattlesnake.

*This rule proposes the listing of the eastern massasauga rattlesnake as a threatened species.* The eastern massasauga rattlesnake is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing rule has been precluded by other higher priority listing activities. This rule reassesses all available information regarding status of and threats to the eastern massasauga rattlesnake.

*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. Although there are several factors that are affecting the species' status, the loss of habitat was historically, and continues to be, the primary threat, either through development or through

changes in habitat structure due to vegetative succession.

We will seek peer review. We will seek comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal.

A Species Status Assessment (SSA) team prepared an SSA report for the eastern massasauga rattlesnake. The SSA team was composed of U.S. Fish and Wildlife Service biologists, in consultation with other species experts. The SSA represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the eastern massasauga rattlesnake. The SSA underwent independent peer review by 21 scientists with expertise in eastern massasauga rattlesnake biology, habitat management, and stressors (factors negatively affecting the species) to the species. The SSA and other materials relating to this proposal can be found on the Midwest Region Web site at <http://www.fws.gov/midwest/Endangered/> and at <http://www.regulations.gov> under docket number FWS-R3-ES-2015-0145.

### Information Requested

#### Public Comments

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 governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

- (1) The eastern massasauga rattlesnake's biology, range, and population trends, including:
  - (a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;
  - (b) Genetics and taxonomy;
  - (c) Historical and current range, including distribution patterns;
  - (d) Historical and current population levels, and current and projected trends; and
  - (e) Past and ongoing conservation measures for the species or its habitat.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Whether designating critical habitat is prudent for this species and, if so, the reasons why any habitat should or should not be determined to be critical habitat for the eastern massasauga rattlesnake as provided by section 4 of the Act, including physical or biological features within areas occupied or specific areas outside of the geographic area occupied that are essential for the conservation of the species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is 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 this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Chicago Ecological Services

Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see DATES, above). Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

#### Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in eastern massasauga rattlesnake biology, habitat management, climate change, and other stressors to the species. We previously conducted peer review on the SSA, which informs our determination as discussed below. We invite comment from the peer reviewers during this public comment period.

#### Previous Federal Actions

We identified the eastern massasauga rattlesnake as a Category 2 species in the December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454). Category 2 candidates were defined as species for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. The species remained so designated in subsequent candidate notices of review (CNORs) for animal species (50 FR 37958, September 18, 1985; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of Category 2 species as candidates; therefore, the eastern massasauga rattlesnake was no longer a candidate species.

Subsequently, in 1999, the eastern massasauga rattlesnake was added to the

candidate list (64 FR 57534; October 25, 1999) through the Service's internal candidate review process. Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. The eastern massasauga rattlesnake was included in all of our subsequent CNORs (66 FR 54808, October 30, 2001; 67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004; 70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014). On May 11, 2004, we were petitioned to list the eastern massasauga rattlesnake, although no new information was provided in the petition. Because we had already found the species warranted listing through our internal candidate assessment process and it was already a candidate species, no further action was taken on the petition. The eastern massasauga rattlesnake has a listing priority number of 8, which reflects a species with threats that are imminent and of moderate to low magnitude.

### Background

A thorough background and review of the ecology, life history, and taxonomy of the eastern massasauga rattlesnake can be found in the Species Status Assessment for the Eastern Massasauga Rattlesnake (Szymanski *et al.* 2015, entire) available at <http://www.fws.gov/midwest/Endangered/> and at <http://www.regulations.gov> under Docket No. FWS-R3-ES-2015-0145. The eastern massasauga rattlesnake is a pitviper with a small (0.6 to 1 meter (2 to 3 feet)) but heavy body, heart-shaped head, and vertical pupils. As a pitviper, eastern massasaugas have an extrasensory "pit" located on each side of the head between the eyes and the nares (nostrils). Adult eastern massasaugas have gray or light brown coloration with large brown to black blotches encircled in lighter edges (these blotches are smaller on their sides). Tipped by gray-yellow keratinized (containing the fibrous protein called keratin) rattles, eastern massasauga tails have several dark brown rings. Younger snakes are distinguished from adults only by paler versions of the same markings and bright yellow tails that grow darker with

age. This species can be distinguished from the closely related western massasauga rattlesnake (*Sistrurus tergeminus*) by the number of ventral (belly) scales, the ventral coloration and pattern, the number of and shape of dorsal blotches, and markings and patterns on the nape of the neck and head (Gloyd 1940, pp. 36, 38–40, 42–44, 46–49, 52–55; Evans and Gloyd 1948, pp. 3–6).

First described by Rafinesque in 1818, the eastern massasauga rattlesnake is known by several locally used common names: Eastern massasauga rattlesnake, eastern massasauga prairie rattlesnake, spotted rattler, and swamp rattler (Gloyd 1940, p. 44; Minton 1972, p. 315). The eastern massasauga rattlesnake was previously recognized by the Service as a subspecies (*Sistrurus catenatus catenatus*) of a wider-ranging species (Conant and Collins 1998, pp. 231–232) (*Sistrurus catenatus*), but in 2011, was categorized as a distinct species based on published scientific information on the phylogenetic relationships of massasaugas (Kubatko *et al.* 2011, p. 13; Gibbs *et al.* 2011, pp. 433–439). The historical range documented for eastern massasauga rattlesnakes included western New York, western Pennsylvania, the lower peninsula and on Bois Blanc Island in Michigan, the northern two-thirds of Ohio and Indiana, the northern three-quarters of Illinois, the southern half of Wisconsin, extreme southeast Minnesota, east-central Missouri, the eastern third of Iowa, and far southwestern Ontario, Canada. Currently, the eastern massasauga rattlesnake's range still reflects this distribution, although the range is now more restricted than at the time the eastern massasauga rattlesnake was first identified as a candidate species in 1999, because populations in central and western Missouri have since been reclassified as western massasauga rattlesnakes (Kubatko *et al.* 2011, p. 404; Gibbs *et al.* 2011, pp. 433–439).

Eastern massasauga rattlesnakes hibernate in the winter and are active in spring, summer, and fall. The type of habitat used during the active season generally consists of higher, drier habitats, open canopy wetlands, and adjacent upland areas (Sage 2005, p. 32; Lipps 2008, p. 1). Active season habitat use varies regionally (Reinert and Kodrich 1982, p. 169; Johnson *et al.* 2000, p. 3), and individual snakes can be found in a wide variety of habitats, including old fields (Reinert and Kodrich 1982, p. 163; Mauger and Wilson 1999, p. 111), bogs, fens (Kingsbury *et al.* 2003, p. 2; Marshall *et al.* 2006, p. 142), shrub swamps, wet

meadows, marshes (Wright 1941, p. 660; Sage 2005, p. 32), moist grasslands, wet prairies (Siegel 1986, p. 334), sedge meadows, peatlands (Johnson and Leopold 1998, p. 84), forest edge, scrub shrub forest (DeGregorio *et al.* 2011, p. 378), floodplain forests (Moore and Gillingham 2006, p. 745), and coniferous forests (Harvey and Weatherhead 2006, p. 207). During the active season, snakes thermoregulate (regulate body temperature) through basking in order to perform physiological functions like shedding, digestion, movement, and gestation (process of carrying young in the uterus). Basking sites are generally open, sunny areas in higher and drier habitats than those used for hibernation.

While there is regional variation, in general, after using higher, drier habitats during the active season, the eastern massasauga rattlesnake moves to lower, wet areas for overwintering or hibernation (Reinert and Kodrich 1982, pp. 164, 169; Johnson *et al.* 2000, p. 3; Harvey and Weatherhead 2006, p. 214; Mauger and Wilson 1999, p. 117). Hibernation sites provide insulated and moist subterranean spaces below the frost line where individuals can avoid freezing and dehydration (Sage 2005, p. 56). These hibernation sites can occur in wetland, wetland edges, wet prairie, closed canopy forests with mossy substrates (DeGregorio 2008, p. 20), wet grassland, and sedge meadow (Mauger and Wilson 1999, p. 116).

The availability of retreat sites is important to the snake at all times of the year. Retreat sites are generally used by the snake to hide from potential predators, but are also important to gain shelter from extreme temperatures, because these sites are more thermally stable than surface habitat (Shoemaker 2007, pp. 9–10). Retreat sites can be hibernacula, rock crevices, hummocks, live or dead tree root systems, mammal holes, crayfish burrows, shrubs, boards, burn piles before burning, or any structure that a snake can crawl into or under.

Adult eastern massasauga rattlesnakes forage by ambushing prey, which are primarily small mammals (voles (*Microtus* spp.), deer mice (*Peromyscus* spp.), and short-tailed shrew (*Blarina* spp.)), that vary according to whatever prey species is most readily available within the habitat. Juvenile eastern massasaugas also prey on small mammals, but feed occasionally on other species of snakes (*e.g.*, brown snakes, *Storeria dekayi*). Neonates, born near the end of summer with a short active season before hibernation, feed mainly on snakes, perhaps due to the size of their mouth openings

(VanDeWalle and VanDeWalle 2008, p. 358; Shepard *et al.* 2004, p. 365).

Eastern massasauga rattlesnakes (both males and females) reach sexual maturity at roughly 2 years of age and are ovoviviparous (the females give birth to broods of live young) ranging from 3 to 20 in number, with an average brood size of 9 but varying throughout the range (Anton 2000, p. 248; Bielma 1973, p. 46; Aldridge *et al.* 2008, p. 404; Jellen 2005, p. 47). Both annual and biennial reproductive cycles have been reported (Reinert 1981, pp. 383–384; Johnson 1995, p. 109). Those individuals that do reproduce annually most likely mate in the spring and bear young in the late summer or autumn. Conversely, biennially reproductive females probably mate in the autumn and either store sperm until the following spring (Johnson 1992, p. 52) or suspend embryo development over winter and bear young the next summer (Prior 1991). Mating is most prevalent in the summer or early autumn and occasionally in spring (Aldridge and Duvall 2002, p. 6; Aldridge *et al.* 2008, p. 405; Jellen 2005, p. 41; Johnson 1995, p. 109; Johnson 2000, p. 189; Reinert 1981, pp. 383–384; Swanson 1933, p. 37). Male eastern massasaugas tend to occur in higher ratios than receptive females, because the most common female condition (biennial reproduction) essentially results in two female reproductive populations, whereas males can breed every year. Because of the higher ratio of males, males intensely compete for mates and face prolonged periods of mate searching, longer daily movements, and defensive female polygyny (having multiple mates) during the mating season (Jellen 2005, p. 9; Johnson 2000, p. 189).

### Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed a comprehensive assessment of the biological status of the eastern massasauga rattlesnake, and prepared the SSA report, which provides a thorough description of the species' overall viability. We define viability as the ability of the species to maintain multiple, self-sustaining populations across the full gradient of genetic and ecological diversity of the species. We used the conservation biology principles of resiliency, representation, and redundancy in our analysis. Briefly, resiliency is the ability of the species to withstand stochasticity; redundancy is

the ability of the species to withstand catastrophic events; and representation is the ability of the species to adapt over time to long-term changes in the environment. In general, the more redundant, representative, and resilient a species is, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we considered the eastern massasauga rattlesnake's needs at the individual, population, and species scales. We also identified the beneficial and risk factors influencing the species' viability. We considered the degree to which the species' ecological needs are met both currently and as can be reliably forecasted into the future, and assessed the consequences of any unmet needs as they relate to species viability. In this section, we summarize the conclusions of the SSA, which can be accessed at <http://www.fws.gov/midwest/Endangered/> and at <http://www.regulations.gov> under Docket No. FWS–R3–ES–2015–0145.

For survival and reproduction at the individual level, the eastern massasauga rattlesnake requires appropriate habitat, which varies depending on the season and its life stage (see Background section, above). During the winter (generally October through March), they occupy hibernacula, such as crayfish burrows. Intact hydrology at eastern massasauga rattlesnake sites is important in maintaining conditions, such as crayfish burrows with high enough water levels to support the survival of hibernating eastern massasauga rattlesnakes. During their active season (after they emerge from hibernacula), they require low canopy cover and sunny areas (intermixed with shaded areas) for thermoregulation (basking and retreat sites), abundant prey (foraging sites), and the ability to escape predators (retreat sites). Habitat structure, including early successional stage and low canopy cover, appears to be more important for eastern massasauga rattlesnake habitat than plant community composition or soil type. Maintaining such habitat structure may require periodic management of most habitat types occupied by the eastern massasauga rattlesnake.

At the population level, the eastern massasauga rattlesnake requires sufficient population size, population growth, survivorship (the number of individuals that survive over time), recruitment (adding individuals to the population through birth or immigration), population structure (the number and age classes of both sexes), and size. Populations also require a sufficient quantity of high-quality

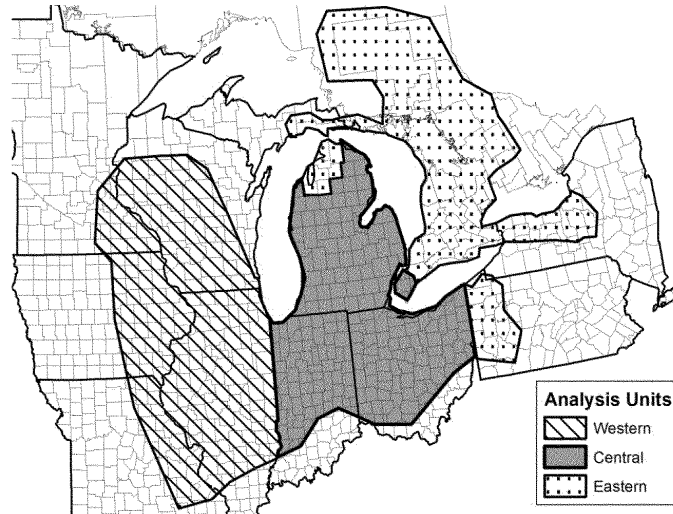
microhabitats with intact hydrology and ecological processes that maintain suitable habitat, and connectivity among these microhabitats. In the SSA, a self-sustaining population of eastern massasauga rattlesnakes is defined as one that is demographically, genetically, and physiologically robust (a population with 50 or more adult females and a stable or increasing growth rate), with a high level of persistence (a probability of persistence greater than 0.9) given its habitat conditions and the risk or beneficial factors operating on it.

We relied on a population-specific model developed by Faust *et al.* (2011, entire) (hereafter referred to as the Faust model) to assess the health of populations across the eastern massasauga rattlesnake's range. Faust and colleagues developed a generic, baseline model for a hypothetical, healthy (growing) eastern massasauga rattlesnake population. Using this baseline model and site-specific information, including population size estimate, risk factors operating at the site, and potential future management changes that might address those factors, the Faust model forecasted the future condition of 57 eastern massasauga rattlesnake populations over three different time spans (10, 25, and 50 years) (for more details on the Faust model, see pp. 4–6 in the SSA report). We extrapolated the Faust model results and supplemental information gathered since 2011 to forecast the future conditions of the other (non-modeled; n=331) eastern massasauga rattlesnake populations.

At the species level, the eastern massasauga rattlesnake requires multiple (redundant), self-sustaining (resilient) populations distributed across areas of genetic and ecological diversity (representative). Using the literature on distribution of genetic diversity across the range of this species, we identified three geographic "analysis units" corresponding to "clumped" genetic variation patterns across the eastern massasauga rattlesnake populations (Figure 1). A reasonable conclusion from the composite of genetic studies that exist (Gibbs *et al.* 1997, entire; Andre 2003, entire; Chiocchi and Gibbs 2010, entire; Ray *et al.* 2013, entire) is that there are broad-scaled genetic differences across the range of the eastern massasauga rattlesnake, and within these broad units, there is genetic diversity among populations comprising the broad units. Thus, we assume these genetic variation patterns represent areas of unique adaptive diversity. We subsequently use these analysis units (eastern, central, and

western) to structure our analysis of viability.

Figure 1: The three genetically distinct “analysis units” (western, central, and eastern) adapted from Ray *et al.* 2013.



*Species' Current Condition*

As a result of the risk factors acting on eastern massasauga rattlesnake populations, the resiliency of the eastern massasauga rattlesnake across its range and within each of the three analysis units has declined from its historically known condition. Rangewide, there are 581 known historical eastern massasauga rattlesnake populations, of which 267 are known to still be extant, 163 are likely extirpated or known extirpated, and 121 are of unknown status. For the purposes of our assessment, we considered all populations with extant or unknown status as currently extant (referred to as presumed extant, n=388). Of those 388 populations presumed extant, 40 percent are likely quasi-extirpated (*i.e.*, have 25 or fewer adult females).

The number of presumed extant populations has declined from the number that was known historically rangewide by 33 percent (and 31 percent of the presumed extant populations have unknown status). Of those populations presumed extant, 156 (40 percent) are presumed to be quasi-extirpated while 99 (26 percent) are presumed to be demographically, genetically, and physiologically robust (Table 1). Of these presumed demographically, genetically, and physiologically robust populations, 29 (7 percent) are presumed to have conditions suitable for maintaining

populations over time (risk factors affecting the species at those populations are nonexistent or of low impact) and, thus, are self-sustaining. The greatest declines in resiliency occurred in the western analysis unit, where only 21 populations are presumed extant, and of these, only 1 is presumed to be self-sustaining. Although to a lesser degree, loss of resiliency has occurred in the central and eastern analysis units, where 22 and 6 populations, respectively, are presumed to be self-sustaining.

TABLE 1—THE NUMBER OF POPULATIONS BY STATUS RANGEWIDE [DGP = demographically, genetically, and physiologically]

Status	Number of populations rangewide	Percentage of presumed extant populations
Presumed Extant	388	.....
Quasi-extirpated ..	156	40
DGP robust (self-sustaining) .....	99 (29)	26 (7)

The degree of representation, as measured by spatial extent of occurrence, across the range of the eastern massasauga rattlesnake, has declined as noted by the northeasterly contraction in the range and by the loss of area occupied within the analysis units (see pp. 52–55 in the SSA report). Overall, there has been more than a 46 percent reduction of extent of occurrence rangewide (Table 2). This

loss has not been uniform, with the western analysis unit encompassing most of this decline (69 percent reduction in extent of occurrence in the western analysis unit). However, losses of 43 percent and 32 percent of the extent of occurrence in the central analysis unit and eastern analysis unit, respectively, are notable as well. The results are not a true measure of area occupied by the species, but rather a coarse evaluation to make relative comparison among years. The reasons for this are twofold: (1) The calculations are done at the county, rather than the population, level; and (2) if at least one population was projected to be extant, the entire county was included in the analysis, even if other populations in the county were projected to be extirpated. Assuming that loss of range equates to loss of adaptive diversity, the degree of representation of the eastern massasauga rattlesnake has declined since historical conditions.

TABLE 2—THE PERCENT REDUCTION IN EXTENT OF OCCURRENCE FROM HISTORICAL TO PRESENT DAY

[WAU = western analysis unit, CAU = central analysis unit, EAU = eastern analysis unit]

Analysis unit	Percent reduction
WAU .....	69
CAU .....	43
EAU .....	32
Rangewide .....	46



The redundancy of the eastern massasauga rattlesnake has also declined since historical conditions. Potential catastrophic events relevant to eastern massasauga rattlesnake populations include disease, flooding, and drought. We were unable to find sufficient information on the likelihood of disease outbreaks, the factors that affect disease spread, and the magnitude of impact on eastern massasauga rattlesnake populations to assess the risk from a catastrophic disease outbreak. Similarly, we were unable to assess flooding as a catastrophic risk, but we did consider the impacts of flooding and disease as general factors affecting the species in our assessment. We assess the vulnerability of unit-wide extirpation due to varying drought intensities below. Extreme fluctuations in the water table may negatively affect body condition for the following active season, cause early emergence, or cause direct mortality (Harvey and Weatherhead 2006, p. 71; Smith 2009, pp. vii, 33, 38–39). Changes in water levels under certain circumstances can cause mortality to individuals, particularly during hibernation (Johnson *et al.* 2000, p. 26; Kingsbury 2002, p. 38) when the snakes are underwater. The water in the hibernacula protects the eastern massasauga rattlesnake from dehydration and freezing, and, therefore, dropping the levels in the winter leaves the snakes vulnerable to both (Kingsbury 2002, p. 38; Moore and Gillingham 2006, p. 750; Smith 2009, p. 5). Because individual eastern massasauga rattlesnakes often return to the same hibernacula year after year, dropping water levels in hibernacula could potentially decimate an entire population if the majority of individuals in that population hibernate in the same area.

The Drought Monitor (a weekly map of drought conditions that is produced jointly by the National Oceanic and Atmospheric Administration, the U.S. Department of Agriculture, and the National Drought Mitigation Center (NDMC) at the University of Nebraska-Lincoln) classifies general drought areas by intensity, with D1 being the least intense drought and D4 being the most intense drought. For the eastern massasauga rattlesnake, the risk of unit-wide extirpation due to a catastrophic drought varies by analysis unit and by the level of drought considered. Experts believe drought intensities of magnitude D2 or higher are likely to make the species more vulnerable to overwinter mortality and cause catastrophic impacts to eastern massasauga rattlesnake populations. In the central

and eastern analysis units, the annual frequency rate for a D3 or D4 drought is zero, so there is little to no risk of unit-wide extirpation regardless of how broadly dispersed the species is within the unit. In the eastern analysis unit, the annual frequency rate for a D2 drought is also zero. Portions of the central analysis unit are at risk of a D2-level catastrophic drought; populations in the southern portion of the central analysis unit and scattered portions in the north are at risk from such a drought. In the western analysis unit, the risk of unit-wide extirpation based on the frequency of a D3 drought is low, but the risk of losing clusters of populations within the western analysis unit is notable; 5 of the 8 population clusters are vulnerable to a catastrophic drought. The probability of unit-wide extirpation in the western analysis unit is notably higher with D2 frequency rates; 7 of the 8 clusters of populations are at risk of D2-level catastrophic drought. Thus, the probability of losing most populations within the western analysis unit due to a catastrophic drought is high.

#### *Assessment of Threats and Conservation Measures*

The most prominent risk factors affecting the eastern massasauga rattlesnake include habitat loss and fragmentation, especially through development and vegetative succession, road mortality, hydrologic alternation resulting in drought or flooding, persecution, collection, and mortality of individuals as a result of post-emergent (after hibernation) prescribed fire and mowing. Habitat loss includes direct habitat destruction of native land types (*e.g.*, grassland, swamp, fen, bog, wet prairie, sedge meadow, marshland, peatland, floodplain forest, coniferous forest) due to conversion to agricultural land, development, and infrastructure associated with development (roads, bridges). Because eastern massasauga rattlesnake habitat varies seasonally and also varies over its range, the destruction of even a portion of a population's habitat (*e.g.*, hibernacula or gestational sites) causes a negative effect to individual snakes, thus reducing the numbers of individuals in a population and, in turn, reducing the viability of that population. Habitat is also lost due to fragmentation, succession, exotic species invasion, dam construction, fire suppression, water level manipulation, and other incompatible habitat modifications (Jellen 2005, p. 33). These non-development-related habitat losses continue even in publicly held areas protected from development.

Vegetative succession is a major contributor to habitat loss (Johnson and

Breisch 1993, pp. 50–53; Reinert and Buskar 1992, pp. 56–58). The open vegetative structure, typical of eastern massasauga rattlesnake habitat, provides the desirable thermoregulatory areas, increases prey densities by enhancing the growth of sedges and grasses, and provides retreat sites. Degradation of eastern massasauga rattlesnake habitat typically happens through woody vegetation encroachment or the introduction of nonnative plant species. These events alter the structure of the habitat and make it unsuitable for the eastern massasauga rattlesnake by reducing and eventually eliminating thermoregulatory and retreat areas. Fire suppression has led to the widespread loss of open canopy habitats through succession (Kingsbury 2002, p. 37). Alteration in habitat structure and quality can also affect eastern massasauga rattlesnakes by reducing the forage for the species' prey base (Kingsbury 2002, p. 37).

An effective tool for controlling vegetative succession is the use of prescribed fire, which kills or temporarily sets back the growth of woody vegetation, retards the growth of undesirable species, and stimulates the response of prairie species (Johnson *et al.* 2000, p. 25). Mowing and herbicide application are two additional strategies, often used in conjunction with prescribed burning, to control woody vegetation and invasive species encroachment. However, direct mortality of snakes can result from exposure to fire or mowers, if these activities occur when the snakes are out of their hibernacula (post-emergent fire) (Cross 2009, pp. 18, 19, 24; Cross *et al.* 2015, p. 355; Dreslik 2005, p. 180; Dreslik *et al.* 2011, p. 22; Durbian 2006, p. 333).

Roads, bridges, and other structures constructed in eastern massasauga rattlesnake habitat fragment the snakes' habitat and impact the species both through direct mortality as snakes are killed trying to cross these structures (Shepard *et al.* 2008b, p. 6), as well as indirectly through the loss of access to habitat components necessary for the survival of the snakes.

Because of the fear and negative perception of snakes, many people have a low interest in snakes or their conservation and consequently large numbers of snakes are deliberately killed (Whitaker and Shine 2000, p. 121; Alves *et al.* 2014, p. 2). Human-snake encounters frequently result in the death of the snake (Whitaker and Shine 2000, pp. 125–126). Given the species' site fidelity and ease of capture once located, the eastern massasauga rattlesnake is particularly susceptible to

collection. Poaching and unauthorized collection of the eastern massasauga rattlesnake for the pet trade is a factor contributing to declines that has significant impact on this species (*e.g.*, Jellen 2005, p. 11; Baily *et al.* 2011, p. 171).

Assessing the occurrence of the above-mentioned risk factors, we found that 97 percent of the presumed extant eastern massasauga rattlesnake populations have at least one risk factor (with some degree of impact on the species) currently affecting the site. Unmanaged vegetative succession is the most commonly occurring risk factor, with 75 percent of sites being impacted by succession. Vegetative succession makes eastern massasauga rattlesnake habitat unsuitable by reducing or eliminating thermoregulatory and retreat areas. Post-emergent fire is the second most common risk factor (69 percent of sites), and fragmentation is the third most common factor (67 percent of sites). Some form of habitat loss or modification is occurring at 52 percent of the sites; 17 percent of these sites are at risk of total habitat loss (all habitat at the site being destroyed or becoming unusable by the species). Among the other risk factors considered, water fluctuation, collection or persecution, and road mortality occur at 38 percent, 35 percent, and 15 percent of the sites, respectively.

We also considered the magnitude of impact of the various risk factors. The Faust model indicates that the risk factors most likely to push a population to quasi-extirpation within 25 years (high magnitude risk factors) are late-stage vegetative succession, high habitat fragmentation, moderate habitat fragmentation, total habitat loss, and moderate habitat loss or modification. Our analysis shows that 84 percent of eastern massasauga rattlesnake populations are impacted by at least one high magnitude risk factor, and 63 percent are affected by multiple high magnitude risk factors. These risk factors are chronic and are expected to continue with a similar magnitude of impact into the future, unless ameliorated by increased implementation of conservation actions. Furthermore, these multiple factors are not acting independently, but are acting together, which can result in cumulative effects that lower the overall viability of the species.

In addition to the above risk factors, other factors may be affecting individuals. Disease (whether new or currently existing at low levels but increasing in prevalence) is another emerging and potentially catastrophic stressor to eastern massasauga

rattlesnake populations. For example, snake fungal disease (SFD) is an emerging disease found in populations of wild snakes in the eastern and midwestern United States, and the eastern massasauga rattlesnake is one of the species that has recently been diagnosed with SFD (Sleeman 2013, p. 1; Allender *et al.* 2011, p. 2383). However, we do not have sufficient information on the emergence and future spread of SFD or other diseases to reliably model this stressor for forecasting future conditions for the rattlesnake. Our quantitative modeling analysis also does not consider two other prominent risk factors, road mortality and persecution, due to a lack of specific information on the magnitude of impacts from these factors. Additionally, this species is vulnerable to the effects of climate change through increasing intensity of winter droughts and increasing risk of summer floods, particularly in the southwest part of its range (Pomara *et al.*, undated; Pomara *et al.* 2014, pp. 95–97). Thus, while we acknowledge and considered that disease, road mortality, persecution/collection, and climate changes are factors that affect the species, and which may increase or exacerbate existing threats in the future, our viability assessment does not include a quantitative analysis of these stressors.

Of the 267 sites with extant eastern massasauga populations, 64 percent (171) occur on land (public and private) that is considered protected from development; development may result in loss or fragmentation of habitat. Signed candidate conservation agreements with assurances (CCAAs) with the Service exist for two of these populations. These CCAAs include actions to mediate the stressors acting upon the populations and provide management prescriptions to perpetuate eastern massasauga rattlesnakes on these sites. For example, at an additional 22 sites, habitat restoration or management, or both, is occurring. Information is not available for these sites to know if habitat management has mediated the current risk factors acting upon the populations; the Faust model, however, included these activities in the projections of trends, and, thus, our future condition analyses considered these activities and assumed that ongoing restoration would continue into the future. Lastly, another 18 populations have conservation plans in place. Although these plans are intended to manage for the eastern massasauga rattlesnake, sufficient site-specific information is not available to assess whether these restoration or

management activities are currently ameliorating the stressors acting upon the population. Thus, we were unable to include the potential beneficial impacts into our quantitative analyses.

#### *Species' Projected Future Condition*

To assess the future resiliency, representation, and redundancy of the eastern massasauga rattlesnake, we used the Faust model results to predict the number of self-sustaining populations likely to persist over the next 10, 25, and 50 years, and extrapolated those proportions to the remaining presumed extant populations to forecast the number of self-sustaining populations likely to persist at the future time scales. We then predicted the change in representation and redundancy.

The projected future resiliency (the number of self-sustaining populations) varies across the eastern massasauga rattlesnake's range. In the western analysis unit, 83 percent of the modeled populations are projected to have a declining trajectory and 94 percent of the populations a low probability of persistence (*i.e.*, the probability of remaining above the quasi-extirpated threshold of 25 adult females;  $p(P) < 0.90$ ) by year 25, and, thus, the number of forecasted populations likely to be extant declines over time. By year 50, 17 of the 21 presumed extant populations are projected to be extirpated (*i.e.*, no individuals remain;  $n=15$ ) or quasi-extirpated ( $n=2$ ), with only 1 population projected to be self-sustaining. The resiliency of the western analysis unit is forecasted to decline over time. The situation is similar in the central and eastern analysis units, but to a lesser degree. In the central analysis unit, 70 percent of the modeled populations are projected to have a declining trajectory and 78 percent a low probability of persistence, and thus, by year 50, 196 of the 294 presumed extant populations are projected to be extirpated ( $n=174$ ) or quasi-extirpated ( $n=22$ ), and 54 populations to be self-sustaining. In the eastern analysis unit, 83 percent of the modeled populations are projected to have a declining trajectory and 92 percent of the populations are projected to have a low probability of persistence, and, thus, by year 50, 61 of the 73 presumed extant populations are projected to be extirpated ( $n=55$ ) or quasi-extirpated ( $n=6$ ), and 6 to be self-sustaining. Rangewide, 61 (16 percent) of the 388 populations that are currently presumed to be extant will be self-sustaining by year 50.

We calculated the future extent of occurrence (representation) for the 57 modeled populations (Faust model) and

for the populations forecasted to persist at years 10, 25, and 50 by using the counties occupied by populations to evaluate the proportions of the range falling within each analysis unit and the change in spatial distribution within each analysis unit. Our results indicate that eastern massasauga rattlesnake populations are likely to persist in all three analysis units; however, the distribution of the range is predicted to contract northeasterly, and the geographic area occupied will decline within each analysis unit over time. The results project a 65 percent reduction of the area occupied by the eastern massasauga rattlesnake rangewide by year 50, with the western analysis unit comprising most of the decline (83 percent reduction within the unit). These projected declines in extent of occurrence across the species' range and within the analysis units suggest that loss of adaptive diversity is likely to occur.

We assessed the ability of eastern massasauga rattlesnake populations to withstand catastrophic events (redundancy) by predicting the number of self-sustaining populations in each analysis unit and the spatial dispersion of those populations relative to future drought risk.

The future redundancy (the number and spatial dispersion of self-sustaining populations) across the eastern massasauga rattlesnake's range varies. In the western analysis unit, the risk of analysis-unit-wide extirpations from either a D2 or D3 catastrophic drought is high, given the low number of populations forecasted to be extant. Coupling this with a likely concurrent decline in population clusters (reduced spatial dispersion), the risk of analysis-unit-wide extirpation is likely even higher. Thus, the level of redundancy in the western analysis unit is projected to decline into the future.

Conversely, in the eastern analysis unit, there is little to no risk of a D2- or D3-level drought, and consequently the probability of unit-wide extirpation due to a catastrophic drought is very low. Thus, redundancy, from a catastrophic drought perspective, is not expected to decline over time in the eastern analysis unit.

Similarly, in the central analysis unit, there is little to no risk of a D3 catastrophic drought. The southern and northern portions of the central analysis unit, however, are at risk of a D2-level catastrophic drought. Losses of populations in these areas may lead to portions of the central analysis unit being extirpated and will also increase the probability of analysis-unit-wide extirpation. However, the risk of

analysis-unit-wide extirpation will likely remain low given the presumed persistence of multiple populations scattered throughout low drought risk areas. Thus, from a drought perspective, the level of redundancy is not likely to be noticeably reduced in the central analysis unit (see Figure 4.3 (p. 60) in the SSA report for a detailed map). A caveat to this conclusion, however, is that the forecasted decline in extent of occurrence suggests our data are too coarse to tease out whether the forecasted decline in populations will lead to substantial losses in spatial distribution, and, thus, the risk of analysis-unit-wide extirpation might be higher than predicted. Therefore, the future trend in the level of redundancy in the central analysis unit is less clear than for either the western analysis unit or the eastern analysis unit.

Given the loss of populations to date, portions of the eastern massasauga rattlesnake's range are in imminent risk of extirpation in the near term. Specifically, our analysis suggests there is a high risk of extirpation of the western analysis unit and southern portions of the central and eastern analysis units within 10 to 25 years. Although self-sustaining populations are expected to persist, loss of populations within the central and eastern analysis units are expected to continue as well, and, thus, those populations are at risk of extirpation in the future. These losses have led to reductions in resiliency and redundancy across the range and may lead to irreplaceable loss of adaptive diversity across the range of the eastern massasauga rattlesnake, thereby leaving the eastern massasauga rattlesnake less able to adapt to a changing environment into the future. Thus, the viability of the eastern massasauga rattlesnake has and is projected to continue to decline over the next 50 years.

The reader is directed to the SSA for a more detailed discussion of our evaluation of the biological status of the eastern massasauga rattlesnake and the influences that may affect its continued existence. Our conclusions are based upon the best available scientific and commercial data.

#### **Determination**

##### *Standard for Review*

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.

Until recently, the Service has presented its evaluation of information under the five listing factors in an outline format, discussing all of the information relevant to any given factor and providing a factor-specific conclusion before moving to the next factor. However, the Act does not require findings under each of the factors, only an overall determination as to status (e.g., threatened, endangered, not warranted). Ongoing efforts to improve the efficiency and efficacy of the Service's implementation of the Act have led us to present this information in a different format that we believe leads to greater clarity in our understanding of the science, its uncertainties, and the application of our statutory framework to that science. Therefore, while the presentation of information in this rule differs from past practice, it differs in format only. We have evaluated the same body of information that we would have evaluated under the five listing factors outline format, we are applying the same information standard, and we are applying the same statutory framework in reaching our conclusions.

##### *Determination*

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the eastern massasauga rattlesnake and how those threats are affecting the species now and into the future. The species faces an array of threats that have and will likely continue (often increasingly) to contribute to declines at all levels (individual, population, and species). The loss of habitat was historically, and continues to be, the threat with greatest impact to the species (Factor A), either through development or through changes in habitat structure due to vegetative succession. Disease, new or increasingly prevalent, is another emerging and potentially catastrophic threat to eastern massasauga rattlesnake populations (Factor C). As population sizes decrease, localized impacts, such as collection and persecution of individuals, also increases the risk of extinction (Factor B). These risk factors are chronic and are expected to

continue with a similar magnitude of impact into the future. Additionally, this species is vulnerable to the effects of climate change through increasing intensity of winter droughts and increasing risk of summer floods (Factor E), particularly in the southwest part of its range (Pomera *et al.*, undated; Pomera *et al.* 2014, pp. 95–97). Some conservation actions (*e.g.*, management of invasive species and woody plant encroachment, timing prescribed fires to avoid the active season) are currently in place, which provide protection and enhancement to some eastern massasauga rattlesnake populations. However, our analysis projects that eastern massasauga rattlesnake populations will continue to decline even if current conservation measures are continued into the future. As a result of these factors, the numbers and health of eastern massasauga rattlesnake populations are anticipated to decline across the species' range, and particularly in the southwestern portions of the range, which have already experienced large losses relative to historical conditions. Further, the reductions in eastern massasauga rattlesnake population numbers, distribution, and health forecast in the SSA report represent the best case scenario for the species, and future outcomes may be worse than predicted. Because of the type of information available to us, the analysis assumes that threat magnitude and pervasiveness remains constant into the future, while it is more likely that the magnitude of threats will increase into the future throughout the range of the species, or that novel threats may arise. In addition, some currently identified threats are not included in the quantitative analysis (*e.g.*, disease, road mortality, persecution/collection, and climate changes), because we lack specific, quantitative information on how these factors may affect the species in the future. These factors and their potential effects on the eastern massasauga rattlesnake were discussed and considered as part of the determination.

The species' viability is also affected by losses of populations from historical portions of its range, which may have represented unique genetic and ecological diversity. The species is extirpated from Minnesota and Missouri, and many populations have been lost in the western part of the species' range. Rangelwide, the extent of occurrence is predicted to decline by 65 percent by year 50. Actual losses in extent of occurrence will likely be greater than estimated because of the

methodology used in our analysis, as discussed above.

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 an endangered species within the foreseeable future throughout all or a significant portion of its range." 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, either now (endangered species) or in the foreseeable future (threatened species). Based on the biology of the eastern massasauga rattlesnake and the degree of uncertainty of future predictions, we find that the "foreseeable future" for the species is best defined as 50 years. Forecasting to 50 years, the current threats are still reliably foreseeable at the end of that time span based on models, available information on threats impacting the species, and other analyses; however, we cannot reasonably predict future conditions for the species beyond 50 years. Our uncertainty in forecasting the status of the species beyond 50 years is also increased by our methodology of extrapolating from a subset of modeled populations to all extant or potentially extant populations.

We find that the eastern massasauga rattlesnake is likely to become endangered throughout its entire range within the foreseeable future based on the severity and pervasiveness of threats currently impacting the species. We find that the eastern massasauga rattlesnake is likely to be on the brink of extinction within the foreseeable future due to the projected loss of populations rangewide (loss of resiliency and redundancy) and the projected loss of its distribution within large portions of its range. This loss in distribution could represent a loss of genetic and ecological adaptive diversity, as well as a loss of populations from parts of the range that may provide future refugia in a changing climate. Furthermore, many remaining populations are currently experiencing high magnitude threats. Although these high magnitude threats are not currently pervasive rangewide, they are likely to become pervasive in the foreseeable future as they expand and impact additional populations throughout the species' range. Therefore, on the basis of the best available scientific and commercial data, we propose listing the eastern massasauga rattlesnake as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

We find that an endangered species status is not appropriate for the eastern massasauga rattlesnake. In assessing whether the species is in danger of extinction, we used the plain language understanding of this phrase as meaning "presently in danger of extinction." We considered whether extinction is a plausible condition as the result of the established, present condition of the eastern massasauga rattlesnake. Based on the species' present condition, we find that the species is not currently on the brink of extinction. The timeframe for conditions that render the species on the brink of extinction is beyond the present. While the magnitude of threats affecting populations is high, threats are not acting at all sites at a sufficient magnitude to result in the species presently being on the brink of extinction. Additionally, some robust populations still exist, and we anticipate they will remain self-sustaining.

The SSA results represent the best-case scenario for this species. For example, the analysis treated populations of unknown status as if they were all extant, likely resulting in an overestimate of species' viability. Thus, we considered whether treating the populations with an "unknown" status as currently extant in the analysis had an effect on the status determination. We examined whether the number of self-sustaining populations would change significantly over time if we instead assumed that all populations with an "unknown" status were extirpated. The results are a more severe projected decline in eastern massasauga rattlesnake's status than our analysis projects when we assign the unknown status populations to the "extant" category, but not to the extent that we would determine the species to be currently in danger of extinction.

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or threatened species throughout all or a significant portion of its range. Because we have determined that eastern massasauga rattlesnake is threatened throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014).

## Critical Habitat

### Prudence Determination

#### Background

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographic area occupied by a 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) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

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, we designate critical habitat at the time the 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 circumstances exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We have determined that both circumstances apply to the eastern massasauga rattlesnake. This determination involves a weighing of the expected increase in threats associated with a critical habitat designation against the benefits gained by a critical habitat designation. An explanation of this “balancing” evaluation follows.

#### Increased Threat to the Taxon by Designating Critical Habitat

Poaching and unauthorized collection (Factor B) of the eastern massasauga rattlesnake for the pet trade is a factor contributing to declines, and remains a threat with significant impact to this species, commanding high black market value. For example, an investigation into reptile trafficking reports documented 35 eastern massasauga rattlesnakes (representing nearly one entire wild source population) collected in Canada and smuggled into the United

States, most destined for the pet trade (Thomas 2010, unpaginated). Snakes in general are known to be feared and persecuted by people, and venomous species even more so (Ohman and Mineka 2003, p. 7; Whitaker and Shine 2000, p. 121). As a venomous snake, the eastern massasauga rattlesnake is no exception, with examples of roundups or bounties for them persisting through the mid-1900s (Bushey 1985, p. 10; Vogt 1981; Wheeling, IL, Historical Society Web site accessed 2015), and more recent examples of persecution in Pennsylvania (Jellen 2005, p. 11) and Michigan (Baily *et al.* 2011, p. 171). The process of designating critical habitat would increase human threats to the eastern massasauga rattlesnake by increasing the vulnerability of this species to unauthorized collection and trade through public disclosure of its locations. Designation of critical habitat requires the publication of maps and a specific narrative description of critical habitat in the **Federal Register**. The degree of detail in those maps and boundary descriptions is far greater than the general location descriptions provided in this proposal to list the species as a threatened species. Furthermore, a critical habitat designation normally results in the news media publishing articles in local newspapers and special interest Web sites, usually with maps of the critical habitat. We have determined that the publication of maps and descriptions outlining the locations of this species would further facilitate unauthorized collection and trade, as collectors would know the exact locations where eastern massasauga rattlesnakes occur. While eastern massasauga rattlesnakes are cryptic in coloration, they can still be collected in high numbers during certain parts of their active seasons (*e.g.*, spring egress from hibernation or summer gestation). Also, individuals of this species are often slow moving and have small home ranges. Therefore, publishing specific location information would provide a high level of assurance that any person going to a specific location would be able to successfully locate and collect specimens, given the species’ site fidelity and ease of capture once located. Due to the threat of unauthorized collection and trade, a number of biologists working for State and local conservation agencies that manage populations of eastern massasauga rattlesnakes have expressed to the Service serious concerns with publishing maps and boundary descriptions of occupied habitat areas that could be associated with critical habitat designation (Redmer 2015, pers.

comm.). In addition, when providing us with data on the current status of populations across the range of the species, one State agency redacted site-specific information, while others who provided the information expressed strong concerns that we should not disclose sensitive locality information. We, therefore, find that designating critical habitat could negate the efforts of State and local conservation agencies to restrict access to location information that could significantly affect future efforts to control the threat of unauthorized collection and trade of eastern massasauga rattlesnakes.

#### Benefits to the Species From Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical and biological features that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species. Critical habitat only provides protections where there is a Federal nexus, that is, those actions that come under the purview of section 7 of the Act. Critical habitat designation has no application to actions that do not have a Federal nexus. Section 7(a)(2) of the Act mandates that Federal agencies, in consultation with the Service, evaluate the effects of their proposed actions on any designated critical habitat. Similar to the Act’s requirement that a Federal agency action not jeopardize the continued existence of listed species, Federal agencies have the responsibility not to implement actions that would destroy or adversely modify designated critical habitat. Critical habitat designation alone, however, does not require that a Federal action agency implement specific steps toward species recovery. Eastern massasauga rattlesnakes primarily occur on non-Federal lands. The eastern massasauga rattlesnake does occur on land managed by the Service (Wisconsin), National Park Service (Indiana), U.S. Army Corps of Engineers (Illinois and Wisconsin), and U.S. Forest Service (Michigan). We anticipate that some actions on non-Federal lands will have a Federal nexus (for example, requirement for a permit to discharge dredge and fill material from the U.S. Army Corps of Engineers) for an action that may adversely affect

the eastern massasauga rattlesnake. There is also the potential that some proposed actions by the Federal agencies listed above may adversely affect the eastern massasauga rattlesnake. In those circumstances where it has been determined that a Federal action (including actions involving non-Federal lands) may affect the eastern massasauga rattlesnake, the action would be reviewed under section 7(a)(2) of the Act. We anticipate that the following Federal actions are some of the actions that could adversely affect the eastern massasauga rattlesnake: certain direct or indirect (*e.g.*, funded through Federal grants) habitat management activities such as post-emergent mowing or prescribed fire, regional flood control activities, or discharging fill material (or associated activities) into jurisdictional waters of the United States. Under section 7(a)(2) of the Act, project impacts would be analyzed and the Service would determine if the Federal action would jeopardize the continued existence of the eastern massasauga rattlesnake. The designation of critical habitat would ensure that a Federal action would not result in the destruction or adverse modification of the designated critical habitat. Consultation with respect to critical habitat would provide additional protection to a species only if the agency action would result in the destruction or adverse modification of the critical habitat but would not jeopardize the continued existence of the species. If we list the species but do not designate critical habitat, areas that support the eastern massasauga rattlesnake would continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as appropriate. If we list the species, Federal actions affecting the eastern massasauga rattlesnake even in the absence of designated critical habitat areas would still benefit from consultation pursuant to section 7(a)(2) of the Act and could still result in jeopardy findings.

Another potential benefit to the eastern massasauga rattlesnake from designating critical habitat is that such a designation serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. Generally, providing this information helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the affected species. However, simply publicizing

the proposed listing of the species also serves to notify and educate landowners, State and local governments, and the public regarding important conservation values. Furthermore, we have worked with State conservation agencies and the Association of Zoos and Aquariums (Eastern Massasauga Rattlesnake Species Survival Plan) to develop outreach and education materials that target a diverse audience, including public and private landowners, organizations, and the media. The eastern massasauga rattlesnake outreach actions implemented to date include producing and distributing brochures and informational Web sites, working with media outlets (newspaper and television) on eastern massasauga stories, and giving presentations to conservation agencies or the public. In addition, the Service provides a staff advisor to the Eastern Massasauga Rattlesnake Species Survival Plan, which provides a unique opportunity to help frame messaging about this species to many thousands of visitors to North American zoos. Due to the extensive outreach and conservation efforts already underway that benefit the eastern massasauga rattlesnake, we find that the designation of critical habitat would provide limited additional outreach value.

#### Increased Threat to the Species Outweighs the Benefits of Critical Habitat Designation

Upon reviewing the available information, we have determined that the designation of critical habitat would increase the threat to eastern massasauga rattlesnakes from persecution, unauthorized collection, and trade. We find that the risk of increasing this threat to a significant degree by publishing location information in a critical habitat designation outweighs the benefits of designating critical habitat. A limited number of U.S. species listed under the Act have commercial value in trade. The eastern massasauga rattlesnake is one of them. Due to the market demand and willingness of individuals to collect eastern massasauga rattlesnakes without authorization, and the willingness of others to kill them out of fear or wanton dislike, we have determined that any action that publicly discloses the location of eastern massasauga rattlesnakes (such as critical habitat) puts the species in further peril. Many populations of the eastern massasauga rattlesnake are small, and the life history of the species makes it vulnerable to additive loss of individuals (for example, loss of

reproductive adults in numbers that would exceed those caused by predation and other non-catastrophic natural factors), requiring a focused and comprehensive approach to reducing threats. Several measures are currently being implemented to address the threat of persecution and unauthorized collection and trade of eastern massasauga rattlesnakes, and additional measures will be implemented if the species is listed under the Act. One of the basic measures to protect eastern massasauga rattlesnakes from unauthorized collection and trade is restricting access to information pertaining to the location of the species' populations. Publishing maps and narrative descriptions of eastern massasauga rattlesnake critical habitat would significantly affect our ability to reduce the threat of persecution, as well as unauthorized collection and trade. Therefore, based on our determination that critical habitat designation would increase the degree of threat to the eastern massasauga rattlesnake, and, at best, provide nominal benefits for this taxon, we find that the increased threat to the eastern massasauga rattlesnake from the designation of critical habitat significantly outweighs any benefit of designation.

#### Summary of Prudency Determination

We have determined that the designation of critical habitat would increase persecution, unauthorized collection, and trade threats to the eastern massasauga rattlesnake. The eastern massasauga rattlesnake is highly valued in the pet trade, and that value is likely to increase as the species becomes rarer, and as a venomous species, it also is the target of persecution. Critical habitat designation may provide some benefits to the conservation of the eastern massasauga rattlesnake, for example, by identifying areas important for conservation. We have determined, however, that the benefits of designating critical habitat for the eastern massasauga rattlesnake are minimal. We have concluded that, even if some benefit from designation may exist, the increased threat to the species from unauthorized collection and persecution outweighs any benefit to the species. A determination to not designate critical habitat also supports the measures taken by the States to control and restrict information on the locations of the eastern massasauga rattlesnake and to no longer make location and survey information readily available to the public. We have, therefore, determined in accordance with 50 CFR 424.12(a)(1) that it is not prudent to designate critical habitat for

the eastern massasauga rattlesnake. However, we seek public comment on our determination that designation of critical habitat is not prudent (see **ADDRESSES**, above, for instructions on how to submit comments).

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

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 calls for 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 concurrently or shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, 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 (composed of species experts, Federal

and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (<http://www.fws.gov/ endangered>), or from our Chicago 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, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation) and management, research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, and Wisconsin would be eligible for Federal funds to implement management actions that promote the protection or recovery of the eastern massasauga rattlesnake. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the eastern massasauga rattlesnake is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the

Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Service (Upper Mississippi National Wildlife and Fish Refuge, Wisconsin), U.S. Forest Service (Huron-Manistee National Forest, Michigan), National Park Service (Indiana Dunes National Lakeshore, Indiana), or military lands administered by branches of the Department of Defense (Fort Grayling, Michigan); flood control projects (Lake Carlyle, Illinois) and issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; construction and maintenance of roads or highways by the Federal Highway Administration; construction and maintenance of pipelines or rights-of-way for transmission of electricity, and other energy related projects permitted or administered by the Federal Energy Regulatory Commission.

Under section 4(d) of the Act, the Service has discretion to issue regulations that we find necessary and advisable to provide for the conservation of threatened species. The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened wildlife. The prohibitions of section 9(a)(1) of the Act, as applied to threatened wildlife and codified at 50 CFR 17.31, 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 to attempt any of these) threatened wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to

possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, for economic hardship, for zoological exhibition, for educational purposes, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

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 species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Pre-emergent fire: Prescribed burns to control vegetation occurring prior to eastern massasauga rattlesnake emergence from hibernacula (typically in late March to early April); and

(2) Pre-emergent mowing: Mowing of vegetation prior to eastern massasauga rattlesnake emergence from hibernacula.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Development of land or the conversion of native land to agricultural land, including the construction of any related infrastructure (e.g., roads, bridges, railroads, pipelines, utilities) in occupied eastern massasauga rattlesnake habitat;

(2) Certain dam construction: In an area where the dam alters the habitat from native land types (e.g., grassland, swamp, fen, bog, wet prairie, sedge meadow, marshland, peatland, floodplain forest, coniferous forest) causing changes in hydrology at hibernacula or where the dam causes fragmentation that separates snakes from hibernacula or gestational sites;

(3) Post-emergent prescribed fire: Prescribed burns to control vegetation that are conducted after snakes have emerged from their hibernacula and are thus exposed to the fire;

(4) Post-emergent mowing: Mowing of vegetation after snakes have emerged from hibernacula can cause direct mortality by contact with blades or being run over by tires on mower;

(5) Certain pesticide use;

(6) Water level manipulation: Flooding or hydrologic drawdown affecting eastern massasauga rattlesnake individuals or habitat, particularly hibernacula;

(7) Certain research activities: Collection and handling of eastern massasauga rattlesnake individuals for research that may result in displacement or death of the individuals; and

(8) Poaching or collecting individuals.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Chicago Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Required Determinations

##### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the

sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*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).

#### References Cited

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Chicago Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this proposed rule are the staff members of the Chicago Ecological Services Field Office.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### **PART 17—[AMENDED]**

- 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

- 2. In § 17.11(h), add an entry for “Rattlesnake, eastern massasauga” to the List of Endangered and Threatened Wildlife in alphabetical order under REPTILES to read as set forth below:

#### **§ 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						
*	*	*	*	*	*		*
REPTILES	.....	.....	.....		.....	.....	.....
*	*	*	*	*	*		*
Rattlesnake, eastern massasauga.	<i>Sistrurus catenatus</i>	U.S.A. (IL, IN, IA, MI, MN, MO, NY, OH, PA, WI); Canada (Ontario).	Entire .....	T	.....	NA	NA
*	*	*	*	*	*		*

\* \* \* \* \*

Dated: September 11, 2015.  
**James W. Kurth,**  
*Acting Director, U.S. Fish and Wildlife Service.*  
 [FR Doc. 2015-24780 Filed 9-29-15; 8:45 am]  
**BILLING CODE 4310-55-P**

# Notices

Federal Register

Vol. 80, No. 189

Wednesday, September 30, 2015

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

### Agricultural Marketing Service

[Doc. No. AMS-NOP-15-0059; NOP-15-14]

#### National Organic Standards Board (NOSB): Call for Nominations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice: Call for nominations.

**SUMMARY:** The National Organic Standards Board (NOSB) was established to assist in the development of standards for substances to be used in organic production and to advise the Secretary on the implementation of the Organic Foods Production Act of 1990 (OFPA). Through this Notice, the USDA is requesting nominations to fill one (1) unexpected vacancy on the NOSB for an environmentalist/resource conservationist position. The Secretary of Agriculture will appoint one person to this position to serve on the NOSB for the remainder of the term for this position, which began in January 24, 2015, and goes through January 23, 2020.

**DATES:** Written nominations must be postmarked on or before 30 days from publication of this Notice

**ADDRESSES:** Nomination applications are to be mailed to Michelle Arsenault, USDA-AMS-NOP, 1400 Independence Avenue SW., Room 2648-S., Ag Stop 0268, Washington, DC 20250; or electronically sent via Email to: [Michelle.Arsenault@ams.usda.gov](mailto:Michelle.Arsenault@ams.usda.gov). Electronic submittals by email are preferred.

**FOR FURTHER INFORMATION CONTACT:** Michelle Arsenault, (202) 720-0081; Email: [Michelle.Arsenault@ams.usda.gov](mailto:Michelle.Arsenault@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** The OFPA of 1990, as amended (7 U.S.C. Section 6501 *et seq.*), requires the Secretary to establish an organic certification

program for producers and handlers of agricultural products that have been produced using organic methods. The OFPA includes the requirement that the Secretary establish a NOSB in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 *et seq.*). The purpose of the NOSB is to assist in the development of a proposed National List of Allowed and Prohibited Substances and to advise the Secretary on the implementation of the OFPA.

The NOSB is composed of 15 members; including 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists/resource conservationists, 3 public/consumer representatives, a scientist, and a certifying agent. Through this Notice, USDA is seeking nominations to fill one (1) unexpected vacancy on the NOSB for an environmentalist/resource conservationist position. The Secretary of Agriculture will appoint one person to this position immediately to serve for the remainder of the term that began in January 24, 2015, and goes through January 23, 2020.

As per the OFPA, individuals seeking appointment to the NOSB at this time must have expertise in areas of environmental protection and resource conservation as identified under section 6515 of this title. Other selection criteria includes multiple factors, such as: Understanding of organic principles and practical experience in the organic community; demonstrated experience and interest in organic production and organic certification; demonstrated experience with respect to agricultural products produced and handled on certified organic farms; a commitment to the integrity of the organic food and fiber industry; demonstrated experience in the development of public policy such as participation on public or private advisory boards, boards of directors or other comparable organizations; support of consumer and public interest organizations; participation in standards development or involvement in educational outreach activities; the ability to evaluate technical information and to fully participate in Board deliberation and recommendations; the willingness to commit the time and energy necessary to assume Board duties; and other such factors as may be appropriate for specific positions.

To nominate yourself or someone else, please submit: A resume, a cover letter, and a Form AD-755, which can be accessed at: [http://www.ocio.usda.gov/sites/default/files/docs/2012/AD-755\\_Master\\_2012\\_508\\_Ver.pdf](http://www.ocio.usda.gov/sites/default/files/docs/2012/AD-755_Master_2012_508_Ver.pdf). Resumes must be no longer than 5 pages, and include at the beginning a summary of the following information: Current and past organization affiliations; areas of expertise; education; career positions held; any other notable positions held. You may also submit a list of endorsements or letters of recommendation, if desired. Resume and completed requested background information are required for a nominee to receive consideration for appointment by the Secretary.

If USDA receives a request under the Freedom of Information Act (FOIA) (5 U.S.C. 552), for records relating to NOSB nominations, your application materials may be released to the requester. Prior to the release of the information, personally identifiable information protected by the FOIA Privacy Act will be redacted.

Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that the recommendations of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505-0001.

Dated: September 25, 2015.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2015-24800 Filed 9-29-15; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF COMMERCE****Census Bureau****Proposed Information Collection; Comment Request; Survey of State Government Research and Development (R&D)**

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** To ensure consideration, written comments must be submitted on or before November 30, 2015.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [jjessup@doc.gov](mailto:jjessup@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lisa McNelis, U.S. Census Bureau, Economic Reimbursable Surveys Division, 4600 Silver Hill Road, Washington, DC 20233-6900; (888) 340-7525 (or via the Internet at [erd.sgrd@census.gov](mailto:erd.sgrd@census.gov)).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The United States Census Bureau plans to continue to conduct the Survey of State Government Research and Development (SGRD) on behalf of the National Science Foundation (NSF) to measure research and development performed and funded by state governments in the United States.

The NSF Act of 1950, as amended, includes a statutory charge to “provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies in the Federal Government.” Under the aegis of this legislative mandate, NSF has sponsored surveys of research and development (R&D) since 1953, including since 2006 the Survey of State Government R&D. The Census Bureau’s authorization to undertake this work is found at 13 U.S.C. Section 8(b) which provides that

the Census Bureau “may make special statistical compilations and surveys for departments, agencies, and establishments of the Federal government, the government of the District of Columbia, the government of any possession or area (including political subdivisions thereof) . . . State or local agencies, or other public and private persons and agencies.”

The Survey of State Government R&D is the only comprehensive source of state government research and development expenditure data collected on a nationwide scale using uniform definitions, concepts, and procedures. The collection covers the expenditures of all agencies in the fifty state governments, the District of Columbia, and Puerto Rico that perform or fund R&D. The National Science Foundation has coordinated with the Census Bureau for the data collection. The NSF uses this collection to satisfy, in part, its need to collect research and development expenditures data.

Fiscal data provided by respondents aid data users in measuring the effectiveness of resource allocation. The products of this data collection make it possible for data users to obtain information on such things as expenditures according to *source of funding* (e.g., federal funds or state funds), *by performer of the work* (e.g., intramural and extramural to state agencies), *by function* (e.g., agriculture, energy, health, transportation, etc.), *by type of work* (e.g., basic research, applied research, or experimental development) for intramural performance of R&D, and by R&D plant (e.g., construction projects). Final results produced by NSF contain state and national estimates useful to a variety of data users interested in research and development performance including: The National Science Board; the Office of Management and Budget; the Office of Science and Technology Policy and other science policy makers; institutional researchers; and private organizations.

In order to increase the timeliness of the statistics, we plan to change the collection from a biennial survey which collected two years of data to an annual survey collecting one year of data. The state coordinators will no longer be asked to monitor agency response. As a result of this change, the average burden for state coordinators will decrease from 4 hours to 1 hour per response. We are also changing the response mode for state coordinators from a web form to an emailed Excel spreadsheet. We are making changes to the content of the web form which agency respondents are asked to complete. The changes are

designed to capture specific information on source of funds (e.g., internal or external) for R&D performer type (e.g., intramural and extramural); collect information on intramural R&D by type-of-work (e.g., basic research, applied research, and experimental development); and to collect specific information on federal support to states for R&D. In order to obtain this information, we are: (i) Asking state agencies to provide information on the source of funds for extramural performance; (ii) Asking state agencies to provide information on basic research, applied research, and experimental development, but instead of asking for these on the agencies’ total R&D expenditures (as was done previously) this question only applies to agencies with intramural R&D; and (iii) No longer asking agencies to identify how much of their total R&D was supported from federal funds, but have replaced this with a question asking how much R&D funds did the state receive from a list of specific federal departments and independent agencies. These changes will increase the agencies’ average burden from one hour and 45 minutes to 2 hours per response. The total respondent burden will increase as a net result of these changes.

The survey announcements and forms used in the research and development survey are:

**Survey Announcement.** The Governor’s letter is mailed to the Governor’s Office to announce the survey collection and to solicit assignment of a State Coordinator. The State Coordinator’s Announcement is sent electronically at the beginning of each survey period to solicit assistance in identifying state agencies which may perform or fund R&D activities.

**Form SRD-1.** This form contains item descriptions and definitions of the research and development items collected by the Census Bureau on behalf of the NSF. It is used primarily as a worksheet and instruction guide by the state agencies providing research and development expenditure data in their respective states. All states supply their data by electronic means.

**II. Method of Collection**

The Census Bureau will use a web-based collection strategy. State governors are emailed a request to appoint a state coordinator for the survey. Governors are asked to respond within 30 days. State coordinators are then emailed an Excel spreadsheet asking them to identify state agencies that may be active R&D performers. State coordinators are asked to respond within 30 days. State agencies identified

by their respective state coordinators are emailed a pdf version of the form and directed to the Census Bureau's Business Help Site where they can complete the survey form online. Agencies are asked to respond within 60 days.

### III. Data

*OMB Control Number:* 0607–0933.

*Form Number(s):* SRD–1.

*Type of Review:* Regular submission.

*Affected Public:* State Government Agencies.

*Estimated Number of Respondents:* 52 governors, 52 state coordinators and approximately 500 state government agencies.

*Estimated Time per Response:* 5 minutes for each governor, 1 hour for each state coordinator and 2 hours for each state agency surveyed.

*Estimated Total Annual Burden Hours:* 1,056.

*Estimated Total Annual Cost to Public:* \$0.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 42 U.S.C. 1861–76: “National Science Foundation Act of 1950” as amended. Title 13, U.S.C. Section 8(b).

### IV. Request for 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 (including hours and cost) 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.

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: September 25, 2015.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2015–24768 Filed 9–29–15; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Judges Panel of the Malcolm Baldrige National Quality Award

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in closed session Monday through Friday, November 2–6, 2015, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The purpose of this meeting is to review recommendations from site visits, and recommend 2015 Malcolm Baldrige National Quality Award recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

**DATES:** The meeting will be held Monday through Friday, November 2–6, 2015, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The entire meeting will be closed to the public.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, Maryland 20899–1020, telephone number (301) 975–2360, email [robert.fangmeyer@nist.gov](mailto:robert.fangmeyer@nist.gov).

#### SUPPLEMENTARY INFORMATION:

**Authority:** 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. app., notice is hereby given that the Judges Panel will meet Monday through Friday, November 2–6, 2015, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, chosen for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, health care providers, and educational institutions. Members are also chosen who have broad experience in for-profit and nonprofit areas. The purpose of this meeting is to review recommendations from site visits, and recommend 2015 Malcolm Baldrige National Quality

Award recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the Acting Assistant General Counsel for Administration, formally determined on May 19, 2015, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, that the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential; and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meeting is likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of current Award applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

**Richard Cavanagh,**

*Acting Associate Director for Laboratory Programs.*

[FR Doc. 2015–24733 Filed 9–29–15; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Synthetic Biology Standards Consortium—Planning and Progress Workshop

**AGENCY:** National Institute of Standards & Technology, Department of Commerce.

**ACTION:** Notice of public workshop.

**SUMMARY:** NIST announces the Synthetic Biology Standards Consortium (SBSC)—Planning and Progress Workshop to be held on Tuesday November 3, 2015 from 9:00 a.m.–5:00 p.m. Pacific time. The SBSC is a standards setting consortium focused on the shared standards development needs of consortium participants. It will provide a forum for collaborative work through the formation of technical standards-setting working groups. Working groups are organized around a clear vision of specific metrology products—standards, including reference materials; reference

data; reference methods; and documentary standards—that will enable interoperability and reproducibility. At this workshop the working groups will collaboratively develop work products.

**DATES:** The Synthetic Biology Standards Consortium (SBSC)—Planning and Progress Workshop will be held on Tuesday, November 3, 2015 from 9:00 a.m.–5:00 p.m. Pacific Time.

**ADDRESSES:** The meeting will be held at the Quadrus Conference Center, 2400 Sand Hill Road, Menlo Park, CA 94025. To register, go to <http://jimb.stanford.edu/sbsc-registration>. There is no registration fee. Space is limited so please register early. For additional meeting details, including travel and parking information, visit <http://jimb.stanford.edu/sbsc-1115-workshop>.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Matthew Munson, Sarah Munro, and Marc Salit by email at [sbsc@nist.gov](mailto:sbsc@nist.gov).

**SUPPLEMENTARY INFORMATION:** A robust metrology infrastructure for the field of synthetic biology will enable coordination of labor and reuse of materials, driving economic growth. Metrology products—standards, including reference materials; reference data; reference methods; and documentary standards—can enable business-to-business transactions at scale. The intent of the NIST-hosted Synthetic Biology Standards Consortium (SBSC) is to collectively establish infrastructure to support a fully integrated global synthetic biology enterprise. NIST will provide standards development support for some consortium activities, as well as facilitation and technical leadership.

The SBSC has been convened as a standards setting consortium focused on the shared standards development needs of consortium members. It will provide a forum for collaborative work through the formation of technical standards-setting working groups. Successful working groups will be organized around a clear vision of specific metrology products that will enable interoperability and reproducibility.

Examples of metrology products include a reference material such as a standard proteome set from whole cell lysates to be used as a benchmark for mass spectroscopy; reference data such as a DNA watermark repository; a reference method for DNA sequence verification; and a documentary standard for minimum information standards for biological protocol interoperability.

The goals of the workshop are to discuss working group progress and plans with the broad consortium, develop a timeline of deliverables for metrology products to be produced by each working group, and collaboratively design and draft relevant documents.

The SBSC Planning and Progress Workshop will be held on Tuesday, November 3, 2015 from 9:00 a.m.–5:00 p.m. Pacific time. The workshop will be held at the Quadrus Conference Center, 2400 Sand Hill Road, Menlo Park, CA 94025. To register, go to <http://jimb.stanford.edu/sbsc-registration>. There is no registration fee. Space is limited so please register early. For additional meeting details, including travel and parking information, visit <http://jimb.stanford.edu/sbsc-1115-workshop>.

There is no cost for participating in the consortium or the workshop. No proprietary information will be shared at the workshop.

**Authority:** 15 U.S.C. 272(b) and (c).

**Richard Cavanagh,**

*Acting Associate Director for Laboratory Programs.*

[FR Doc. 2015–24734 Filed 9–29–15; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE122**

#### Draft 2015 Marine Mammal Stock Assessment Reports

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

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS reviewed the Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act. SARs for marine mammals in the Alaska, Atlantic, and Pacific regions were revised according to new information. NMFS solicits public comments on the draft 2015 SARs.

**DATES:** Comments must be received by December 29, 2015.

**ADDRESSES:** The 2015 draft SARs are available in electronic form via the Internet at <http://www.nmfs.noaa.gov/pr/sars/draft.htm>.

Copies of the Alaska Regional SARs may be requested from Marcia Muto, Alaska Fisheries Science Center, NMFS,

7600 Sand Point Way NE., BIN 15700, Seattle, WA 98115–0070.

Copies of the Atlantic, Gulf of Mexico, and Caribbean Regional SARs may be requested from Peter Corkeron, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

You may submit comments, identified by NOAA–NMFS–2015–0108, by any of the following methods:

**Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

**Mail:** Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Shannon Bettridge, Office of Protected Resources, 301–427–8402, [Shannon.Bettridge@noaa.gov](mailto:Shannon.Bettridge@noaa.gov); Marcia Muto 206–526–4026, [Marcia.Muto@noaa.gov](mailto:Marcia.Muto@noaa.gov), regarding Alaska regional stock assessments; Peter Corkeron, 508–495–2191, [Peter.Corkeron@noaa.gov](mailto:Peter.Corkeron@noaa.gov), regarding Atlantic, Gulf of Mexico, and Caribbean regional stock assessments; or Jim Carretta, 858–546–7171, [Jim.Carretta@noaa.gov](mailto:Jim.Carretta@noaa.gov), regarding Pacific regional stock assessments.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States, including the Exclusive

Economic Zone. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. The term “strategic stock” means a marine mammal stock: (A) for which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the ESA. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific independent Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in the Alaska, Atlantic, and Pacific regions to incorporate new information.

NMFS solicits public comments on the draft 2015 SARs.

### Alaska Reports

In the Alaska region, SARs for 31 Alaska stocks (15 “strategic”, 16 “non-strategic”) were updated. All stocks were reviewed and the following stocks were revised for 2015: Steller sea lion, western U.S.; northern fur seal, eastern Pacific; bearded seal, Alaska; ringed seal, Alaska; beluga whale, Cook Inlet; killer whale, AT1 transient; harbor porpoise, Southeast Alaska; harbor porpoise, Gulf of Alaska; harbor porpoise, Bering Sea; sperm whale, North Pacific; humpback whale, Western North Pacific; humpback whale, Central North Pacific; fin whale, Northeast Pacific; right whale, Eastern North Pacific; bowhead whale, Western Arctic; harbor seal (12 stocks); ribbon seal, Alaska; Pacific white-sided dolphin, Central North Pacific; Dall’s porpoise, Alaska; and minke whale, Alaska. Information on the remaining Alaska region stocks can be found in the final 2014 reports (Allen and Angliss, 2015).

Most revisions to the Alaska SARs included updates of abundance and/or

mortality and serious injury estimates, including revised abundance estimates for the 12 stocks of harbor seals and for the two stocks of humpback whales. No changes in stock status occurred.

### Atlantic Reports

In the Atlantic region (including the Atlantic Ocean, Gulf of Mexico, and U.S. territories in the Caribbean), 43 reports for 69 stocks were updated. Of the updated stocks, 51 stocks are “strategic,” and 18 are “non-strategic.” Two common bottlenose dolphin stocks, the Gulf of Mexico northern coastal and Gulf of Mexico western coastal, changed in status from strategic to non-strategic. This change is a technical correction, and not due to a change in abundance, PBR, mortality estimates, or ESA listing status.

All stocks were reviewed and reports for the following strategic stocks were revised for 2015: North Atlantic right whale; humpback whale, Gulf of Maine; fin whale, Western North Atlantic (WNA); sei whale, Nova Scotia; sperm whale, Gulf of Mexico; Bryde’s whale, Gulf of Mexico; and the following common bottlenose dolphin stocks: WNA northern migratory coastal; WNA southern migratory coastal; WNA South Carolina (SC)/Georgia (GA) coastal; WNA northern Florida coastal; WNA central Florida coastal; Northern NC Estuarine System; Southern NC Estuarine System; Northern SC Estuarine System; Charleston Estuarine System; Northern GA/Southern SC Estuarine System; Central GA Estuarine System; Southern GA Estuarine System; Jacksonville Estuarine System; Indian River Lagoon Estuarine System; Gulf of Mexico bay, sound, and estuary (27 stocks) Barataria Bay; Mississippi Sound, Lake Borgne, Bay Boudreau; St. Joseph Bay; and Choctawhatchee Bay.

Reports for the following non-strategic stocks were revised for 2015: Minke whale, Canadian east coast; Risso’s dolphin, WNA; long-finned pilot whale, WNA; short-finned pilot whale, WNA; short-finned pilot whale, Gulf of Mexico; Atlantic white-sided dolphin, WNA; short-beaked common dolphin, WNA; harbor porpoise, Gulf of Maine/Bay of Fundy; harbor seal, WNA; gray seal, WNA; pantropical spotted dolphin, Gulf of Mexico; Risso’s dolphin, Gulf of Mexico; Atlantic spotted dolphin, continental shelf and oceanic; and the following common bottlenose dolphin stocks: WNA offshore; Gulf of Mexico continental shelf; Gulf of Mexico northern coastal; Gulf of Mexico western coastal; and Gulf of Mexico eastern coastal.

Information on the remaining Atlantic region stocks can be found in the final 2014 reports (Waring *et al.*, 2015).

Most revisions to the Atlantic SARs included updates of abundance and/or mortality and serious injury estimates. No changes in stock status occurred.

### Pacific Reports

In the Pacific region (waters along the west coast of the United States, within waters surrounding the main and Northwest Hawaiian Islands, and within waters surrounding U.S. territories in the Western Pacific), SARs were revised for 8 stocks under NMFS jurisdiction (5 “strategic” and 3 “non-strategic” stocks).

All stocks were reviewed and reports for the following strategic stocks were revised for 2015: Hawaiian monk seal; Southern Resident killer whale; false killer whale, Main Hawaiian Islands Insular; false killer whale, Hawaii Pelagic; and blue whale, Eastern North Pacific. Reports for the following non-strategic stocks were revised for 2015: false killer whale, Northwestern Hawaiian Islands; Bryde’s whale, Eastern Tropical Pacific; and Northern fur seal, California. Information on the remaining Pacific region stocks can be found in the final 2014 reports (Carretta *et al.*, 2015).

New abundance estimates are available for three stocks in the Pacific Islands region (Hawaiian monk seal, Hawaii Pelagic and Northwestern Hawaiian Islands false killer whales) and two U.S. west coast stocks (Southern Resident killer whale and California northern fur seal). The stock range and boundaries of the three Hawaiian stocks of false killer whales were recently reevaluated based on new information on the occurrence and movements of each stock. The three stocks have partially overlapping ranges. No changes in stock status occurred.

A stock assessment report for the Eastern Tropical Pacific stock of Bryde’s whale has been reinstated into the Pacific reports in response to a regular and increasing presence of this species in southern California waters. The Eastern Tropical Pacific Bryde’s whale report last appeared in the Pacific stock assessments in 2007.

The genus of Hawaiian monk seal has been changed from *Monachus* to *Neomonachus* to reflect new genetic and skull morphology data.

The report for Eastern North Pacific blue whales includes new information on historic whaling removals, the population’s status relative to carrying capacity, and risk of ship strikes to the population.

Dated: September 25, 2015.

**Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2015-24762 Filed 9-29-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Advisory Committee on Arlington National Cemetery Remember Subcommittee Meeting

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open subcommittee meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Remember Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Remember Subcommittee, please visit <http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx>.

**DATES:** The Remember Subcommittee will meet from 09:00 a.m. to 10:00 a.m. on Wednesday, October 14, 2015.

**ADDRESSES:** Arlington National Cemetery Welcome Center, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

**FOR FURTHER INFORMATION CONTACT:** Ms. Renea Yates; Designated Federal Officer for the committee and the Remembrance Subcommittee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at [renea.c.yates.civ@mail.mil](mailto:renea.c.yates.civ@mail.mil), or by phone at 1-877-907-8585.

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Advisory Committee on Arlington National Cemetery was unable to provide public notification, as required by 41 CFR 102-3.150(a), of its scheduled meeting of the Remember Subcommittee on October 14, 2015. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement. This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41

Code of the Federal Regulations (CFR 102-3.150).

**Purpose of the Meeting:** The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Remember Subcommittee is to review and provide recommendations on preserving and caring for the marble components of the Tomb of the Unknown Soldier (TUS), including addressing the cracks in the large marble sarcophagus, the adjacent marble slabs, and the disposition of the dye block already gifted to the Army.

**Proposed Agenda:** The Subcommittee will review the status of all pending commemorative monument requests.

**Public's Accessibility to the Meeting:** Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

**Written Comments and 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 comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will

review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102-3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015-24778 Filed 9-29-15; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Army Science Board Partially Closed Meeting Notice

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of a partially closed meeting; Correction.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 and title 41 of the Code of Federal Regulations, the Department of the Army announces a meeting of the Army Science Board.

**FOR FURTHER INFORMATION CONTACT:** Army Science Board, Designated Federal Officer, 2530 Crystal Drive, Suite 7098, Arlington, VA 22202; LTC Stephen K. Barker, the committee's Designated Federal Officer (DFO), at (703) 545-8652 or email: [stephen.k.barker.mil@mail.mil](mailto:stephen.k.barker.mil@mail.mil), or Mr. Paul Woodward at (703) 695-8344 or email: [paul.j.woodward2.civ@mail.mil](mailto:paul.j.woodward2.civ@mail.mil).

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the U.S. Army Science Board was unable to provide public notification of its meeting of October 6, 2015, as required by 41 CFR 102-3.150(a). Accordingly, the Advisory Committee Management Officer for the

Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) § 102–3.140 through 160, the Department of the Army announces the following committee meeting:

*Name of Committee:* Army Science Board (ASB) Fall Voting Session.

*Date:* Tuesday, October 6, 2015.

*Time:* 0800–1100.

*Locations: Open portion:* Capital Conference Center, One Virginia Square, 3601 Wilson Boulevard, 6th Floor, Arlington, VA 22201, from 0800–0900.

*Closed portion:* Capital Conference Center, One Virginia Square, 3601 Wilson Boulevard, 6th Floor, Arlington, VA 22201, from 0900–1100.

*Purpose of Meeting:* The purpose of the meeting is for ASB members to review, deliberate, and vote on the findings and recommendations presented for the Board's two remaining Fiscal Year 2015 (FY15) studies.

*Agenda:* The board will present findings and recommendations for deliberation and vote on the following two FY15 studies:

*Human Interaction and Behavioral Enhancement.* This study is partially classified and will be presented in the open and closed portions of the meeting. The purpose of this study is to identify and assess methods and techniques to understand, interact, and influence human behavior in support of Army missions.

*Force 2025 and Beyond.* This study is classified and will be presented in the closed portion of the meeting. This study will provide findings and recommendations for operational concepts and advanced technologies along with the associated force designs for improving and maintaining readiness, designing and conducting training, and aligning the required logistics investments.

*Filing Written Statement:* Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Board. Individuals submitting a written statement must submit their statement to the DFO at the address listed above. Written statements not received at least 10 calendar days prior to the meeting may not be considered by the Board prior to its scheduled meeting.

The DFO will review all timely submissions with the Board's executive

committee and ensure they are provided to the specific study members as necessary before, during, or after the meeting. After reviewing written comments, the study chairs and the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

The DFO, in consultation with the executive committee, may allot a specific amount of time for members of the public to present their issues for discussion.

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 3.165, and the availability of space, the open portion of this meeting is open to the public. Seating is on a first-come basis. The Antlers Hilton is fully handicapped accessible. For additional information about public access procedures, contact LTC Stephen Barker at the telephone number or email address listed in the **FOR FURTHER INFORMATION CONTACT** section.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015–24773 Filed 9–29–15; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA–2013–0032]

#### Proposed Collection; Comment Request

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army (OAA-AAHS), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 30, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting

comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Military Surface Deployment and Distribution Command, (AMSSD–SP), 1 Soldier Way, ATTN: C. Sue Kennedy, Scott Air Force Base, Illinois 62225–5006, or call Department of the Army Reports Clearance Officer at (703) 428–6440.

#### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Industry Partnership Survey, OMB Control Number 0702–0122.

*Needs And Uses:* The information collected from this survey will be used to systematically survey and measure industry contractors to better understand how they feel about SDDC's acquisition processes and to improve the way business is conducted. The SDDC provides global surface deployment command and control and distribution operations to meet National Security objectives in peace and war. They are working to the Warfighter's single surface deployment/distribution provider for adaptive and flexible solutions delivering capability and



sustainment on time. Respondents will be commercial firms who have contracts awarded by SDDC for several program areas.

*Affected Public:* Business or Other for-Profit.

*Annual Burden Hours:* 632.

*Number of Respondents:* 1,264.

*Responses per Respondent:* 1.

*Annual Responses:* 1,264.

*Average Burden per Response:* 30 minutes.

*Frequency:* Annually.

SDDC works with industry partners in several program areas, Global Domestic Distribution Program, Freight Global Distribution Program, Personal Property Traffic Management Program, Transportation Engineering Agency, Army Ammunition & Explosives and several more. Most industry partners only provide services in one or two of the program areas, so the survey design provides for transparently skipping respondents only to the sections that are relevant to them. To make performance improvement in the operations of these programs areas, SDDC plans to undertake voluntary surveys of our "partners" in industry for 3 years from the approval/renewal date.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24776 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Advisory Committee on Arlington National Cemetery Explore Subcommittee Meeting Notice

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open subcommittee meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Explore Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Explore Subcommittee, please visit <http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx>.

**DATES:** The Explore Subcommittee will meet from 10:00 a.m. to 11:00 a.m. on Wednesday, October 14, 2015.

**ADDRESSES:** Arlington National Cemetery Welcome Center, Conference

Room, Arlington National Cemetery, Arlington, VA 22211.

**FOR FURTHER INFORMATION CONTACT:** Ms. Renea Yates; Designated Federal Officer for the committee and the Explore Subcommittee, in writing at Arlington National Cemetery, Arlington, VA 22211, or by email at [renea.c.yates.civ@mail.mil](mailto:renea.c.yates.civ@mail.mil), or by phone at 1-877-907-8585.

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Advisory Committee on Arlington National Cemetery was unable to provide public notification, as required by 41 CFR 102-3.150(a), of its scheduled meeting of the Explore Subcommittee on October 14, 2015. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement. This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102-3.150).

*Purpose of the Meeting:* The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The Explore Subcommittee is tasked to provide recommendations on Section 60 Mementos study and improving the quality of visitors' experiences, now and for generations to come.

*Proposed Agenda:* The Subcommittee will review the proposed commemorative planning for the upcoming 2016 World War I anniversary events and the current status of the Section 60 Memorial Collection.

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery Conference Room is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates,

the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Written Comments and 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 comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102-3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015-24774 Filed 9-29-15; 8:45 am]

**BILLING CODE 3710-08-P**

**DEPARTMENT OF DEFENSE****Department of the Army**

[Docket ID USA-2015-HQ-0038]

**Proposed Collection; Comment Request**

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army (OAA-RPA), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 30, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on

any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Military Surface Deployment and Distribution Command, 709 Ward Drive, Bldg. 1990, Scott Air Force Base, IL 62225-1604, *Attn:* SDDC-IMP-T, Station 1E164-44 (Carlos Alvarado), or call Department of the Army Reports Clearance Officer at (703) 428-6440.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Transportation Discrepancy Report; DD Form 361; OMB Control Number 0702-0124.

*Needs and Uses:* DD Form 361 is essential for documenting any loss, damage, or other discrepancy, which may result from the movement of Government freight by commercial transportation companies (carries). The form is ordinarily completed by the Federal agencies for which the transportation service is provided. However, in a small minority of cases (approximately 9%), contractor personnel acting for the government may be required to complete this form.

*Affected Public:* Business or other for profit.

*Annual Burden Hours:* 1,434.

*Number of Respondents:* 1,434.

*Responses per Respondent:* 1.

*Annual Responses:* 1,434.

*Average Burden per Response:* 1 hour.

*Frequency:* On occasion.

DD Form 361 is essential for documenting any loss, damage, or other discrepancy, which may result from the movement of Government freight by commercial transportation companies (carries). As insurers of goods transported under the bill of lading contract carriers are responsible to the extent provided by law, for the delivery of goods as tendered by or for the Government.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2015-24796 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE****Department of the Army**

[Docket ID USA-2015-HQ-0039]

**Proposed Collection; Comment Request**

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army, (OAA-RPA), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 30, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on

any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Military Surface Deployment and Distribution Command, 661 Sheppard Place, Ft. Eustis, VA 23604, ATTN: (Richard Cody), or call the Department of the Army Reports Clearance Officer at (703) 428-6440.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Department of Defense Standard Tender of Freight Services, SDDC Form 364-R, OMB Control Number 0704-0261.

*Needs and Uses:* The information derived from the DoD tenders on file with the Military Service Deployment and Distribution Command (SDDC) is used by SDDC subordinate commands and DoD shippers to select the best value carriers to transport surface freight shipments. Freight carriers furnish information in a uniform format so that the Government can determine the cost of transportation, accessorial, and security services, and select the best value carriers for 1.1 million Bill of Lading shipments annually. The DoD tender is the source document for the General Services Administration post-shipment audit or carrier freight bills.

*Affected Public:* Business or other for profit.

*Annual Burden Hours:* 5,391.

*Number of Respondents:* 434.

*Responses per Respondent:* 50.

*Annual Responses:* 21,700.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

**Summary of Information Collection:** The DoD tender format was developed to take advantage of improved information collection technology and to connect with ongoing initiatives to implement automated systems to file tenders, select carriers, quote rates, and audits. The disciplined data fields of the tenders will facilitate the Electronic Data Interchange of tender data between carriers and SDDC, also between SDDC subordinate commands and DoD shippers. This initiative ultimately will permit electronic filing of the tender and eliminate mailing paper documents, which are manually processed.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24817 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

[Docket ID: USA-2013-0012]

**Proposed Collection; Comment Request**

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army, (OAA-AAHS), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 30, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on

any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Military Surface Deployment and Distribution Command, 1 Soldier Way, Scott Air Force Base, Illinois, 62225-5006; email to [tony.mayo@us.army.mil](mailto:tony.mayo@us.army.mil); or call the Department of the Army Reports Clearance Officer at (703) 428-6440.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Freight Carrier Registration Program (FCRP), SDDC Form 410; OMB Control Number 0702-0121.

*Needs and Uses:* The FCRP is designed to protect the interest of the Government and to ensure that the Department of Defense deals with responsible carriers having the capability to provide quality and dependable service. Information is vital in determining capability to perform quality service transporting DoD freight. Carriers will furnish SDDC with information to assist in determining through other public records whether the company and its officers are responsible contractors.

*Affected Public:* Business or other for profit.

*Annual Burden Hours:* 108.

*Number of Respondents:* 430.

*Responses per Respondent:* 1.

*Annual Responses:* 430.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

The Freight Carrier Registration Program will be a minimum burden to the carrier industry. The information SDDC collects can now be accessed through the DoD Web site. That will expedite the time to approve the carrier to do business with the DoD.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24788 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Western Hemisphere Institute for Security Cooperation Board of Visitors Meeting Notice**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce

the following Federal advisory committee meeting of the Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors. This meeting is open to the public.

**DATES:** The WHINSEC Board of Visitors will meet from 8 a.m. to 12 p.m. on Thursday, November 5, 2015.

**ADDRESSES:** Western Hemisphere Institute for Security Cooperation, Bradley Hall, 7301 Baltzell Avenue, Building 396, Fort Benning, GA 31905.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Procell, Acting Executive Secretary for the Committee, in writing at USACGSC, 100 Stimson Avenue, Fort Leavenworth, KS 66027-2301, by email at [richard.d.procell2.civ@mail.mil](mailto:richard.d.procell2.civ@mail.mil), or by telephone at (913) 684-2963.

**SUPPLEMENTARY INFORMATION:** The committee 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), 41 CFR 102-3.140(c), and 41 CFR 102-3.150.

*Purpose of the Meeting:* The Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors (BOV) is a non-discretionary Federal Advisory Committee chartered to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on matters pertaining to the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Institute; other matters relating to the Institute that the Board decides to consider; and other items that the Secretary of Defense determines appropriate. The Board reviews curriculum to determine whether it adheres to current U.S. doctrine, complies with applicable U.S. laws and regulations, and is consistent with U.S. policy goals toward Latin America and the Caribbean. The Board also determines whether the instruction under the curriculum of the Institute appropriately emphasizes human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society. The Secretary of Defense may act on the Committee's advice and recommendations.

*Proposed Agenda:* Status briefing on the Institute from the Commandant; update briefings from the Office of the Under Secretary of Defense (Policy); Department of State; U.S. Northern Command; and U.S. Southern Command; presentation of other information appropriate to the board's

interests, and a public comments period.

*Public Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the meeting of the committee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Bradley Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Mr. Procell at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Written Comments and 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 comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102-3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during

the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) days in advance to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Requests will be logged in the order received. The Designated Federal Officer in consultation with the Committee Chair will determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015-24855 Filed 9-29-15; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Advisory Committee on Arlington National Cemetery Honor Subcommittee Meeting Notice

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open subcommittee meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Honor Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Honor Subcommittee, please visit <http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx>.

**DATES:** The Honor Subcommittee will meet from 11:00 a.m. to 12:00 p.m. on Wednesday, October 14, 2015.

**ADDRESSES:** Arlington National Cemetery Welcome Center, Conference

Room, Arlington National Cemetery, Arlington, VA 22211.

**FOR FURTHER INFORMATION CONTACT:** Ms. Renea Yates; Designated Federal Officer for the committee and the Honor Subcommittee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at [renea.c.yates.civ@mail.mil](mailto:renea.c.yates.civ@mail.mil), or by phone at 1-877-907-8585.

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Advisory Committee on Arlington National Cemetery was unable to provide public notification, as required by 41 CFR 102-3.150(a), of its scheduled meeting of the Honor Subcommittee on October 14, 2015. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement. This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102-3.150).

**Purpose of the Meeting:** The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The Honor Subcommittee is directed to provide independent recommendations of methods to address the long-term future of Arlington National Cemetery, including how best to extend the active burials and on what ANC should focus once all available space has been used.

**Proposed Agenda:** The Subcommittee will discuss the current interment trends and impacts to cemetery master planning.

**Public's Accessibility to the Meeting:** Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal

Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

**Written Comments and 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 comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102-3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015-24779 Filed 9-29-15; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA-2014-0018]

#### Proposed Collection; Comment Request

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army (OAA-AHS), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 30, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on

any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Human Resources Command, (HRC) ATTN: Ms. Denise L. Camacho, 200 Stovall Street, Alexandria, Virginia 22332-0314, or call the Department of the Army Reports Clearance Officer at (703) 428-6440.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Application and Agreement for Establishment of a National Defense Cadet Corps Unit, DA Form 3126-1; OMB Control Number 0702-0110.

*Needs and Uses:* Educational institutions desiring to host a National Defense Cadet Corps Unit (NDCC) may apply by using a DA Form 3126-1. The DA Form 3126-1 documents the agreement and becomes a contract signed by both the secondary institution and the U.S. Government. This form provides information on the school's facilities and states specific conditions if a NDCC unit is placed at the institution. The data provided on the applications is used to determine which school will be selected.

*Affected Public:* Not-for-profit institutions; State, Local, and Tribal Government.

*Annual Burden Hours:* 35.

*Number of Respondents:* 35.

*Responses per Respondent:* 1.

*Annual Responses:* 35.

*Average Burden per Response:* 1 hour.

*Frequency:* On occasion.

The DA Form 3126-1 is initiated by the school desiring to host a unit and is countersigned by a representative of the Secretary of the Army. The contract is necessary to establish a mutual agreement between the secondary institution and the U.S. Government. The Commanding General, Human Resources Command, is responsible for administering the JROTC program and overall policy. Region commanders are responsible for operating and administering the JROTC training conducted with the areas.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24764 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Advisory Committee on Arlington National Cemetery Meeting Notice**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open committee meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public.

**DATES:** The Committee will meet from 9:30 a.m.–3:30 p.m. on Thursday, October 15, 2015.

**ADDRESSES:** Arlington National Cemetery Welcome Center, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

**FOR FURTHER INFORMATION CONTACT:** Ms. Renea Yates; Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at [renea.c.yates.civ@mail.mil](mailto:renea.c.yates.civ@mail.mil), or by phone at 1-877-907-8585.

**ADDRESSES:** For more information about the Committee, please visit <http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter>.

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Advisory Committee on Arlington National Cemetery was unable to provide public notification of its meeting of October 15, 2015, as required by 41 CFR 102-3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 CFR 102-3.150.

*Purpose of the Meeting:* The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The

Secretary of the Army may act on the Committee's advice and recommendations.

*Proposed Agenda:* The Committee will review current major construction and expansion project status, Arlington National Cemetery private marker and commemorative monument requests, and receive a briefing on the various differences between the National Cemeteries Administration's burial eligibility and eligibility for burial at Arlington National Cemetery.

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Ms. Renea Yates, the Committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Written Comments and 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 comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Designated Federal Officer and the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102-3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will

be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) days in advance to the Committee's Designated Federal Official, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Official will log each request, in the order received, and in consultation with the Committee Chair determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the Designated Federal Official.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015-24781 Filed 9-29-15; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[Docket Number DARS-2015-0058]

#### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Contract Financing

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through January 31, 2016. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

**DATES:** DoD will consider all comments received by November 30, 2015.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704-0321, using any of the following methods:

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

*Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Control Number 0704-0321 in the subject line of the message.

*Fax:* (571) 372-6096.

*Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment, please check [www.regulations.gov](http://www.regulations.gov) approximately two to three days after submission to verify posting, except allow 30 days for posting of comments submitted by mail.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, at 571-372-6099.

#### SUPPLEMENTARY INFORMATION:

*Title, Associated Form, and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and the Clause at 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions; OMB Control Number 0704-0321.

*Needs and Uses:* Section 22 of the Arms Export Control Act (22 U.S.C. 2762) requires the U.S. Government to use foreign funds, rather than U.S. appropriated funds, to purchase military equipment for foreign governments. To comply with this requirement, the Government needs to know how much to charge each country. The clause at 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions,

requires each contractor whose contract includes foreign military sales (FMS) requirements to submit a separate progress payment request for each progress payment rate, and to submit a supporting schedule that clearly distinguishes the contract's FMS requirements from U.S. requirements. The Government uses this information to determine how much of each country's funds to disburse to the contractor.

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

*Annual Burden Hours:* 4,950 (includes 1,650 response hours plus 3,300 recordkeeping hours).

*Number of Respondents:* 124.

*Responses per Respondent:*

Approximately 26.6.

*Annual Responses:* 3,300.

*Average Burden per Response:* 1.5 hours.

*Frequency:* On occasion.

#### Summary of Information Collection

This information collection includes requirements relating to DFARS part 232, Contract Financing, and the related clause at DFARS 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions. DFARS 232.502-4-70(a) prescribes use of the clause at DFARS 252.232-7002 in any contract that provides for progress payments and contains FMS requirements. The clause at 252.232-7002 requires each contractor whose contract includes FMS requirements to submit a separate progress payment request for each progress payment rate and to submit a supporting schedule that distinguishes the contract's FMS requirements from U.S. requirements.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2015-24783 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing this notice to announce an open meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board (SAB). This meeting will be open to the public.

**DATES:** Wednesday, October 21, 2015, from 8:30 a.m to 4:40 p.m and Thursday, October 22, 2015, from 8:30 a.m to 4:05 p.m

**ADDRESSES:** 901 N. Stuart Street, Suite 200, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anne Andrews, SERDP Office, 4800 Mark Center Drive, Suite 17D08, Alexandria, VA 22350-3605; or by telephone at (571) 372-6565.

**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 41 CFR 102-3.150. This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463).

Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the

availability of space, this meeting is open to the public. Seating is on a first-come basis.

The purpose of the October 21-22, 2015 meeting is to review new start research and developing projects requesting Strategic Environmental Research and Development Program funds as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, § 2904. The full agenda follows:

**Agenda for October 21, 2015**

8:30 a.m	Convene	Dr. Joseph Hughes, Chair.
8:40 a.m	Weapons Systems and Platforms Overview	Dr. Robin Nissan, Weapons Systems and Platforms, Program Manager.
8:50 a.m	16 WP02-004 (WP-2601): Sustainable, Environmentally Green Polyurethanes for Erosion-Resistant Coatings (FY16 New Start).	Dr. Peter Zarras, NAWCWD, China Lake, CA.
9:35 a.m	16 WP02-007 (WP-2602): Non-Isocyanate Polyurethane Platform for Sustainable and Advanced Rain Erosion Resistant Coatings (FY16 New Start).	Dr. Vijay Mannari, Eastern Michigan University, Ypsilanti, MI.
10:20 a.m	Break.	
10:35 a.m	Weapons Systems and Platforms Overview	Dr. Robin Nissan, Weapons Systems and Platforms, Program Manager.
10:45 a.m	16 WP03-006 (WP-2605): Environmentally Conscious Process Development for the Production of Composite Propellants and Explosives (FY16 New Start).	Dr. Keith Anderson, Resodyn Corporation, Butte, MT.
11:30 a.m	16 WP03-003 (WP-2631): Safer Resonant Acoustic Manufacturing for High Volume Pyrotechnics (FY16 New Start).	Dr. Eric Miklaszewski, Naval Surface Warfare Center, Crane Division, Crane, IN.
12:15 p.m	Lunch.	
1:15 p.m	16 WP03-008 (WP-2632): Manufacture of Ordnance by In-Situ Resonant Acoustic Mixing (FY16 New Start).	Ms. Amy Luebbering, NSWC IHEODTD, Indian Head, MD.
2:00 p.m	Weapons Systems and Platforms Overview	Dr. Robin Nissan, Weapons Systems and Platforms, Program Manager.
2:10 p.m	16 WP04-003 (WP-2607): Cold Spray Coatings for Cr and Ni Plating Replacement (FY16 New Start).	Mr. Victor Champagne, US Army Research Laboratory, Aberdeen, MD.
2:55 p.m	Break.	
3:10 p.m	16 WP04-012 (WP-2608): Novel Atmospheric High Power Impulse Plasma Source for Durable, Field Applicable Coatings (FY16 New Start).	Dr. Vasiliki Poenitzsch, Southwest Research Institute, San Antonio, TX.
3:55 p.m	16 WP04-013 (WP-2609): Advanced Nanocrystalline Cobalt Alloys and Composites as Alternatives for Chromium and Nickel Plating in Repair Operations (FY16 New Start).	Dr. Jonathan McCrea, Integran Technologies, Inc., Mississauga, ON.
4:40 p.m	Public Discussion/Adjourn for the day.	

**Agenda for October 22, 2015**

8:30 a.m	Convene	Dr. Joseph Hughes, Chair.
8:40 a.m	Environmental Restoration Overview	Andrea Leeson, Ph.D., Environmental Restoration, Program Manager.
8:50 a.m	16 ER02-005 (ER-2624): Development of Toxicity Reference Values (TRVs) for Birds Exposed to PFOS, PFOA and Associated Mixtures of Fluorinated Compounds (FY16 New Start).	Dr. Matt Simcik, University of Minnesota, Minneapolis, MN.
9:35 a.m	16 ER02-006 (ER-2625): Development of Toxicity Data to Support Toxicity Reference Values for Perfluorinated Compounds (FY16 New Start).	Dr. Michael Quinn, U.S. Army Public Health Command, Aberdeen Proving Ground, MD.
10:20 a.m	Break.	
10:35 a.m	16 ER02-010 (ER-2626): Development of Amphibian Poly- and Perfluoroalkyl Substances Toxicity Reference Values for Use in Ecological Risk Assessment at Aqueous Film Forming Foam Sites (FY16 New Start).	Dr. Maria Sepulveda, Purdue University, West Lafayette, IN.
11:20 a.m	16 ER02-014 (ER-2627): Advancing the Understanding of the Ecological Risk of Per- and Polyfluoroalkyl Substances (FY16 New Start).	Dr. Christopher Salice, Towson University, Towson, MD.
12:05 p.m	Lunch.	
1:05 p.m	Munitions Response Overview	Dr. Herb Nelson, Munitions Response, Program Manager.
1:20 p.m	16 MR01-001 (MR-2645): Underwater Munitions Expert System for Remediation Guidance (FY16 New Start).	Dr. Sarah Rennie, Johns Hopkins University, Applied Physics Laboratory.
2:05 p.m	16 MR01-017 (MR-2646): Advanced Magnetometer System (FY16 New Start) ....	Dr. Rahul Mhaskar, Geometrics, San Jose, CA.
2:50 p.m	Break.	
3:05 p.m	Munitions Response Overview	Dr. Herb Nelson, Munitions Response, Program Manager.



3:20 p.m .....	16 MR02-001 (MR-2649): Elastic Target Modeling for Physics-Based Automatic Classification (FY16 New Start).	Dr. Lane Owsley, University of Washington, Applied Physics Laboratory, Seattle, WA.
4:05 p.m .....	Public Discussion/Adjourn.	

Pursuant to 41 CFR 102-3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Contact information for the DFO can be obtained from the GSA's FACA Database at <http://www.facadatabase.gov/>.

Time is allotted at the close of each meeting day for the public to make comments. Oral comments are limited to 5 minutes per person.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24789 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2014-OS-0070]

### Proposed Collection; Comment Request

**AGENCY:** Defense Threat Reduction Agency (DTRA), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Defense Threat Reduction Agency (DTRA) announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 30, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Threat Reduction Agency, Office of Small Business Programs (DTRA/B), 8725 John J. Kingman Road, MSC 6201, Ft. Belvoir, VA 22060-6201, or call (703) 767-7889, or email [BusinessRelations@dtra.mil](mailto:BusinessRelations@dtra.mil).

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* DTRA Industry Partner Questionnaire; OMB Control Number 0704-0442.

*Needs and Uses:* The information collection will allow DTRA to benchmark our contract relationships and request best practices from our industry partners via an electronic

questionnaire. Further, the questionnaire will result in more constructive agendas for subsequent DTRA industry outreach conferences.

**Affected Public:** Business or other for profit; Not-for-profit institutions.

**Annual Burden Hours:** 70.

**Number of Respondents:** 209.

**Responses per Respondent:** 1.

**Annual Responses:** 209.

**Average Burden per Response:** 0.33 hours.

**Frequency:** On occasion.

Respondents are small businesses, large businesses, and universities that have received DTRA contract awards greater than \$100,000 since October 1, 2002, major Indefinite Delivery Indefinite Quantity (IDIQ) subcontractors, and vendors that have bid unsuccessfully on DTRA contracts greater than \$100,000 since October 1, 2002. DTRA plans to utilize this survey information in subsequent business process reengineering initiatives which leverage our industry partnerships to better support the warfighter. Further, DTRA is required under the Defense Federal Acquisition Regulation Supplement (DFARS) to maintain an active industry outreach program. DTRA plans to use the survey results to develop constructive agendas for subsequent outreach conferences with our contractor community.

Dated: September 24, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24696 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2015-OS-0072]

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to add a new System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to add a new system of records, DPFPA 06, entitled "Internal Affairs Records System" to document investigations of alleged Pentagon Force Protection Agency employee misconduct, fraud, waste, and abuse.

The records may be used in law enforcement, judicial, or adjudicative proceedings including litigation. Records are also used to identify alleged offenders, witnesses or victims, to document facts and evidence, and to respond to congressional inquiries as appropriate. Used as a management tool for statistical analysis, tracking, reporting, evaluation program effectiveness, and conducting research.

**DATES:** Comments will be accepted on or before November 2, 2015. This proposed action will be effective 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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

*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 <http://dpcl.d.defense.gov/>.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 22, 2015, 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: July 23, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DPFPA 06**

**SYSTEM NAME:**

Internal Affairs Records System.

**SYSTEM LOCATION:**

Pentagon Force Protection Agency (PFPA), 9000 Defense Pentagon, Washington, DC 20301-9000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

PFPA employees who are either the subject of or associated with an internal affairs investigation by the Office of Professional Responsibility (OPR).

Any witness or victims outside of PFPA who are connected with an OPR investigation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

PFPA employees:

Name (including former names and aliases), Social Security Number (SSN), DoD Identification Number (DoD ID Number), driver's license (state, number, and expiration date), gender, race/ethnicity, home address, home/work/cell phone numbers, home/work email addresses, date and place of birth, country of birth, height, weight, hair/eye color, build, facial hair, employment information (name, address, and phone number of employer), education information (degree, certification), security clearance level, disability information (what type), Office of Professional Responsibility case number, Incident Crime Information System case number, and law enforcement data (criminal arrest history, Federal Bureau of Investigation/State ID numbers). Additional data for PFPA employees includes marital status, length of service, supervisor's name and phone number, and records of investigations to include Reports of Investigation, Information Reports and Case Summaries.

Witness or victims:

Name, home address, home/work/cell phone number, and date and place of birth.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2674, Operation and control of Pentagon Reservation and defense facilities in National Capital Region; DoD Directive 5105.68, Pentagon Force Protection Agency; Administrative

Instruction 30, Force Protection of the Pentagon; and E.O. 9397 (SSN), as amended.

**PURPOSE(S):**

To document investigations of alleged Pentagon Force Protection Agency employee misconduct, fraud, waste, and abuse. The records may be used in law enforcement, judicial, or adjudicative proceedings including litigation. Records are also used to identify alleged offenders, witnesses or victims, to document facts and evidence, and to respond to congressional inquiries as appropriate. Used as a management tool for statistical analysis, tracking, reporting, evaluation program effectiveness, and conducting research.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(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:

**Law Enforcement Routine Use:** If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibilities of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

**Disclosure When Requesting Information Routine Use:** A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

**Disclosure of Requested Information Routine Use:** A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance

of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

**Congressional Inquiries Disclosure Routine Use:** Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Disclosure to the Department of Justice for Litigation Routine Use:** A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

**Disclosure of Information to the National Archives and Records Administration Routine Use:** A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

**Disclosure to the Merit Systems Protection Board Routine Use:** A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

**Data Breach Remediation Purposes Routine Use:** A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or

property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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. The complete list of DoD Blanket Routine Uses can be found online at: <http://dpcl.d.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx>.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE**

Paper file folders and electronic storage media.

**RETRIEVABILITY:**

Name, SSN, DoD ID number, or driver's license number, and date of birth.

**SAFEGUARDS:**

Records are maintained in controlled areas accessible only to authorized DoD personnel, including systems users, system administrators, and authorized contractors who have a need-to-know in the performance of official duties and who are properly screened and cleared. Physical entry is restricted by the use of locks, guards, identification badges, key cards, and closed circuit TV. Paper records are stored in locked cabinets in secured offices which are further protected by an access control system. Access to personal information is further restricted by the use of Common Access Card and user ID/passwords, intrusion detection system, encryption, firewalls and DoD public key infrastructure certificates. Data in transit and at rest is encrypted. Administrative procedures, including periodic security audits, regular monitoring of users' security practices, and methods to ensure only authorized personnel access Personally Identifiable Information (PII).

**RETENTION AND DISPOSAL:**

Destroy/Delete 15 years after the close of the investigation.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Office of Professional Responsibility, Pentagon Force

Protection Agency, 9000 Defense Pentagon, Washington, DC 20301-9000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in a closed investigation in this system should address written inquiries to the Chief, Office of Professional Responsibility, Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301-9000.

**PFPA employees:** Signed, written requests should contain individual's full name, SSN, DoD ID number, driver's license number, and date of birth.

**Witness or victims:** Signed, written requests should contain the individual's full name, home address, home/work/cell phone number, and date and place of birth.

**Note:** The existence of an active investigation or the non-existence of a record will be neither confirmed nor denied.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves in a closed investigation should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301-1155.

**PFPA employees:** Signed, written requests should include full name, SSN, DoD ID number, driver's license number, date of birth, and the number of this system of records notice.

**Witness or victims:** Signed, written requests should include full name, home address, home/work/cell phone number, and date and place of birth.

**Note:** The existence of an active investigation or the non-existence of a record will be neither confirmed nor denied.

**CONTESTING RECORD PROCEDURES:**

An exemption rule has been published, and this Privacy Act system of records is exempt from the amendment and appeal provisions described in 5 U.S.C. 552a(f).

Open investigations are exempt from the Access to Records provisions established in 5 U.S.C. 552a(d).

**RECORD SOURCE CATEGORIES:**

Individuals involved in or witness to the incident or inquiry, PFPA officers and investigators, state and local law enforcement, and Federal departments and agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

This system of records is used by the DoD for a law enforcement purpose (j)(2) and (k)(2), and the records contained herein are used for criminal,

administrative, and civil enforcement requirements. As such, this system of records is exempt from the following provisions of 5 U.S.C. 552a section (c)(3) and (4), (d), (e)(1) through (e)(3), (e)(4)(G) through (I), (e)(5), (f) and (g) of the Act.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2015-24632 Filed 9-29-15; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### National Commission on the Future of the Army; Notice of Federal Advisory Committee Meeting

**AGENCY:** Deputy Chief Management Officer, Department of Defense (DoD).

**ACTION:** Notice of federal advisory committee meeting.

**SUMMARY:** The DoD is publishing this notice to announce two days of meetings of the National Commission on the Future of the Army (“the Commission”). The meetings will be closed to the public.

**DATES:** Dates of the closed meetings: Thursday, October 15, 2015, from 8 a.m. to 5:30 p.m. and Friday, October 16, 2015, from 8 a.m. to 5:30 p.m.

**ADDRESSES:** Address of Closed Meetings, October 15 and 16, 2015: Institute for Defense Analyses, 4850 Mark Center Dr., Alexandria, VA 22311.

**FOR FURTHER INFORMATION CONTACT:** Mr. Don Tison, Designated Federal Officer, National Commission on the Future of the Army, 700 Army Pentagon, Room 3E406, Washington, DC 20310-0700, Email: [dfo.public@ncfa.ncr.gov](mailto:dfo.public@ncfa.ncr.gov). Desk (703) 692-9099. Facsimile (703) 697-8242.

**SUPPLEMENTARY INFORMATION:** This meeting will be held under the provisions of the Federal Advisory Committee Act (FACA) 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 41 CFR 102-3.150.

#### Purpose of Meetings

During the closed meeting on Thursday, October 15, 2015, the Commission will be briefed on the classified war plan selected for analytical review, discuss the process and procedures for the conduct of the Classified Analytical Review and begin

the Classified Analytical Review using classified war plans and operational scenarios to examine the size and structure options for the future of the Army.

During the closed meeting on Friday, October 16, 2015, the Commission will complete the Classified Analytical Review and discuss the results.

#### Agendas

October 15, 2015—Closed Meeting: The Commission will hold a closed meeting to conduct a classified analytical review using current war plans while applying predetermined variables to develop realistic results. Speakers include analysts from Institute for Defense Analyses (IDA), Center for Army Analysis, TRADOC Analysis Center, RAND Corporation. All presentations and resulting discussion are classified.

October 16, 2015—Closed Meeting: The Commission will complete the classified analytical review and discuss the results in a closed meeting. The results will be used in the development of recommendations for the final report due on February 1, 2016. Speakers include analysts from IDA, Center for Army Analysis, TRADOC Analysis Center, RAND Corporation. All presentations and resulting discussion are classified.

#### Meeting Accessibility

In accordance with applicable law, 5 U.S.C. 552b(c) and 41 CFR 102-3.155, the DoD has determined that the meetings scheduled for October 15 and 16, 2015, will be closed to the public. Specifically, the Assistant Deputy Chief Management Officer, with the coordination of the DoD FACA Attorney, has determined in writing that these two meetings will be closed to the public because they will discuss matters covered by 5 U.S.C. 552b(c)(1).

#### Written Comments

Pursuant to section 10(a)(3) of the FACA and 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the closed meetings or the Commission’s mission. The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mr. Donald Tison, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author’s name, title or affiliation, address, and daytime phone number. All comments received before Wednesday, October 14, 2015, will be

provided to the Commission before the October 15, 2015, meeting. Comments received after Wednesday, October 14, 2015, will be provided to the Commission before its next meeting. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section.

#### Additional Information

The DoD sponsor for the Commission is the Deputy Chief Management Officer. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2016 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the Army will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the Army in a manner consistent with available resources.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24754 Filed 9-29-15; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2015-OS-0078]

#### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to add a new System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to add a new system of records, DPFPA 07, entitled “Counterintelligence Management Information System (CIMIS)” to conduct and exercise overall responsibility within PFFA for all matters pertaining to acts involving counterintelligence (CI) activities against PFFA employees, U.S. property, or interests. Also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research.

**DATES:** Comments will be accepted on or before October 30, 2015. This proposed

action will be effective 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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

*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 <http://dpcl.dod.defense.gov/>.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 30, 2015, 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: July 31, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DPFPA 07**

**SYSTEM NAME:**

Counterintelligence Management Information System (CIMIS).

**SYSTEM LOCATION:**

Pentagon Force Protection Agency (PFPA), 9000 Defense Pentagon, Washington, DC 20301-9000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any individual involved, or suspected of being involved, in intelligence collection on behalf of a foreign government or foreign terror organization which may harm PFPA employees, U.S. property or interests. Individuals involved in or suspected of being involved in National Security Crimes of assassination, sedition, subversion, treason, espionage, sabotage or terrorism. Individuals who provide information that is relevant to the case, such as victims or witnesses, and individuals who report such crimes or acts.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Data on suspect: Name; other names used (former and aliases); other identification (ID) numbers (e.g., DoD ID number, passport, VISA, resident alien); driver's license (state, number, and expiration date); date and place of birth; citizenship; legal status; gender; race/ethnicity; description (height, weight, hair color, etc.); name of current employer and address; college/university (major and/or degree); military records; home/office address; home/work/cell phone numbers; personal/work email address; personal property information (e.g., vehicle, photographic equipment (make/model/serial number)); marital status; spouse location (city and state); and CIMIS incident number.

**DATA ON INDIVIDUALS (VICTIMS, WITNESSES, COMPLAINANT):**

Name; DoD ID number; work/home/cell phone numbers; and employer information (e.g. organization, address).

**ADDITIONAL DATA:**

Law Enforcement Reports; National Crime Information Center (NCIC); Intelligence Information Reports (IIR).

Individuals may voluntarily offer additional personal information in an effort to establish their identity. While not specifically requested, the information will be retained in the

record if it is deemed beneficial to the inquiry.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2674, Operation and control of Pentagon Reservation and defense facilities in National Capital Region; 18 U.S.C. 794, Gathering or Delivering Defense Information to Aid Foreign Government; E.O. 12333, United States Intelligence Activities; E.O. 12968, Access to Classified Information; DoD Directive (DoDD) 5105.68, Pentagon Force Protection Agency (PFPA); DoDD 5200.27, Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense; DoDD 5240.01, DoD Intelligence Activities, as amended; DoDD 5240.02, Counterintelligence; DoDD 5240.06, DoD Counterintelligence Awareness and Reporting (CIAR); DoD Instruction (DoDI) O-5240.21, Counterintelligence Inquiries; and Administrative Instruction 30, Force Protection on the Pentagon Reservation.

**PURPOSES:**

To conduct and exercise overall responsibility within PFPA for all matters pertaining to acts involving counterintelligence (CI) activities against PFPA employees, U.S. property, or interests. Also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(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 Federal counterintelligence and law enforcement agencies that administer programs or employ individuals involved in an incident or inquiry.

**LAW ENFORCEMENT ROUTINE USE:**

If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the

statute, rule, regulation, or order issued pursuant thereto.

**CONGRESSIONAL INQUIRIES DISCLOSURE ROUTINE USE:**

Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE:**

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

**DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE:**

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

**DATA BREACH REMEDIATION PURPOSES ROUTINE USE:**

A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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. The complete list of DoD Blanket Routine Uses can be found online at: [http://](http://dpcl.d.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx)

[dpcl.d.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx](http://dpcl.d.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx)”

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Name, date of birth, and other identification (DoD ID number, passport, VISA or driver's license number).

**SAFEGUARDS:**

Electronically stored records are maintained in “fail-safe” system software with password-protected access. Access to these records is role-based and is limited to those individuals requiring access in performance of their official duties. Entry to the area is restricted by the use of cipher and combination locks, security guards, identification badges and closed circuit TV (CCTV). Data in transit and at rest is encrypted and computer servers are scanned to assess system vulnerabilities. Encryption of backups containing sensitive PII is in place. Firewalls are in place to control the incoming and outgoing data traffic based on an applied rule set. DoD Public Key Infrastructure Certificates are used to authenticate authorized users. Periodic security audits are maintained to document access to data. Regular monitoring of user's security practice is conducted and methods are used to ensure only authorized personnel have access to PII. All individuals granted access to this system of records receives annual Information Assurance and Privacy Act training.

**RETENTION AND DISPOSAL:**

**FILES RELATING TO FOREIGN NATIONALS:**

Close annually upon determination that the individual is no longer a threat to DoD, the Pentagon, Pentagon Reservation or DoD Facilities within the Capitol Region (NCR). Destroy 25 year(s) after cut off.

**FILES RELATING TO U.S. CITIZENS:**

Cut off after determination person(s) are no longer a CI threat to DoD, the Pentagon, Pentagon Reservation or DoD Facilities within the NCR. Destroy/delete 90 days after cut off.

**SYSTEM MANAGER(S) AND ADDRESS:**

Pentagon Force Protection Agency (PFPA), 9000 Defense Pentagon, Washington, DC 20301-9000.

**NOTIFICATION PROCEDURE:**

An exemption rule has been published, and this Privacy Act system

of records is exempt from the notification provisions described in 5 U.S.C. 552a(e)(4)(H).

**RECORD ACCESS PROCEDURES:**

An exemption rule has been published, and this Privacy Act system of records is exempt from the access provisions described in 5 U.S.C. 552a(d).

**CONTESTING RECORD PROCEDURES:**

An exemption rule has been published, and this Privacy Act system of records is exempt from the amendment and appeal provisions described in 5 U.S.C. 552a(f).

**RECORD SOURCE CATEGORIES:**

PFPA officers and investigators, state and local law enforcement, Federal departments and agencies, and intelligence agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

This system of records is used by the Department of Defense for a law enforcement purpose (k)(2), and the records contained herein are used for criminal, civil, and administrative enforcement requirements. As such, allowing individuals full exercise of the Privacy Act would compromise the existence of any criminal, civil, or administrative enforcement activity. This system of records is exempt from the following provisions of 5 U.S.C. 552a section (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f) of the Act.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2015-24792 Filed 9-29-15; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE**

**Department of the Army**

[Docket ID: USA-2014-0017]

**Proposed Collection; Comment Request**

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army (OAA-AAHS), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 30, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, U.S. Military Academy, Institutional Research & Analysis, Office of Policy, Planning & Analysis, ATTN: Dr. William Burke, West Point, New York 10966-5000, or call Department of the Army Reports Clearance Officer at (703) 428-6440.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* West Point Engineering Graduates Surveys; OMB Control Number 0702-0116.

*Needs and Uses:* An assessment of perceptions of graduates on the effectiveness of the U.S. Military Academy programs and curricula is needed for periodic accreditation by the Accreditation Board or Engineering and Technology. The information collected will be used to evaluate programs/curricula and make changes deemed advisable.

*Affected Public:* Individuals or Households.

*Annual Burden Hours:* 216.

*Number of Respondents:* 519.

*Responses per Respondent:* 1.

*Annual Responses:* 519.

*Average Burden per Response:* 25 minutes.

*Frequency:* On occasion (every three years).

The information will be collected via seven surveys, each with content appropriate to graduates of engineering and engineering related courses of study at the U.S. Military Academy. The surveys will go to graduates currently serving as officers in the U.S. Army and to graduates not currently serving. Respondents will be allowed to choose between completing a mailed survey or an Internet based survey.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-24777 Filed 9-29-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### National Commission on the Future of the Army; Notice of Federal Advisory Committee Meeting

**AGENCY:** Deputy Chief Management Officer, Department of Defense (DoD).

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The DoD is publishing this notice to announce a meeting of the National Commission on the Future of the Army ("the Commission"). The meeting will be partially closed to the public.

**DATES:** Date of the Open Meeting: Thursday, October 22, 2015, from 9 a.m. to 12 p.m. Date of the Closed Meeting: Thursday, October 22, 2015, from 1:30 p.m. to 4:30 p.m.

**ADDRESSES:** Address of Open Meeting, October 22, 2015: Polk Conference Room, Room 12158, James Polk Building, 2521 S. Clark St., Arlington, VA 22202.

Address of Closed Meeting, October 22, 2015: Rm 12110, 5th Floor, Zachary Taylor Building, 2530 Crystal Dr., Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mr. Don Tison, Designated Federal Officer, National Commission on the Future of the Army, 700 Army Pentagon, Room 3E406, Washington, DC 20310-0700, Email: [dfo.public@ncfa.ncr.gov](mailto:dfo.public@ncfa.ncr.gov). Desk (703) 692-9099. Facsimile (703) 697-8242.

**SUPPLEMENTARY INFORMATION:** This meeting will be held under the provisions of the Federal Advisory Committee Act (FACA) 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 41 CFR 102-3.150.

### Purpose of Meetings

During the open meeting on Thursday, October 22, 2015, the Commission will hear Sub-committee interim reports, a statement from the Chief of the National Guard Bureau, and comments on Army Modernization. The Public will have the opportunity to provide verbal comments.

During the closed meeting on Thursday, October 22, 2015, the Commission will conclude a discussion of Classified Analytical Review from the October 16, 2015 closed meeting, followed by classified Subcommittee Interim reports.

### Agendas

October 22, 2015—Open Meeting: The Commission will hear comments from the representatives from the National Guard, a discussion on Army modernization from representatives of the Army G8, subcommittees will provide interim reports and comments from members of the public.

October 22, 2015—Closed Meeting: The Commission will conclude a discussion started during the Classified Analytical Review in the October 16, 2015 closed meeting followed by subcommittee representatives presenting classified initial findings and suggested topics for deliberation. Speakers include, but are not limited to analysts from IDA, Center for Army Analysis, TRADOC Analysis Center, RAND Corporation. All presentations and resulting discussion are classified.

### Meeting Accessibility

In accordance with applicable law, 5 U.S.C. 552b(c) and 41 CFR 102-3.155, the DoD has determined that the portion of the meeting scheduled for Thursday, October 22, 2015, from 1:30 p.m. to 4:30 p.m. will be closed to the public.

Specifically, the Assistant Deputy Chief Management Officer, with the coordination of the DoD FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it will discuss matters covered by 5 U.S.C. 552b(c)(1).

Pursuant to 41 CFR 102–3.140 through 102–3.165 and the availability of space, the meeting scheduled for October 22, 2015 from 9 a.m. to 12 p.m. at the James Polk Building is open to the public. Seating is limited and pre-registration is strongly encouraged. Media representatives are also encouraged to register. Members of the media must comply with the rules of photography and video filming in the James Polk Building. The closest public parking facility is located in the basement and along the streets. Visitors will be required to present one form of photograph identification. Visitors to the James Polk Office Building will be screened by a magnetometer, and all items that are permitted inside the building will be screened by an x-ray device. Visitors should keep their belongings with them at all times. The following items are strictly prohibited in the James Polk Office Building: Any pointed object, e.g., knitting needles and letter openers (pens and pencils are permitted); any bag larger than 18" wide x 14" high x 8.5" deep; electric stun guns, martial arts weapons or devices; guns, replica guns, ammunition and fireworks; knives of any size; mace and pepper spray; razors and box cutters.

#### Written Comments

Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open and/or closed meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mr. Donald Tison, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All comments received before Wednesday, October 21, 2015, will be provided to the Commission before the October 22, 2015, meeting. Comments received after Wednesday, October 21, 2015, will be provided to the Commission before its next meeting. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section.

#### Oral Comments

In addition to written statements, fifty minutes will be reserved for individuals or interest groups to address the Commission on October 22, 2015. Those interested in presenting oral comments to the Commission must summarize their oral statement in writing and submit with their registration. The Commission's staff will assign time to oral commenters at the meeting; no more than five minutes each for individuals. While requests to make an oral presentation to the Commission will be honored on a first come, first served basis, other opportunities for oral comments will be provided at future meetings.

#### Registration

Individuals and entities who wish to attend the public meeting on Thursday, October 22, 2015 are encouraged to register for the event with the DFO using the electronic mail and facsimile contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, day time phone number. This information will assist the Commission in contacting individuals should it decide to do so at a later date. If applicable, include written comments and a request to speak during the oral comment session. (Oral comment requests must be accompanied by a summary of your presentation.) Registrations and written comments should be typed.

#### Additional Information

The DoD sponsor for the Commission is the Deputy Chief Management Officer. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2016 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the Army will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the Army in a manner consistent with available resources.

Dated: September 25, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015–24755 Filed 9–29–15; 8:45 am]

**BILLING CODE 5001–06–P**

#### DEPARTMENT OF DEFENSE

##### Department of the Army; Corps of Engineers

##### Availability of a Draft Feasibility Study With Integrated Environmental Impact Statement (EIS), Ala Wai Canal Project, Oahu, HI

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The comment period for the Draft Feasibility Study With Integrated Environmental Impact Statement (EIS), Ala Wai Canal Project, Oahu, HI published in the **Federal Register** on Friday, August 21, 2015 (80 FR 50832), required comments be submitted by October 7, 2015. The comment period has been extended to November 9, 2015. **FOR FURTHER INFORMATION CONTACT:** Mr. Derek Chow, U.S. Army Corps of Engineers, Honolulu District, 808–835–4026 or via email at [Derek.J.Chow@usace.army.mil](mailto:Derek.J.Chow@usace.army.mil).

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015–24771 Filed 9–29–15; 8:45 am]

**BILLING CODE 3720–58–P**

#### DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0114 ]

##### Agency Information Collection Activities; Comment Request; The Secretary of the Department of Education's Recognition of Accrediting Agencies, and the Comparability of Medical and Veterinary Medical Programs

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before November 30, 2015.

**ADDRESSES:** To access and review all the documents related to the information



collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2015–ICCD–0114. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Karen Duke, (202) 219–7067.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* The Secretary of the Department of Education's Recognition of Accrediting Agencies, and the Comparability of Medical and Veterinary Medical Programs.

OMB Control Number: 1840–0788.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 127.

*Total Estimated Number of Annual Burden Hours:* 828.

*Abstract:* In compliance with Title 34 CFR part 602.10; 602.55; 602.56; and 603.24, the information collected consists of petitions, reports, and accreditation notifications. The information collected is required to determine if accrediting agencies comply or are comparable to the Secretary of Education's criteria for recognition and is used to allow the Secretary to make determinations on new, extension and/or continuing recognition or comparability status. Only postsecondary institutions and countries deemed to be using comparable standards obtain Title IV funding for its students.

Dated: September 25, 2015.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2015–24794 Filed 9–29–15; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

[Docket No. PP–371]

### Notice of Intent To Prepare a Supplement to the Draft Northern Pass Transmission Line Project Environmental Impact Statement and Announcing the Extension of the Public Comment Period and Postponement of Public Hearings To Receive Comments on the Draft Environmental Impact Statement

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent to prepare a Supplement to the Draft Northern Pass Transmission Line Project Environmental Impact Statement (EIS) (DOE/EIS–0463) and announcing the extension of the public comment period and postponement of public hearings on the Draft EIS.

**SUMMARY:** In August 2015, the U.S. Department of Energy (DOE) received an amendment to the July 2013 Northern Pass Transmission Line Project Presidential permit amended application.

The August 2015 application amendment changed the proposed transmission line route by adding three miles of buried transmission line adjacent to a road not previously

analyzed, added two new transition stations and increased the total amount of proposed buried transmission line from approximately 8 miles to approximately 60 miles. In addition, the amendment proposed a minor shift in the international border crossing location and identified some other project changes. The proposed transmission line route and associated changes in the amended application is a new “Applicant's Preferred Alternative.”

The Supplement to the Draft EIS will present an analysis of the new Applicant's Preferred Alternative. This analysis will compare the new proposed transmission line route and configuration (above ground/underground) against the alternatives currently presented in the Draft EIS. To accommodate public review and comment on both the Draft EIS and the Supplement to the Draft EIS, DOE is extending the public comment period until December 31, 2015. DOE has canceled the public hearings on the Draft EIS that were to be held in October 2015 and will reschedule those hearings after the Supplement to the Draft EIS is issued.

**DATES:** DOE extends the current public comment period that was to close on October 29, 2015, to December 31, 2015. DOE will conduct public hearings on the Draft EIS and the Supplement to the Draft EIS prior to the close of the public comment period on December 31, 2015. DOE will announce dates, times and locations of the rescheduled public hearings after issuance of the Supplement to the Draft EIS, which is expected in November 2015.

**ADDRESSES:** Requests for individuals to be added to the document mailing list (to receive a paper or electronic copy of the Draft EIS and/or Supplement to the Draft EIS) should be addressed to: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; by email to [Brian.Mills@hq.doe.gov](mailto:Brian.Mills@hq.doe.gov); or by facsimile to 202–586–8008. Additional information on the Northern Pass Transmission Line Project EIS is available on the EIS Web site at <http://www.northernpasseis.us>.

**SUPPLEMENTARY INFORMATION:** The public comment period on the Draft EIS started on July 31, 2015, with publication in the **Federal Register** by the U.S. Environmental Protection Agency of its Notice of Availability of the Draft EIS. The Draft EIS is available on the Northern Pass EIS Web site at <http://www.northernpasseis.us/library/>

*draft-eis*. On August 28, 2015, DOE announced public hearings in October 2015 to receive comments on the Draft EIS in the **Federal Register** (80 FR 52268). On August 31, 2015, DOE received an amendment to the July 1, 2013, Northern Pass Transmission Line Project Presidential permit amended application. The August 31, 2015 amendment and related exhibits are available on the Northern Pass EIS Web site at <http://www.northernpasseis.us/library/documents/>.

The August 31, 2015 application amendment changed the proposed transmission line route by adding three miles of buried transmission line adjacent to a road not previously analyzed, added two new transition stations (one in Bridgewater and one in Bethlehem; both would transition the transmission line between aboveground and buried) of approximately one acre each, and increased the amount of proposed buried transmission line from approximately 8 miles to approximately 60 miles. In addition, the amendment proposed a minor shift (less than 100 feet) in the international border crossing location, changed the project size from 1,200 MW to 1,000 MW with a potential transfer capability of 1,090 MW and included other design changes (e.g., change in converter technology and type of cable).

Issued in Washington, DC, on September 24, 2015.

**Meghan Conklin,**

*Deputy Assistant Secretary, National Electricity Delivery Division, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy.*

[FR Doc. 2015-24772 Filed 9-29-15; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. NJ15-18-000]

#### Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on September 22, 2015, Oncor Electric Delivery Company LLC submitted its tariff filing: Oncor TFO Tariff Rate Changes, to be effective 9/15/2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto: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 October 13, 2015.

Dated: September 24, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-24740 Filed 9-29-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER15-2541-000]

#### Burgess Capital LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Burgess Capital LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 14, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 24, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-24738 Filed 9-29-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

September 24, 2015.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER15-2707-000.

*Applicants:* PacifiCorp.

*Description:* § 205(d) Rate Filing: USBR SGIA ? Green Springs Rev 1 to be effective 9/15/2015.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5112.

*Comments Due:* 5 p.m. ET 10/15/15.

*Docket Numbers:* ER15–2708–000.

*Applicants:* Hardin Hilltop Wind, LLC.

*Description:* § 205(d) Rate Filing: Hardin Hilltop and Greene Wind Transmission and Interconnection Agreement to be effective 11/23/2015.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5119.

*Comments Due:* 5 p.m. ET 10/15/15.

*Docket Numbers:* ER15–2709–000.

*Applicants:* Hardin Hilltop Wind, LLC.

*Description:* § 205(d) Rate Filing: Hardin Hilltop and Hardin Wind Transmission and Interconnection Agreement to be effective 11/23/2015.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5125.

*Comments Due:* 5 p.m. ET 10/15/15.

*Docket Numbers:* ER15–2710–000.

*Applicants:* Hardin Hilltop Wind, LLC.

*Description:* § 205(d) Rate Filing: Hardin Hilltop and Poverty Ridge Transmission and Interconnection Agreement to be effective 11/23/2015.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5126.

*Comments Due:* 5 p.m. ET 10/15/15.

*Docket Numbers:* ER15–2711–000.

*Applicants:* Hardin Hilltop Wind, LLC.

*Description:* § 205(d) Rate Filing: Hardin Hilltop and Sutton Wind Transmission and Interconnection Agreement to be effective 11/23/2015.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5127.

*Comments Due:* 5 p.m. ET 10/15/15.

*Docket Numbers:* ER15–2712–000.

*Applicants:* Hardin Hilltop Wind, LLC.

*Description:* § 205(d) Rate Filing: Hardin Hilltop and Wind Family Transmission and Interconnection Agreement to be effective 11/23/2015.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5129.

*Comments Due:* 5 p.m. ET 10/15/15.

*Docket Numbers:* ER15–2713–000.

*Applicants:* Florida Power & Light Company.

*Description:* § 205(d) Rate Filing: FPL–FPUC–Preliminary Engineering Design, Permitting and Procurement of Material to be effective 9/2/2015.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5130.

*Comments Due:* 5 p.m. ET 10/15/15.

*Docket Numbers:* ER15–2714–000.

*Applicants:* Hardin Hilltop Wind, LLC.

*Description:* § 205(d) Rate Filing: Hardin Hilltop and Zontos Wind

Transmission and Interconnection Agreement to be effective 11/23/2015.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5131.

*Comments Due:* 5 p.m. ET 10/15/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 24, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–24736 Filed 9–29–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. NJ15–17–000]

#### Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on September 22, 2015, Oncor Electric Delivery Company LLC submitted its tariff filing: Oncor Tex-La Tariff Rate Changes, to be effective 9/15/2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto: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 October 13, 2015.

Dated: September 24, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–24739 Filed 9–29–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG15–131–000.

*Applicants:* Desert Stateline LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Desert Stateline LLC.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5030.

*Comments Due:* 5 p.m. ET 10/15/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER15–1409–002.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* Report Filing: 2015–09–24\_SA 2769 Refund Report for ATC-City of Reedsburg CFA to be effective N/A.

*Filed Date:* 9/24/15.

*Accession Number:* 20150924–5058.

*Comments Due:* 5 p.m. ET 10/15/15.

*Docket Numbers:* ER15–1411–002.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* Report Filing: 2015–09–24\_SA 2770 Refund Report of ATC-City of Sun Prairie CFA to be effective N/A.

*Filed Date:* 9/24/15.  
*Accession Number:* 20150924–5060.  
*Comments Due:* 5 p.m. ET 10/15/15.  
*Docket Numbers:* ER15–1494–000.  
*Applicants:* Convergent Energy and Power Inc.  
*Description:* Report Filing: Market-Based Rate Tariff Refund Report to be effective N/A.

*Filed Date:* 9/24/15.  
*Accession Number:* 20150924–5077.  
*Comments Due:* 5 p.m. ET 10/15/15.  
*Docket Numbers:* ER15–2695–000.  
*Applicants:* Crosswind Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Crosswind and Eagle View Transmission and Interconnection Agreement to be effective 11/22/2015.

*Filed Date:* 9/23/15.  
*Accession Number:* 20150923–5160.  
*Comments Due:* 5 p.m. ET 10/14/15.  
*Docket Numbers:* ER15–2696–000.  
*Applicants:* Crosswind Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Crosswind and Elk Lake Transmission and Interconnection Agreement to be effective 11/22/2015.

*Filed Date:* 9/23/15.  
*Accession Number:* 20150923–5162.  
*Comments Due:* 5 p.m. ET 10/14/15.  
*Docket Numbers:* ER15–2697–000.  
*Applicants:* Crosswind Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Crosswind and Green Prairie Transmission and Interconnection Agreement to be effective 11/22/2015.

*Filed Date:* 9/23/15.  
*Accession Number:* 20150923–5163.  
*Comments Due:* 5 p.m. ET 10/14/15.  
*Docket Numbers:* ER15–2698–000.  
*Applicants:* Crosswind Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Crosswind and Highland Transmission and Interconnection Agreement to be effective 11/22/2015.

*Filed Date:* 9/23/15.  
*Accession Number:* 20150923–5164.  
*Comments Due:* 5 p.m. ET 10/14/15.  
*Docket Numbers:* ER15–2699–000.  
*Applicants:* Crosswind Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Crosswind and Palo Alto Transmission and Interconnection Agreement to be effective 11/22/2015.

*Filed Date:* 9/23/15.  
*Accession Number:* 20150923–5166.  
*Comments Due:* 5 p.m. ET 10/14/15.  
*Docket Numbers:* ER15–2700–000.  
*Applicants:* Crosswind Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Crosswind and Silver Lake

Transmission and Interconnection Agreement to be effective 11/22/2015.

*Filed Date:* 9/23/15.  
*Accession Number:* 20150923–5167.  
*Comments Due:* 5 p.m. ET 10/14/15.  
*Docket Numbers:* ER15–2701–000.  
*Applicants:* Crosswind Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Crosswind and Sunrise View Transmission and Interconnection Agreement to be effective 11/22/2015.

*Filed Date:* 9/23/15.  
*Accession Number:* 20150923–5168.  
*Comments Due:* 5 p.m. ET 10/14/15.  
*Docket Numbers:* ER15–2702–000.  
*Applicants:* Crosswind Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Crosswind and Virgin Lake Transmission and Interconnection Agreement to be effective 11/22/2015.

*Filed Date:* 9/23/15.  
*Accession Number:* 20150923–5169.  
*Comments Due:* 5 p.m. ET 10/14/15.  
*Docket Numbers:* ER15–2703–000.  
*Applicants:* Southern California Edison Company.  
*Description:* § 205(d) Rate Filing: Amended CLGIA and Distribution Service Agreement Tulare Solar Center 1 Project to be effective 9/25/2015.

*Filed Date:* 9/24/15.  
*Accession Number:* 20150924–5000.  
*Comments Due:* 5 p.m. ET 10/15/15.  
*Docket Numbers:* ER15–2704–000.  
*Applicants:* National Gas & Electric, LLC.  
*Description:* Baseline eTariff Filing: Application for MBR to be effective 9/25/2015.

*Filed Date:* 9/24/15.  
*Accession Number:* 20150924–5065.  
*Comments Due:* 5 p.m. ET 10/15/15.  
*Docket Numbers:* ER15–2705–000.  
*Applicants:* Southwest Power Pool, Inc.  
*Description:* § 205(d) Rate Filing: Revisions To Address Seams Transmission Projects to be effective 12/1/2015.

*Filed Date:* 9/24/15.  
*Accession Number:* 20150924–5073.  
*Comments Due:* 5 p.m. ET 10/15/15.  
*Docket Numbers:* ER15–2706–000.  
*Applicants:* Hardin Hilltop Wind, LLC.  
*Description:* Baseline eTariff Filing: Hardin Hilltop and Cy-Hawk Transmission and Interconnection Agreement to be effective 11/23/2015.

*Filed Date:* 9/24/15.  
*Accession Number:* 20150924–5101.  
*Comments Due:* 5 p.m. ET 10/15/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 24, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–24735 Filed 9–29–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 6942–003]

#### Joseph Weinert, Holly Parrish and Kevin Bezner, Notice of Transfer of Exemption

1. By letter filed September 15, 2015, Joseph Weinert informed the Commission that the exemption from licensing for the Lower Bear Creek Power Plant Project, FERC No. 6942, originally issued May 9, 1983,<sup>1</sup> has been transferred to Holly Parrish and Kevin Bezner. The project is located on the Little Bear Creek in Placer County, California. The transfer of an exemption does not require Commission approval.

2. Holly Parrish and Kevin Bezner are now the exemptees of the Lower Bear Creek Power Plant Project, FERC No. 6942. All correspondence should be forwarded to: Holly Parrish and Kevin Bezner, 4239 Fairway View Drive, Loomis, CA 95650.

Dated: September 24, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–24741 Filed 9–29–15; 8:45 am]

**BILLING CODE 6717–01–P**

<sup>1</sup> 23 FERC ¶ 62,182, Notice of Exemption From Licensing (1982).

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 14698–000]

**Shenango Dam Hydroelectric Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications**

On August 11, 2015, Shenango Dam Hydroelectric Company, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers' (Corps) Shenango dam located on the Shenango River, near the Borough of Sharpsburg, Mercer County, Pennsylvania. 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 Shenango Hydroelectric Project would consist of the following: (1) Five bulb turbines/generators having a total installed capacity of 2,500 kilowatts to be installed on the upstream face of the existing dam in five of the seven discharge conduits; (2) a proposed steel equipment building 11 feet wide by 40 feet long housing the switchgear and transformer; (3) a 400-foot-long, 14.7-kilovolt transmission line extending to an existing FirstEnergy transmission system; and (4) appurtenant facilities. The proposed project would have an average annual generation of 10,000 megawatt-hours.

*Applicant Contact:* Mr. David C. Sinclair, Advanced Hydro Solutions, LLC, 3000 Auburn Drive, Suite 430, Beachwood, OH 44122; phone: (216) 472–5581.

*FERC Contact:* Timothy Looney; phone: (202) 502–6096.

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](mailto: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–14698–000.

More information about this project, including a copy of the application, can be viewed or printed on the “eLibrary” link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P–14698) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 24, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–24742 Filed 9–29–15; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL15–103–000]

**San Diego Gas & Electric Company; Notice of Petition for Declaratory Order**

Take notice that on September 23, 2015, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a), section 219 of the Federal Power Act, 16 U.S.C. 824(s), and Order No. 679,<sup>1</sup> San Diego Gas & Electric Company (SDG&E or Petitioner), filed a petition for declaratory order requesting authorization of incentive treatment for the South Orange County Reliability Enhancement Project. SDG&E requests incentive rate treatment for application to the Project that will authorize recovery of one hundred percent of all prudently incurred development and construction costs if the Project is abandoned or cancelled, in whole or in part, for reasons beyond SDG&E's

<sup>1</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 FR 43294 (Jul. 31, 2006), *FERC Stats. & Regs.* ¶ 31,222 (2006) (Order No. 679), order on reh'g, Order No. 679–A, 72 FR 1152 (Jan. 10, 2007), *FERC Stats. & Regs.* ¶ 31,236 (“Order No. 679–A”), order on reh'g, 119 *FERC* ¶ 61,062 (2007).

control, as more fully explained in the petition.

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 Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto: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 October 23, 2015.

Dated: September 24, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–24737 Filed 9–29–15; 8:45 am]

**BILLING CODE 6717–01–P**

**FEDERAL HOUSING FINANCE AGENCY**

[No. 2015–N–08]

**Submission for OMB Review; Comment Request**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** 30-Day Notice of Submission of Information Collection for Approval from the Office of Management and Budget.

**SUMMARY:** In accordance with the requirements of the Paperwork

Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is submitting the information collection entitled "Advances to Housing Associates" to the Office of Management and Budget (OMB) for review and approval of a three year extension of OMB control number 2590-0001, which is due to expire on September 30, 2015.

**DATES:** Interested persons may submit comments on or before October 30, 2015.

**ADDRESSES:** Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: 202-395-6974, Email: *OIRA\_Submission@omb.eop.gov*. Please also submit comments to FHFA, identified by "Proposed Collection; Comment Request: 'Advances to Housing Associates, (No. 2015-N-08)'" by any of the following methods:

- *Agency Web site:* [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the agency.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Proposed Collection; Comment Request: "Advances to Housing Associates, (No. 2015-N-08)".

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

**FOR FURTHER INFORMATION CONTACT:** Jonathan F. Curtis, Financial Analyst, by email at [Jonathan.Curtis@fhfa.gov](mailto:Jonathan.Curtis@fhfa.gov), by telephone at (202) 649-3321, or Eric M. Raudenbush, Assistant General Counsel, [Eric.Raudenbush@fhfa.gov](mailto:Eric.Raudenbush@fhfa.gov), (202) 649-3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The Telecommunications Device

for the Hearing Impaired is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### A. Need for and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) establishes the requirements for making Federal Home Loan Bank (Bank) advances to nonmember mortgagees, which are referred to as "Housing Associates" in FHFA's regulations.<sup>1</sup> Section 10b also establishes the eligibility requirements an applicant must meet in order to be certified as a Housing Associate.

Part 1264 of FHFA's regulations implements the statutory eligibility requirements and establishes uniform review criteria the Banks must use in evaluating applications from entities that wish to be certified as a Housing Associate. Specifically, § 1264.4 implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy those requirements.<sup>2</sup> Section 1264.5 authorizes the Banks to approve or deny all applications for certification as a Housing Associate, subject to the statutory and regulatory requirements.<sup>3</sup> It also permits an applicant that has been denied certification by a Bank to appeal that decision to FHFA.

In part 1266 of FHFA's regulations, subpart B governs Bank advances to Housing Associates that have been approved under part 1264. Section 1266.17 establishes the terms and conditions under which a Bank may make advances to Housing Associates.<sup>4</sup> Specifically, § 1266.17(e) imposes a continuing obligation on each certified Housing Associate to provide information necessary for the Bank to determine if it remains in compliance with applicable statutory and regulatory requirements, as set forth in part 1264.

The OMB control number for the information collection, which expires on September 30, 2015, is 2590-0001. The likely respondents include entities applying to be certified as a Housing Associate and current Housing Associates.

##### B. Burden Estimates

FHFA estimates the total annualized hour burden imposed upon respondents by this information collection to be 336 hours (28 hours for applicants + 308 hours for current Housing Associates), based on the following calculations:

<sup>1</sup> See 12 U.S.C. 1430b; 12 CFR 1264.3.

<sup>2</sup> See 12 CFR 1264.4.

<sup>3</sup> See 12 CFR 1264.5.

<sup>4</sup> See 12 CFR 1266.17.

##### I. Applicants

FHFA estimates that the total annual average number of entities applying to be certified as a Housing Associate over the next three years will be 2, with one response per applicant. The estimate for the average hours per application is 14 hours. Therefore, the estimate for the total annual hour burden for all applicants is 28 hours (2 applicants × 1 response per applicant × 14 hours = 28 hours).

##### II. Current Housing Associates

FHFA estimates that the total annual average number of existing Housing Associates over the next three years will be 77, with one response per Housing Associate required to comply with the regulatory reporting requirements. The estimate for the average hours per response is 4 hours. Therefore, the estimate for the total annual hour burden for current Housing Associates is 308 hours (77 certified Housing Associates × 1 response per associate × 4 hours = 308 hours).

##### C. Comment Request

###### *Comment Received in Response to the Initial Notice*

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published a request for public comments regarding this information collection in the **Federal Register** on July 2, 2015.<sup>5</sup> The 60-day comment period closed on August 31, 2015. FHFA received one comment that did not address the burden estimates, or any other PRA-related aspect of the collection.

###### *Further Comments Requested in Response to This Notice*

In response to this notice, FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: September 24, 2015.

**Kevin Winkler,**  
Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2015-24710 Filed 9-29-15; 8:45 am]

**BILLING CODE 8070-01-P**

<sup>5</sup> See 80 FR 38200 (July 2, 2015).

**FEDERAL MARITIME COMMISSION****Notice of Agreements Filed**

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site ([www.fmc.gov](http://www.fmc.gov)) or by contacting the Office of Agreements at (202) 523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov).

*Agreement No.:* 012179-001.

*Title:* Hoegh/Farrell Space Charter and Cooperative Working Agreement.  
*Parties:* Hoegh Autoliners AS and Farrell Lines Incorporated.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW.; Washington, DC 20036.

*Synopsis:* The amendment extends the duration of the agreement through September 30, 2025.

*Agreement No.:* 012360.

*Title:* "K" Line/Volkswagen Konzernlogistik GmbH & Co. OHG Space Charter Agreement.

*Parties:* Kawasaki Kisen Kaisha, Ltd and Volkswagen Konzernlogistik GmbH & Co. OHG.

*Filing Party:* Eliot J. Halperin, Esq.; Manelli Selter PLLC; 2000 M Street NW., 7th Floor; Washington, DC 20036-3307.

*Synopsis:* The Agreement authorizes "K" Line to charter space to Volkswagen in the trade between the U.S. on the one hand, and Mexico, Germany and Canada on the other hand.

*Agreement No.:* 012361.

*Title:* ELJSA/CMA CGM North West European Continent—U.S. East Coast Service Slot Charter Agreement.

*Parties:* Evergreen Line Joint Service Agreement and CMA CGM S.A.

*Filing Party:* Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000; New York, NY 10006-2802.

*Synopsis:* The agreement authorizes ELJSA to charter space to CMA CGM in the trade between ports in Belgium, Germany, Netherlands, and France on the one hand, and U.S. East Coast on the other hand.

By Order of the Federal Maritime Commission.

Dated: September 25, 2015.

**Karen V. Gregory,**  
*Secretary.*

[FR Doc. 2015-24723 Filed 9-29-15; 8:45 am]

**BILLING CODE 6731-AA-P**

**FEDERAL RESERVE SYSTEM****Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 2015.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Gillmor Financial Services, Inc.*, to engage directly in lending activities pursuant to Section 225.28(b)(1).

Board of Governors of the Federal Reserve System, September 25, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015-24814 Filed 9-29-15; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 2015.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *BB&T Corporation*, Winston-Salem, North Carolina; to merge with National Penn Bancshares, Inc., Allentown, Pennsylvania, and thereby indirectly acquire National Penn Bank, Allentown, Pennsylvania.

Board of Governors of the Federal Reserve System, September 25, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015-24813 Filed 9-29-15; 8:45 am]

**BILLING CODE 6210-01-P**

**GENERAL SERVICES ADMINISTRATION**

[OMB Control No. 3090-0287; Docket 2015-0001; Sequence 10]

**Submission for OMB Review; Background Investigations for Child Care Workers**

**AGENCY:** Office of Mission Assurance, General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding an existing OMB information collection.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding the collection of personal data for background investigations for child

care workers accessing GSA owned and leased controlled facilities. A notice was published in the **Federal Register** at 80 FR 32561 on June 9, 2015. No comments were received.

**DATES:** *Submit comments on or before:* October 30, 2015.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally, submit a copy to GSA by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0287, Background Investigations for Child Care Workers". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0287, Background Investigations for Child Care Workers" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090-0287, Background Investigations for Child Care Workers.

*Instructions:* Please submit comments only and cite Information Collection 3090-0287, Background Investigations for Child Care Workers, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Grady Hannah, Security Officer, Office of Mission Assurance, GSA by telephone at 202-219-0273 or email [grady.hannah@gsa.gov](mailto:grady.hannah@gsa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Homeland Security Presidential Directive (HSPD) 12 "Policy for a Common Identification Standard for Federal Employees and Contractors" requires the implementation of a governmentwide standard for secure

and reliable forms of identification for Federal employees and contractors. OMB's implementing instructions requires all contract employees requiring routine access to federally controlled facilities for greater than six (6) months to receive a background investigation. The minimum background investigation is the National Agency Check with Written Inquiries or NACI and the Office of Personnel Management offers a childcare NACI (CNACI).

However, there is no requirement in the law or HSPD-12 that requires child care employees to be subject to the NACI/CNACI since employees of child care providers are neither government employees nor government contractors. The child care providers are required to complete the criminal history background checks mandated in the Crime Control Act of 1990, Public Law 101-647, dated November 29, 1990, as amended by Public Law 102-190, dated December 5, 1991. These statutes require that each employee of a child care center located in a Federal building or in leased space must undergo a background check.

According to GSA policy, child care workers (as described above) will need to submit the following:

1. An original signed copy of a *Basic National Agency Check Criminal History*, GSA Form 176; and
2. Two sets of fingerprints on FBI Fingerprint Cards, for FD-87 and/or electronic prints from an enrollment center.
3. Electronically submit the e-qip (SF85) application for completion of the CNACI.

This is not a request to collect new information; this is a request to change the form that is currently being used to collect this information. The new GSA forms will be less of a public burden.

**B. Annual Reporting Burden**

*Respondents:* 1200.  
*Responses per Respondent:* 1.  
*Hours per Response:* 1.  
*Total Burden Hours:* 1200.

**C. Public Comments**

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from

the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202-501-4755. Please cite Background Investigations for Child Care Workers, in all correspondence.

Dated: September 21, 2015.

**David A. Shive,**

*Chief Information Officer.*

[FR Doc. 2015-24865 Filed 9-29-15; 8:45 am]

**BILLING CODE 6820-23-P**

**GENERAL SERVICES ADMINISTRATION**

[Notice-MG-2015-05; Docket No. 2015-0002; Sequence No. 5]

**Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Advisory Committee Meeting**

**AGENCY:** Office of Federal High-Performance Green Buildings, Office of Government-Wide Policy, General Services Administration (GSA).

**ACTION:** Meeting notice.

**SUMMARY:** Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2). This notice provides the agenda and schedule for the October 28, 2015 meeting of the Green Building Advisory Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities. Interested individuals must register to attend as instructed below under **SUPPLEMENTARY INFORMATION**.

**DATES:** *Meeting date:* The meeting will be held on Wednesday, October 28, 2015, starting at 9 a.m. Eastern Daylight Time, and ending no later than 4 p.m., (EDT).

**FOR FURTHER INFORMATION CONTACT:** Mr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, General Services Administration, 1800 F Street NW., Washington, DC 20405, telephone 202-219-1121 (note: this is not a toll-free number). Additional information about the Committee, including meeting materials, will be available on-line at <http://www.gsa.gov/gbac>.

**SUPPLEMENTARY INFORMATION:**

*Procedures for Attendance and Public Comment:* Contact Mr. Ken Sandler at [ken.sandler@gsa.gov](mailto:ken.sandler@gsa.gov) to register to attend the meeting. To attend the meeting, submit your full name, organization, email address, and phone number. Requests to attend the October 28, 2015



meeting must be received by 5:00 p.m. (EDT), on Monday, October 19, 2015.

Contact Ken Sandler at [ken.sandler@gsa.gov](mailto:ken.sandler@gsa.gov) to register to comment during the October 28, 2015 meeting public comment period. Registered speakers/organizations will be allowed a maximum of 5 minutes each and will need to provide written copies of their presentations. Requests to comment at the meeting must be received by 5:00 p.m., (EDT) on Monday, October 19, 2015. Written comments also may be provided to Mr. Sandler at [ken.sandler@gsa.gov](mailto:ken.sandler@gsa.gov) by the same deadline.

**Background:** The Administrator of the U.S. General Services Administration established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee advises GSA on the rapid transformation of the Federal building portfolio to sustainable technologies and practices. The Committee reviews strategic plans, products and activities of the Office of Federal High-Performance Green Buildings and provides advice regarding how the Office can accomplish its mission most effectively.

*October 28, 2015 Meeting Agenda:*

- Welcome, Introductions, & Plans for Today
- Energy Use Index: Task Group Report & Discussion
- Portfolio Prioritization: Task Group Report & Discussion
- Working Lunch (with Presenter)
- Updates on Committee Proposals: Net Zero Energy, Social Cost of Carbon
- New Topics Proposed by Committee Members
- Public Comment Period
- Closing Comments
- Adjourn

Detailed agendas, background information and updates for the meeting will be posted on GSA's Web site at <http://www.gsa.gov/gbac>.

**Meeting Access:** The Committee will convene its October 28, 2015 meeting at the General Services Administration building, Room 6159, 1800 F Street NW., Washington, DC 20405. The site is accessible to individuals with disabilities.

Dated: September 21, 2015.

**Kevin Kampschroer,**

*Federal Director, Office of Federal High-Performance Green Buildings, General Services Administration.*

[FR Doc. 2015-24867 Filed 9-29-15; 8:45 am]

**BILLING CODE 6820-14-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Toxic Substances and Disease Registry**

[60Day-15-0046; Docket No. ATSDR-2015-0005]

**Proposed Data Collection Submitted for Public Comment and Recommendations**

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). This notice invites comment on the three-year extension of information collection clearance for the "Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation" project (OMB Control No. 0923-0046; expiration date 05/31/2016). The purpose of the study is to examine the potential association between environmental contaminants (*i.e.*, uranium and other heavy metal exposures) and reproductive birth outcomes by recruiting Navajo mothers to assess and follow theirs and their children's uranium exposures at birth and at key developmental milestones.

**DATES:** Written comments must be received on or before November 30, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. ATSDR-2015-0005 by any of the following methods:

- **Federal eRulemaking Portal:** [Regulation.gov](http://www.Regulation.gov). Follow the instructions for submitting comments.
- **Mail:** Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329.

**Instructions:** All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to [Regulations.gov](http://www.Regulations.gov), including any personal information provided. For access to the docket to read background documents or comments received, go to [Regulations.gov](http://www.Regulations.gov).

**Please note:** All public comment should be submitted through the Federal eRulemaking portal ([Regulations.gov](http://www.Regulations.gov)) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

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; (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.

**Proposed Project**

Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation (U01), (OMB Control No. 0923-0046, Expiration Date 02/29/2016)—Extension—Agency for Toxic Substances and Disease Registry (ATSDR).

*Background and Brief Description*

The Navajo Nation is the largest Alaska Native/American Indian Reservation in the United States. From 1948 to 1986, many uranium mining and milling operations took place in the Navajo Nation, leaving a large amount of uranium contamination on the reservation. The House Committee on Oversight and Government Reform requested that federal agencies develop a plan to address health and environmental impacts of uranium contamination in the Navajo Nation.

As a result in 2013, ATSDR and its research partners (University of New Mexico Community Environmental Health Program [UNM-CEHP], Navajo Area Indian Health Service [NAIHS], Navajo Nation Division of Health [NNDOH], Navajo Nation Environmental Protection Agency [NNEPA], and Navajo culture and language specialists) initiated a research

study titled “Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation” (OMB Control No. 0923-0048; expiration date 02/29/2016). The goal of the research is to better understand and prevent unfavorable child and maternal health outcomes potentially related to prenatal exposures to uranium. As ATSDR has received supplemental funding to continue the study, a three-year extension for PRA clearance is requested to allow further recruitment of mother-infant pairs.

Participants include Native American mothers from age 14 to 45 with verification of pregnancy who have lived in the study area for at least 5 years. Also, participants must consent to receive prenatal care and deliver at one of the healthcare facilities that are taking part in the study.

Since 2013, over 525 mother-infant pairs and over 160 fathers have been enrolled. Biological sample analysis, surveys, and developmental screenings are performed during for each participant. An estimated 675 biomonitoring samples have been analyzed for 36 metals/metalloids including uranium, arsenic, lead and mercury. Home environmental assessments (HEAs) consist of gamma radiation surveys, indoor air radon tests, and dust sample analysis of the participants’ primary residence during pregnancy, and over 400 HEAs have been completed to date. Study

participants receive report back letters on their biomonitoring and HEA results to inform them of uranium and other heavy metals in their bodies and in and around their home environment.

The survey instruments for pregnant mothers include the following: Enrollment Survey, Ages and Stages Questionnaire (ASQ-I), Mullen Stages of Early Development (MSEL), Postpartum Surveys, and Food Frequency Questionnaire/WIC Intake. An enrollment survey for fathers who agree to participate is also administered. Follow-up assessments including the Ages & Stages Questionnaire and biomonitoring at 2, 6, 9 and 12 months are currently being conducted for the 387 infants delivered to date.

Community Health and Environmental Research Specialists (CHERS) administer the surveys using a CDC-approved electronic data entry system. Survey instruments are used to collect demographic information and to assess potential environmental health risks and mother-child interactions. The final format of the survey instruments is based on review and input from the Navajo Nation community liaison group and associated Navajo staff to address issues such as cultural sensitivity, comprehension and language translation.

There is no cost to the respondents other than their time to participate in the study. The total estimated annual burden hours equals 4,455.

**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.)
Mother .....	Eligibility Form (screening form) .....	750	1	5/60	63
	Enrollment Survey .....	550	1	2	1,100
	Home Environmental Assessment ...	550	1	1	550
	Ages and Stages Questionnaire—(2, 6, 9, 12 months).	500	4	15/60	500
	Mullen Stages of Early Development	500	1	20/60	167
	Postpartum Survey—(2 months) .....	500	1	1	500
	Postpartum Survey—(6, 9, 12 months).	500	3	15/60	375
Father .....	Food Frequency Questionnaire/WIC Intake.	500	1	45/60	375
	Enrollment Survey .....	550	1	90/60	825
Total .....	.....	.....	.....	.....	4,455

**Leroy A. Richardson,**  
 Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.

[FR Doc. 2015-24718 Filed 9-29-15; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[60Day–15–0048; Docket No. ATSDR–2015–0006]

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS)

**ACTION:** Notice with comment period.

**SUMMARY:** The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed extension of the information collection entitled “ATSDR Exposure Investigations (EIs)” (OMB Control No. 0923–0048, Expiration Date 5/31/2016). EIs are used by ATSDR as part of its Public Health Assessment (PHA) process to identify whether exposure to contaminants have occurred in communities and to make recommendations for how to lower or eliminate exposure.

**DATES:** Written comments must be received on or before November 30, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. ATSDR–2015–0006 by any of the following methods:

- *Federal eRulemaking Portal:* *Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

*Please note: All public comment should be submitted through the Federal eRulemaking portal*

(*Regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

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; (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.

### Proposed Project

ATSDR Exposure Investigations (EIs), (OMB Control No. 0923–0048, Expiration Date 5/31/2016)—Extension—Agency for Toxic Substances and Disease Registry (ATSDR).

### Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year extension of this generic clearance to allow the agency to conduct exposure investigations (EIs), through methods developed by ATSDR. After a chemical release or suspected release into the environment, EIs are usually requested by officials of a state health agency, county health departments, the Environmental Protection Agency (EPA), the general public, and ATSDR staff.

EI results are used by public health professionals, environmental risk managers, and other decision makers to determine if current conditions warrant intervention strategies to minimize or eliminate human exposure. For example, three of the EIs that ATSDR conducted in the past three years include the Colorado Smelter (CO—blood lead and urine arsenic), ASARCO Hayden Smelter Site (AZ—blood lead and urine arsenic), and Decatur (AL—perfluorochemicals [PFCs] in serum).

### Example 1: Colorado Smelter Blood Lead and Urine Arsenic Sampling, CO

The site is a former smelter located in Pueblo, Colorado. Past sampling found elevated levels of lead and arsenic in residential soils and a slag pile associated with the smelter. ATSDR sampled blood lead levels (BLLs) in children and adults and found seven children that had BLLs near or exceeding the level of 5 micrograms per deciliter (mg/dL) (a level identified by ATSDR as a level of concern for lead effects in children). One adult had an elevated level of arsenic in their urine. Speciation of the sample determined that it was primarily organic arsenic, probably resulting from eating seafood.

- The local health department conducted a Healthy Homes Inspection for these families having children with elevated BLLs and ATSDR recommended that the children follow up with their primary care provider.

- On June 10, 2014, the local health department obtained a six year grant from the EPA Region 8 to conduct health education, BLL screening, assist in the coordination of developmental and cognitive evaluations in affected

children from a designated area of Pueblo, and conduct other public health actions/investigations as stipulated in the grant.

- On December 11, 2014, EPA listed the Colorado Smelter site on the National Priority List (NPL).

**Example 2: ASARCO Hayden Smelter Site, AZ**

The community is located in the vicinity of the ASARCO Hayden Smelter, which has been operating for 100 years as a copper ore processor. The processing has resulted in lead and arsenic contamination in the surrounding residential area and in tailing piles used for recreation. Limited sampling of the community in the past found elevated BLLs and arsenic in urine. Based on community concerns, EPA requested that ATSDR conduct an EI to assess potential exposure of the community to lead and arsenic.

- In April, 2015, ATSDR collected 83 BLL and 58 urine arsenic samples from the community.
- Participants have been notified of their results and the EI report is being prepared.

**Example 3: Perfluorochemical Serum Sampling, Decatur, AL**

Perfluorochemicals (PFC) are a class of organofluorine compounds that are used in a variety of industrial and consumer products including fire-fighting foams; personal care and cleaning products; and oil, stain, grease, and water repellent coatings. These coatings are used on carpet, textiles, leather, “non-stick” cookware, and paper wrappers used on fast food items. As a result, United States (U.S.) general

population exposure to PFCs is common.

In 2007, PFCs were released by a chemical manufacturer near Decatur, AL, and impacted environmental media in the area. In 2010, ATSDR conducted an EI to assess exposure of residents to PFCs in blood. PFCs were found in the serum of people that regularly used the public water system in the area as their primary drinking water source.

Recommendations of the EI included continued monitoring for PFCs in the public water supply and continued biological PFC testing in the community to determine if PFCs in the community had been reduced.

Based on the results of the 2010 EI, ATSDR is preparing to conduct another EI at the site in 2016 (approved by OMB on 8/10/2015), including biological sampling of serum and urine to:

- Compare individuals’ current serum PFC concentrations with their 2010 serum PFC concentrations.
- Compare individuals’ serum PFC concentrations to the national population reference values (NHANES 2011–2012).
- Calculate the biological half-life for each PFC species using paired blood and urine PFC concentrations to improve the understanding of the pharmacokinetic behavior of these compounds in humans.
- Evaluate the potential existence of non-drinking water PFC exposure pathways through physiologically-based pharmacokinetic (PBPK) modeling.

All of ATSDR’s targeted biological assessments (e.g., urine, blood) and some of the environmental investigations (e.g., air, water, soil, or food sampling) involve participants to

determine whether they are or have been exposed to unusual levels of pollutants at specific locations (e.g., where people live, spend leisure time, or anywhere they might come into contact with contaminants under investigation).

Questionnaires, appropriate to the specific contaminant, are generally needed in about half of the EIs (at most approximately 12 per year) to assist in interpreting the biological or environmental sampling results. ATSDR collects contact information (e.g., name, address, phone number) to provide the participant with their individual results. ATSDR also collects information on other possible confounding sources of chemical(s) exposure such as medicines taken, foods eaten, hobbies, jobs, etc. In addition, ATSDR asks questions on recreational or occupational activities that could increase a participant’s exposure potential. That information represents an individual’s exposure history.

The number of questions can vary depending on the number of chemicals being investigated, the route of exposure (e.g., breathing, eating, touching), and number of other sources of the chemical(s) (e.g., products used, jobs). We use approximately 12–20 questions about the pertinent environmental exposures per investigation.

Typically, the number of participants in an individual EI ranges from 10 to 100. Participation is completely voluntary, and there are no costs to participants other than their time. Based on a maximum of 12 EIs per year and 100 participants each, the estimated annualized burden hours are 600.

**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.)
Exposure Investigation Participants .....	Chemical Exposure Questions .....	1,200	1	30/60	600
Total .....	.....	.....	.....	.....	600

**Leroy A. Richardson,**  
 Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.

[FR Doc. 2015–24719 Filed 9–29–15; 8:45 am]

**BILLING CODE 4163–18–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Agency Recordkeeping/Reporting Requirements Under Emergency**

**Review by the Office of Management and Budget (OMB)**

*Title:* Request to use emergency procedures for an emergency revision to the Temporary Assistance for Needy Families (TANF) Annual Report on TANF Programs and State Maintenance-of-Effort Programs.

OMB No.: 0970-0248.

*Description:* We wish to amend the annual report to include the state report on the TANF EBT requirements. The final rule that will govern the TANF EBT state reports (Temporary Assistance for Needy Families (TANF) Program, State Reporting On Policies and Practices to Prevent Use of TANF Funds in Electronic Benefit Transfer Transactions in Specified Locations) has not yet been published, so ACF is unable to have a stand-alone EBT state report form cleared by PRA in time for states to report on fiscal year 2015. Amending the annual report to include

the EBT reporting section would enable states to report on this fiscal year and avoid possible penalty. Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 specifies that the Secretary shall reduce the state's annual TANF grant by 5 percent if the state does not report on its policies and practices each fiscal year. The states have not submitted EBT reports since fiscal year 2014.

*Respondents:* The TANF programs of the states, DC, Guam, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF-204 .....	54	1	138	7,452

*Estimated Total Annual Burden Hours:* 7,452.

*Additional Information:* ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by October 1, 2015. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690-7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503; FAX: (202) 395-7285; email: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2015-24746 Filed 9-29-15; 8:45 am]

**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Community Living**

**Administration on Intellectual and Developmental Disabilities, President's Committee for People With Intellectual Disabilities**

**AGENCY:** Administration for Community Living, HHS.

**ACTION:** Notice.

**DATES:** Monday, November 9, 2015 from 9:00 a.m. to 4:30 p.m.; and Tuesday, November 10, 2015 from 9:30 a.m. to 4:00 p.m.

These meetings will be open to the general public.

**ADDRESSES:** These meetings will be held in the Holiday Inn Capitol Hotel, Capitol Ballroom, located at 550 C Street SW., Washington, DC 20024. The hotel's phone number is: (202) 479-4000.

Individuals who would like to participate via conference call may do so by dialing toll-free #: 888-469-0957, when prompted enter pass code: 8955387. Individuals whose full participation in the meeting will require special accommodations (e.g., sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify Dr. MJ Karimi, PCPID Team Lead, via email at [MJ.Karimie@acl.hhs.gov](mailto:MJ.Karimie@acl.hhs.gov), or via telephone at 202-357-3588, no later than Monday, November 2, 2015. The PCPID will attempt to accommodate requests made after this date, but cannot guarantee the ability to grant requests received after the deadline. All meeting sites are barrier free, consistent with the Americans with Disabilities Act (ADA) and the Federal Advisory Committee Act (FACA).

*Agenda:* The Committee Members will discuss preparation of the PCPID 2016 Report to the President, including its content and format, and related data collection and analysis required to complete the writing of the Report. They will also receive presentations from selected experts in the field of

Intellectual and Developmental Disabilities.

*Additional Information:* For further information, please contact Dr. MJ Karimi, Team Lead, President's Committee for People with Intellectual Disabilities, One Massachusetts Avenue NW., Room 4206, Washington, DC 20201. Telephone: 202-357-3588. Fax: 202-205-8037. Email: [MJ.Karimie@acl.hhs.gov](mailto:MJ.Karimie@acl.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and support for individuals with intellectual disabilities. The PCPID executive order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: September 21, 2015.

**Aaron Bishop,**

*Commissioner, Administration on Disabilities (AoD).*

[FR Doc. 2015-24848 Filed 9-29-15; 8:45 am]

**BILLING CODE 4154-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2015-N-0007]

**Biosimilar User Fee Act; Stakeholder Meetings on Biosimilar User Fee Act of 2012 Reauthorization; Request for Notification of Regulated Industry Organization Intention To Participate**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for notification of participation.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing this notice to request that industry trade associations, whose members include drug companies currently engaged in development or manufacture of biosimilar biological products in the U.S., or drug companies intending to engage in these activities during the period of FY 2018–2022, notify FDA of their intent to participate in industry stakeholder meetings in support of timely reauthorization of the Biosimilar User Fee Act of 2012 (BsUFA). The statutory authority for BsUFA expires at the end of September 2017. At that time, new legislation will be required for FDA to continue collecting user fees to fund the biosimilar biological product review process. The Federal Food, Drug, and Cosmetic Act (the FD&C Act) requires that FDA engage in negotiations with regulated industry to develop recommendations to present to Congress with respect to the reauthorization of BsUFA. The purpose of this request for notification is to ensure that qualifying industry organizations notify FDA of their intention to participate in the planned negotiation process.

**DATES:** Submit notification of intention to participate by October 30, 2015.

**ADDRESSES:** Submit notification of intention to participate in FDA-industry user fee negotiations by email to [biosimilars@fda.hhs.gov](mailto:biosimilars@fda.hhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Sandra Benton, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993, 301-796-1042, FAX: 301-847-3529; [sandra.benton@fda.hhs.gov](mailto:sandra.benton@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** FDA is requesting that industry trade associations, whose members include drug companies currently engaged in development or manufacture of biosimilar biological products in the U.S., or drug companies intending to

engage in these activities during the period of FY 2018–2022, notify the Agency of their intent to participate in FDA-industry negotiations on the reauthorization of BsUFA. BsUFA authorizes FDA to collect fees from the biosimilar biological product industry for certain activities relating to biosimilar biological product development, for certain types of applications and supplements for approval of biosimilar biological products, on establishments where approved biosimilar biological products are made, and on biosimilar biological products after approval. BsUFA fees finance critical and measurable aspects of FDA's biosimilar biological product review program. The statutory authority for BsUFA expires at the end of September 2017. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to fund the biosimilar biological product review process. Section 744I(e) (21 U.S.C. 379j-53(e)) of the FD&C Act requires that FDA, in developing reauthorization recommendations to present to Congress, consult with a range of public and industry stakeholders including representatives from patient and consumer advocacy groups, health care professionals, scientific and academic experts, and the regulated industry. FDA will initiate this process on December 18, 2015, by holding a public meeting at which these key stakeholders and other members of the public will be given an opportunity to present their views on reauthorization. The FD&C Act further requires that after negotiations with the regulated industry are concluded, FDA shall present those recommendations for public review and comment, and finally transmit recommendations to Congress, revised as necessary based on public input, not later than January 15, 2017.

Consistent with FDA's approach to the Prescription Drug User Fee Act (PDUFA) industry stakeholder meetings, the BsUFA industry stakeholder meetings will include industry trade associations that represent biosimilar biological product manufacturers rather than individual companies. Accordingly, FDA is issuing this **Federal Register** notice to request that industry associations, whose members include drug companies currently engaged in the development or manufacture of biosimilar biological products in the U.S., or drug companies intending to engage in these activities during the period of FY 2018–2022, notify FDA of their intent to participate in the industry stakeholder meetings on BsUFA reauthorization.

Please notify FDA if you are a trade association interested in participating in this process by providing an email to [biosimilars@fda.hhs.gov](mailto:biosimilars@fda.hhs.gov) by October 30, 2015. Your email should contain complete contact information, including name, title, organization affiliation, address, email address, telephone number, and notice of any special accommodations required because of disability. It is anticipated that the negotiation process will begin within the first quarter of calendar year 2016 in order to ensure that FDA-industry negotiations can be concluded and the subsequent public consultation process conducted in advance of the statutory deadline in January 2017.

Dated: September 24, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-24815 Filed 9-29-15; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

[Document Identifier: HHS-OS-0990-0281-30D]

**Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request**

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for revision of the approved information collection assigned OMB control number 0990-0281, scheduled to expire on November 30, 2015. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before October 30, 2015.

**ADDRESSES:** Submit your comments to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or via facsimile to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, [Information.CollectionClearance@hhs.gov](mailto:Information.CollectionClearance@hhs.gov) or (202) 690-6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the OMB control number 0990-0281 for reference.

*Information Collection Request Title:* Prevention Communication Formative Research—Revision—OMB No. 0990-0281—Office of Disease Prevention and Health Promotion.

*Abstract:* The Office of Disease Prevention and Health Promotion’s (ODPHP) focus includes developing and disseminating prevention information to the public. Changes in this request include updated national hourly wage and minor changes to data collection activities and related burden hours in order to meet the needs of the initiatives mentioned below. This request builds on previous formative research approaches to place more emphasis on Web-based data collection to allow

greater geographical diversity among respondents, to decrease respondent burden, and to save government costs. As a federal government agency, ODPHP strives to be responsive to the needs of America’s diverse audiences while simultaneously serving all Americans across a range of channels. To carry out its prevention information efforts, ODPHP is committed to conducting formative and usability research to provide guidance on the development and implementation of its disease prevention and health promotion communication and education efforts. This generic clearance request describes data collection activities involving methods such as: Individual interviews, focus groups, Web-based surveys, card sorting and various forms of usability testing to establish a deeper understanding of the interests and needs

of consumers and health professionals for disease prevention and health promotion information and tools.

The information collected will be used by ODPHP to improve its communication, products, and services that support key office activities including: Healthy People, Dietary Guidelines for Americans, Physical Activity Guidelines for Americans, healthfinder.gov, and increasing health care quality and patient safety. ODPHP communicates through its Web sites ([www.healthfinder.gov](http://www.healthfinder.gov), [www.HealthyPeople.gov](http://www.HealthyPeople.gov), [www.health.gov](http://www.health.gov)) and through other channels including social media, print materials, interactive training modules, and reports.

*Likely Respondents:* Respondents are likely to be either consumers or health professionals.

**TOTAL ESTIMATED ANNUALIZED BURDEN HOURS**

Data collection task	Instrument/form name	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total response burden (in hours)
In-depth interviews .....	Screener .....	135	1	10/60	22.5
	Interview .....	45	1	1	45
Focus groups .....	Screener .....	240	1	10/60	40
	Focus Group .....	80	1	1.5	120
Web-based surveys .....	Screener .....	6000	1	5/60	500
	Survey .....	2000	1	15/60	500
Card sorting .....	Screener .....	180	1	10/60	180
	Card Sort .....	60	1	1	60
Usability and prototype testing of materials (print and Web).	Screener .....	360	1	10/60	60
	Usability Test .....	120	1	1	120
<b>Total .....</b>					<b>1,647.50</b>

**Terry S. Clark,**  
*Asst Information Collection Clearance Officer.*  
 [FR Doc. 2015-24702 Filed 9-29-15; 8:45 am]  
**BILLING CODE 4150-32-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 the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable 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:* Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Review Committee.

*Date:* October 22-23, 2015.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892-7924, 301-594-7947, [mintzerk@nhlbi.nih.gov](mailto:mintzerk@nhlbi.nih.gov).

(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: September 24, 2015.

**Michelle Trout,**  
*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-24690 Filed 9-29-15; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Center for Complementary & Integrative Health; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable 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 Center for Complementary and Integrative Health Special Emphasis Panel; Clinical Research on Natural Products (R21 AND R33).

*Date:* November 4, 2015.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD (Virtual Meeting).

*Contact Person:* Martina Schmidt, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Complementary, & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301-594-3456, [schmidma@mail.nih.gov](mailto:schmidma@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 24, 2015.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-24691 Filed 9-29-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health and Human Development Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Initial Review

Group; Reproduction, Andrology, and Gynecology Subcommittee.

*Date:* October 16, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6884, [leszczyd@mail.nih.gov](mailto:leszczyd@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 24, 2015.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-24689 Filed 9-29-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Motor Function, Speech and Rehabilitation.

*Date:* October 21, 2015.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301-915-6298, [mark.lindner@csr.nih.gov](mailto:mark.lindner@csr.nih.gov).

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.

*Date:* October 26–27, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott—Courtyard Long Beach Downtown, 500 East First Street, Long Beach, CA 90802.

*Contact Person:* Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301-996-6208, [hongb@csr.nih.gov](mailto:hongb@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR-14-089: Alzheimer's Disease Pilot Clinical Trials.

*Date:* October 26, 2015.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301-915-6298, [mark.lindner@csr.nih.gov](mailto:mark.lindner@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR 12-251: Behavioral Science Track Award for Rapid Transition Review.

*Date:* October 28, 2015.

*Time:* 2:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455-1761, [kellya2@csr.nih.gov](mailto:kellya2@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Trauma and Stroke.

*Date:* October 28, 2015.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-435-1785, [kondratyevad@csr.nih.gov](mailto:kondratyevad@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)



Dated: September 24, 2015.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-24693 Filed 9-29-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel R01.

*Date:* December 2, 2015.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892-7968, 301-594-4937, [huangz@mail.nih.gov](mailto:huangz@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 24, 2015.

**Michelle Trout,**

*Program Analyst, Office of the Federal Advisory Committee Policy.*

[FR Doc. 2015-24687 Filed 9-29-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Group; Pediatrics Subcommittee.

*Date:* October 22-23, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Rita Anand, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 496-1487, [anandr@mail.nih.gov](mailto:anandr@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 24, 2015.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-24688 Filed 9-29-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

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.

#### Proposed Project—Performance Monitoring for Partnerships for Success (PFS)—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA)'s Center for Substance Abuse Prevention (CSAP) aims to address two of SAMHSA's top substance abuse prevention priorities: Underage drinking (UAD; age 12 to 20) and prescription drug misuse and abuse (PDM; age 12 to 25) through the Strategic Prevention Framework Partnerships For Success (SPF-PFS) program. The program is scheduled through September 2018 to systematically collect and maintain community sub-recipient information, quarterly progress reports (QPR) and outcomes data submitted by the PFS grantees through the online Program for Evaluation in Prevention Contract (PEP-C) Management Reporting Tool (MRT). This data collection will place a new emphasis on the SPF-PFS impact on outcomes related to Prescription Drug Misuse, including the prevalence of prescription drug misuse and related consequences such as prescription drug poisonings and overdoses. SAMHSA is requesting approval for data collection through the PEP-C MRT using the instruments listed below:

- *Contact Information:* This instrument includes sections for Grantee Information, Grantee Staff, Sub-State Information, Community Subrecipient information, and Subrecipient Staff.
- *QPR:* This instrument will gather data related to implementation of the

SPF-PFS grant based on the SPF steps (Assessment, Capacity, Planning, Implementation, and Evaluation).

- *Outcome Data:* This instrument includes 4 separate sub-instruments that grantees will complete in varying time frames dependent on requirements.

- Grantee Target Outcome Data
- PFS Selected Grantee-Level Outcome Data
- Community-Level Outcome Data for Subrecipients
- Substitute Data Source Request

These SPF-PFS performance monitoring measures will primarily be

tools for SAMHSA project officers to systematically collect data to monitor grant program performance and outcomes along with grantee technical assistance needs. In addition to assessing activities related to and progress through the SPF steps, the performance monitoring instruments covered in this statement collect data to assess the following grantee required specific performance measures:

- Number of training and technical assistance activities per funded community provided by the grantee to support communities;

- Reach of training and technical assistance activities (numbers served) provided by the grantee;
- Percentage of subrecipient communities that submit data to the grantee data system.

The instruments also collect data to provide information for the following PFS required Government Performance and Results Act (GPRA) measure:

- Number of sub-recipient communities that improved on one or more targeted NOMs indicators (Outcome).

**ANNUALIZED DATA COLLECTION BURDEN**

Instrument	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
Contact Information .....	69	1	69	1	69
Quarterly Progress Report .....	69	4	276	3	828
Grantee Target Outcome Data .....	11	1	11	1	11
Selected Grantee-Level Outcome Data .....	9	1	9	1	9
Community Level Outcome Data .....	58	1	58	3	175
Substitute Data Source Request .....	15	1	15	1	15
<b>Total .....</b>	<b>69</b>	<b>.....</b>	<b>438</b>	<b>.....</b>	<b>1,107</b>

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2-1057, One Choke Cherry Road, Rockville, MD 20857 or email her a copy at [summer.king@samhsa.hhs.gov](mailto:summer.king@samhsa.hhs.gov). Written comments should be received by November 30, 2015.

**Summer King,**  
*Statistician.*

[FR Doc. 2015-24812 Filed 9-29-15; 8:45 am]

**BILLING CODE 4162-20-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information

are 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.

**Proposed Project: Cross-Site Evaluation of the Minority Substance Abuse/HIV Prevention Program (MAI)—(OMB No. 0930-0298)—Revision**

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) is requesting from the Office of Management and Budget (OMB) approval for the revision of data collection activities for the cross-site evaluation of the Minority Substance Abuse/HIV Prevention Program (MAI), which includes both youth and adult questionnaires. This revision includes the inclusion of 4 cohorts, substantial revisions to the youth and adult questionnaires, updates to the data used to estimate response rates and expected numbers of participants by service duration (see Table 1 below), and addition of two brief forms to collect dosage information. The current

approval is under OMB No. 0930-0298, which expires on 2/29/16.

This cross-site evaluation supports two of SAMHSA's 6 Strategic Initiatives: Prevention of Substance Abuse and Mental Illness and Health Care and Health Systems Integration. It builds on evaluations of data collected by ten previous cohorts of grantees funded by SAMHSA's CSAP to provide substance abuse and HIV prevention services for minority populations. The first two cohorts were planning grant programs and the rest were service grant programs. The goals for the Cohort 3-10 grants were to add, increase, or enhance integrated substance abuse (SA) and HIV prevention services by providing supportive services and strengthening linkages between service providers for at-risk minority populations. Cohorts 1-3 previously received clearance under OMB No. 0930-0208 and Cohort 6-10 grants previously received clearance under OMB No. 0930-0298. Since neither the Cohort 4 nor Cohort 5 Programs were cross-site studies, they did not require OMB clearance. The grant period for Cohort 9 and 10 grants will end on 9/30/2015.

The cohorts of grantees funded by the MAI and included in this clearance request are:

- Minority Serving Institutions (MSI) in Partnerships with Community-Based Organizations (CBO): 29 three-year grants funded at the end of FY 2013 (MSI CBO 2013).

- Minority Serving Institutions (MSI) in Partnerships with Community-Based Organizations (CBO): 21 three-year grants funded at the end of FY 2014 (MSI CBO 2014).

- Minority Serving Institutions (MSI) in Partnerships with Community-Based Organizations (CBO): 34 three-year grants were funded in FY 2015 (MSI CBO 2015).

- Capacity Building Initiative (CBI): 54 five-year grants were funded in 2015 (CBI 2015).

MSI CBO grantees are Historically Black Colleges/Universities, Hispanic Serving Institutions, American Pacific Islander Serving Institutions, or Tribal Colleges/Universities in partnership with community based organizations in their surrounding communities. MSI CBO grantees are required to provide integrated substance abuse (SA), Hepatitis C (HCV), and HIV prevention services to young adults. The CBI grantees are community-level domestic, public and private nonprofit entities, federally recognized American Indian/ Alaska Native Tribes and tribal organizations, and urban Indian organizations. CBI grantees will use grant funds for building a solid infrastructure for integrated SA, HIV, and HCV prevention service provision and implementing evidence-based prevention interventions using the SPF process. The target population for the CBI grantees will be at-risk minority adolescents and young adults. All MAI grantees are expected to provide leadership and coordination on the planning and implementation of SAMHSA's Strategic Prevention Framework (SPF) and to target minority populations, as well as other high risk groups residing in communities of color with high prevalence of SA and HIV/AIDS. The primary objectives of the cross-site evaluation are to:

- Assess the success of the MAI in reducing risk factors and increasing protective factors associated with the transmission of the Human Immunodeficiency Virus (HIV), Hepatitis C Virus (HCV) and other sexually-transmitted diseases (STD).

- Measure the effectiveness of evidence-based programs and infrastructure development activities such as: Outreach and training, mobilization of key stakeholders, substance abuse and HIV/AIDS counseling and education, testing, referrals to appropriate medical treatment and/or other intervention strategies (*i.e.*, cultural enrichment activities, educational and vocational resources, social marketing campaigns, and computer-based curricula).

- Investigate intervention types and features that yield the best outcomes for specific population groups.

- Assess the extent to which access to health care was enhanced for population groups and individuals vulnerable to behavioral health disparities residing in communities targeted by funded interventions.

- Assess the process of adopting and implementing the Strategic Prevention Framework (SPF) with the target populations.

Continuing the cross-site evaluation will assist SAMHSA/CSAP in promoting and disseminating optimally effective prevention programs, counseling, health education, and referrals to appropriate medical treatment and/or other intervention strategies. The MAI grantees are expected to provide an effective prevention process, direction, and a common set of goals, expectations, and accountabilities to be adapted and integrated at the community level. Grantees have substantial flexibility in choosing their individual evidence-based programs, but must base this selection on and build it into the five steps of the SPF. These SPF steps consist of assessing local needs, building service capacity specific to SA and HIV prevention services, developing a strategic prevention plan, implementing evidence-based interventions, and evaluating their outcomes. Grantees are also required to provide HIV and HCV testing and counseling services and referrals to appropriate treatment options. Grantees must also conduct ongoing monitoring and evaluation of their projects to assess program effectiveness including Federal reporting of the Government Performance and Results Act (GPRA) of 1993, The GPRA Modernization Act of 2010, SAMHSA/CSAP National Outcome Measures (NOMs), and the Department of Health and Human Services Core HIV Indicators.

As part of the cross-site evaluation, survey data will be collected through self-report questionnaires administered to program participants. All grantees will use two questionnaires, one for youth aged between 12 and 17 and one for adults aged 18 and older. Participants in services lasting 30 days or longer will complete all three sections of the questionnaires at three time points (baseline, exit, follow-up), taking an average of 37 (youth) or 32 (adult) minutes per survey. Participants in services lasting 2–29 days will complete the first two sections of the questionnaires at two time points (baseline, exit), taking an average of 26 (youth) or 23 (adult) minutes to

complete each survey. Participants in single-day services will complete Section 1 and 3–5 items from Section 2 at one time point (at exit), taking an average of 13 minutes for both youth and adult questionnaires. The revised youth questionnaire contains 94 questions, of which 24 relate to HIV/AIDS and the revised adult questionnaire contains 79 items, 29 of which relate to HIV/AIDS. This represents a substantial reduction from the current OMB-approved versions of the Youth and Adult Questionnaires (128 and 122 items, respectively; OMB No. 0930–0298).

In addition to the shortened versions of the Youth and Adult Questionnaires, SAMHSA is requesting approval for two brief forms for collecting dosage data. Program staff will complete the Individual Dosage Form after each one-on-one service encounter with every participant to provide information on the types of services delivered during the encounter and the duration of each service type. The form takes approximately three minutes to complete. Program staff will complete the Group Dosage Form after each group-format service encounter to provide similar information, with the addition of a list of the unique identification numbers of all participants attending the session. A typical group session is expected to have approximately 20 attendees and a typical Group Dosage Form takes about eight minutes to complete.

Respondent burden and intrusiveness have been limited to the extent possible while providing sufficient power to fulfill the cross-site evaluation's objectives. Procedures such as the use of unique identification numbers in place of personal identification information, security measures at grant sites for limiting access to completed forms, and analysis guidelines that limit the reporting of outcome results for subgroups with small sample sizes, safeguard the privacy and confidentiality of participants. Every effort has been made to coordinate cross-site data collection with local data collection efforts in an attempt to minimize respondent burden.

The cross-site evaluation results will have significant implications for the substance abuse and HIV/AIDS prevention fields, the allocation of grant funds, and other evaluation activities conducted by multiple Federal, State, and local government agencies. They will be used to develop federal policy in support of SAMHSA/CSAP program initiatives, inform the public of program outcomes and lessons learned, improve existing programs, and promote

replication and dissemination of effective prevention strategies.

*Total Estimates of Annualized Hour Burden*

The following table displays estimates of the annualized hour burden for data collection using the Youth and Adult Questionnaires and the Individual and Group Dosage Forms. The expected

numbers of participants by service duration and the numbers of completed dosage forms were estimated based on analysis of the data submitted by Cohort 7–10 grantees. The numbers are adjusted for expected response rates, also estimated based on data analysis. Program staff will complete an Individual Dosage Form for each one-on-one service encounter with every

participant, spending an estimated three minutes per form. A typical grantee is expected to complete 1,316 Individual Dosage Forms per year. A group Dosage Form will be completed for each group session held by the funded programs, and will take approximately eight minutes to complete. A typical grantee is expected to offer approximately 26 group sessions per year.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

Type of respondent activity	Number of respondents	Responses per respondent *	Total responses	Hours per response	Total burden hours
Youth Questionnaire/Single-day service duration .....	64	1	64	0.2167	14
Youth Questionnaire/2–29-day service duration .....	240	2	480	0.4333	208
Youth Questionnaire/30-or-more-day service duration .....	1,136	2	2,158	0.6167	1,401
Adult Questionnaire/Single-day service duration .....	1,040	1	1,040	0.2167	225
Adult Questionnaire/2–29-day service duration .....	4,314	2	8,628	0.3833	3,307
Adult Questionnaire/30-or-more-day service duration .....	19,150	2	38,300	0.5333	20,425
Individual Dosage Form .....	138	1,316	181,608	0.0500	9,080
Group Dosage Form .....	138	26	3,588	0.1333	478
<b>Total .....</b>	<b>26,220</b>	<b>.....</b>	<b>235,980</b>	<b>.....</b>	<b>35,139</b>

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 or email her a copy at [summer.king@samhsa.hhs.gov](mailto:summer.king@samhsa.hhs.gov). Written comments should be received by November 30, 2015.

**Summer King,**  
*Statistician.*

[FR Doc. 2015–24811 Filed 9–29–15; 8:45 am]

**BILLING CODE 4162–20–P**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**Notice of Amendment to Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification**

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of Program Comment amendment.

**SUMMARY:** The Advisory Council on Historic Preservation has amended the referenced Program Comment which avoids duplicate reviews under Section 106 of the National Historic Preservation Act regarding telecommunications projects that undergo Section 106 review by the Federal Communications Commission under existing Nationwide Programmatic Agreements. The amendments extend the duration of the Program Comment, add agencies that

can use the Program Comment, and provide for a monitoring system.

**DATES:** The amendments were adopted by the ACHP on September 24, 2015.

**ADDRESSES:** Address all questions concerning the Program Comment amendments to Charlene Vaughn, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 401 F Street NW., Washington, DC 20001–2637. You may submit electronic questions to: [cvaughn@achp.gov](mailto:cvaughn@achp.gov).

**FOR FURTHER INFORMATION CONTACT:** Charlene Vaughn, (202) 517–0207, [cvaughn@achp.gov](mailto:cvaughn@achp.gov).

**SUPPLEMENTARY INFORMATION:** Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 (Section 106), requires federal agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a “Program Comment” on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.3 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular

aspects of those undertakings by taking into account ACHP’s Program Comment and following the steps set forth in that comment.

**I. Background**

On October 23, 2009, the ACHP issued the referenced Program Comment to the U.S. Department of Agriculture Rural Utilities Service (RUS), the U.S. Department of Commerce National Telecommunications and Information Administration (NTIA), and the Federal Emergency Management Agency (FEMA) to relieve them from conducting duplicate reviews under Section 106 when those agencies assist a telecommunications project subject to Section 106 review by the Federal Communications Commission (FCC). The FCC complies with its Section 106 responsibilities through its Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (FCC NPAs).

For background on that original Program Comment, and its text before these amendments, please refer to 74 FR 60280–60281 (November 20, 2009).

On August 21, 2015, the ACHP received a request from RUS, NTIA, and the Federal Emergency Management Agency (FEMA) to amend the referenced Program Comment.

The issuance of the original Program Comment was intended to assist agencies to expeditiously allocate American Recovery and Reinvestment

Act (ARRA) funds, which was done successfully. While the ARRA funds have been expended, new funding has been provided to agencies to expedite the deployment of broadband. Also, unless amended, the Program Comment would have expired on September 30, 2015.

The extension of the duration of the Program Comment is therefore necessary to continue streamlining the Section 106 review. In addition, several new agencies are now involved in these undertakings and need to be accommodated by the Program Comment to avoid delays in project approval. One of those agencies, FirstNet may or may not provide financial assistance for such towers and collocations in the future, but is the entity responsible for ensuring the building, deployment, and operation of the nationwide public safety broadband network, which will likely include the construction of communications towers and the collocation of equipment on existing facilities.

Accordingly, the ACHP membership voted in favor of amending the Program Comment via an unassembled vote on September 24, 2015. The Program Comment has been amended to:

1. Allow all components of the Department of Homeland Security (DHS), the Federal Railroad Administration (FRA), the Federal Transit Authority (FTA), and the First Responder Network Authority (FirstNet) to use the Program Comment, and specify how to add new agencies to the Program Comment in the future;
2. Insert three new paragraphs explaining the purpose and need of the amendments listed above;
3. Extend the duration of the Program Comment to September 30, 2025;
4. Add a system to monitor the use of the Program Comment;
5. Cite Presidential Memoranda consistent with the streamlining intent of the Program Comment; and
6. Add technical edits to reflect the effective date of these amendments and changes to the statutory citation to Section 106 of the National Historic Preservation Act.

RUS sought input from stakeholders on the proposed amendments to the Program Comment. Thereafter, the ACHP became more directly involved in the consultation by holding meetings, requesting and considering comments by stakeholders, holding conference calls with them, and making changes to the draft amendments accordingly. Overall, the majority of State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and Indian tribes that commented

endorsed the amendment of the Program Comment.

Comments from several stakeholders raised issues beyond the amendments outlined above. Since addressing those issues in the text of the Program Comment itself would unnecessarily clutter it, those issues are addressed in this **Federal Register** preamble instead. These issues are:

1. How the scope of the Federal Communications Commission (FCC) Nationwide Programmatic Agreements does not include federal or tribal lands, and therefore the scope of the Program Comment is similarly limited. The FCC NPAs, by their own terms, do not apply on tribal lands. Since this Program Comment relies on compliance carried out by the FCC through the FCC NPAs, the Program Comment would similarly not cover these undertakings on tribal lands.

Regarding the applicability of the Program Comment on federal lands, it must be noted that of the roughly 635–640 million acres of federal lands, 628 million acres are managed by the Forest Service, the National Park Service, the Bureau of Land Management, the Fish and Wildlife Service, and the Department of Defense. “Federal Land Ownership: Overview and Data,” Congressional Research Service, February 8, 2012. The Program Comment does not apply to any of these agencies or other agencies typically known as land managing agencies. When these land managing agencies issue special use permits, or other approvals, for the construction or location of telecommunications facilities on the lands they manage, they have to comply with Section 106 through means other than the FCC NPAs or this Program Comment.

2. How the Program Comment relies on FCC compliance with Section 106 for the same projects through their Nationwide Programmatic Agreements, and their e-106 and Tower Construction Notification Systems. The Program Comment exempts the named agencies from having to separately comply with Section 106 regarding certain telecommunications facilities and collocations when the FCC has or will comply with Section 106 for those same facilities and collocations through its NPAs. The FCC conducts such Section 106 compliance following the processes and exemptions of those NPAs, and using its related e-106 system and Tower Construction Notification System (TCNS) which are known to most practitioners. Some SHPO stakeholders wanted us to note that some of them do not use the FCC’s e-106 system.

3. How the Program Comment, as originally issued and as amended, has always required subject agencies to inform the SHPOs and THPOs or Indian Tribes when their undertakings are covered by this Program Comment. As stated in Section IV of the original Program Comment: “Whenever RUS, NTIA, or FEMA uses this Program Comment for such undertakings, RUS, NTIA or FEMA will apprise the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) of the use of this Program Comment for the relevant communications facilities construction or modification component.” The amended Program Comment retains this language, with changes to simply note the new agencies that are now being added to the Program Comment.

On a somewhat related note, some SHPOs raised concerns about the need to address the effects of the non-tower components of undertakings. As specified in the second paragraph of Section IV of the Program Comment, the RUS, NTIA, DHS, FRA, FTA, FirstNet are responsible for the Section 106 review of those non-tower components of their undertakings.

4. The purpose, and success, of the original Program Comment in the context of the American Recovery and Reinvestment Act (ARRA). In 2009, the American Recovery and Reinvestment Act (ARRA) provided NTIA and RUS with \$7.2 billion to expand access to broadband services in the United States. The purpose of the original Program Comment was to expedite broadband expansion by relieving these agencies from conducting duplicate Section 106 reviews when those agencies have Section 106 responsibilities for a telecommunications project subject to Section 106 review by the FCC.

Since it went into effect, the Program Comment has met this purpose. The Program Comment helped RUS, NTIA, and FEMA to spend their ARRA funding for broadband deployment without unnecessary delays. The success of the Program Comment is also reflected in the agencies’ request to expand its duration and add new agencies to it.

Finally, the ACHP has not received complaints about the implementation of the Program Comment. The amendments nevertheless, provide for a monitoring system to better ensure the Program Comment is working as intended.

5. How the FCC handles discovery situations under its Nationwide Programmatic Agreement. Since the Program Comment relies on FCC compliance with its NPAs, the discovery provisions of those NPAs are

the ones that will be followed for the relevant projects. The discovery provision of the FCC Nationwide Programmatic Agreement is found on its Section IX. A copy of that agreement can be found at: [http://www.achp.gov/docs/PA\\_FCC\\_0804.pdf](http://www.achp.gov/docs/PA_FCC_0804.pdf).

## II. Final Text of the amended Program Comment

The text of the amended Program Comment is included below:

Program Comment for Streamlining Section 106 Review for Wireless Communications Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (as amended on September 24, 2015).

### I. Background

Due to their role in providing financial assistance and/or carrying out other responsibilities for undertakings that involve the construction of communications towers and collocation of communications equipment on existing facilities, the Rural Utilities Service (RUS), the National Telecommunications and Information Administration (NTIA), the Department of Homeland Security (DHS), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), and the First Responder Network Authority (FirstNet) are required to comply with Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, and its implementing regulations at 36 CFR part 800 (Section 106 review) for such undertakings. Some of those communications towers and antennas are also federal undertakings of the Federal Communications Commission (FCC), and therefore undergo, or are exempted from, Section 106 review under the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC (FCC Nationwide PA) and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (FCC Collocation PA). The FCC Nationwide PA was executed by the FCC, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) on October 4, 2004. The FCC Collocation PA was executed by the FCC, ACHP, and NCSHPO on March 16, 2001. The undertakings addressed by the FCC Nationwide PA primarily include the construction and modification of communications towers. The undertakings addressed by the FCC

Collocation PA include the collocation of communications equipment on existing structures and towers.

This Program Comment is intended to streamline Section 106 review of the construction and modification of communications towers and antennas for which FCC and RUS, NTIA, DHS, FRA, FTA, or FirstNet share Section 106 responsibility. Such streamlining is consistent with the broad purpose of the Presidential Memorandum: Unleashing the Wireless Broadband Revolution dated June 28, 2010, Executive Order 13616: Accelerating Broadband Infrastructure Deployment, dated June 14, 2012, and the Presidential Memorandum: Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training, dated March 23, 2015.

The term "DHS," as used in this Program Comment, refers to all of that agency's operational and support components. For a list of such components, you may refer to: <http://www.dhs.gov/components-directorates-and-offices>.

Nothing in this Program Comment alters or modifies the FCC Nationwide PA or the FCC Collocation PA (collectively, the FCC NPAs), or imposes Section 106 responsibilities on the FCC for elements of a RUS, NTIA, DHS, FRA, FTA, or FirstNet undertaking that are unrelated to a communications facility within the FCC's jurisdiction or are beyond the scope of the FCC NPAs.

The Program Comment, as originally issued in October 23, 2009, only covered RUS, NTIA, and the Federal Emergency Management Agency (FEMA). Because of the successful implementation of this Program Comment, as originally issued, the DHS sought to expand its participation beyond FEMA to all of its components which provide federal assistance for the construction and modification of communications towers, and the collocation of communications equipment on existing structures and towers. Three additional agencies, the FRA, which supports railroading with funding that may be used to improve safety and rail infrastructure, the FTA, which provides financial assistance to eligible applicants to support public transportation, and FirstNet, an independent authority within the NTIA that was created by Congress in 2012, also wished to become part of Program Comment in order to benefit from the efficiencies in the timely delivery of their respective programs.

DHS, FRA and FTA provide financial assistance to applicants for various undertakings, including the

construction of communications towers and collocation of communications equipment on existing facilities. Conversely, FirstNet is the entity responsible for ensuring the building, deployment, and operation of the nationwide public safety broadband network, which will likely include the construction of communications towers and the collocation of equipment on existing facilities. DHS, FRA, FTA and FirstNet must therefore comply with Section 106 for these undertakings. Some of the communications towers and collocated communications equipment assisted by DHS components, FRA, FTA and FirstNet are also the FCC's undertakings, and therefore undergo Section 106 review governed by the FCC NPAs.

Accordingly, the ACHP amended this Program Comment on September 24, 2015, to add all DHS components, FRA, FTA and FirstNet to the list of agencies subject to the terms of the Program Comment along with RUS, NTIA, and FEMA, and to extend its period of applicability, which originally would have ended on September 30, 2015.

### II. Establishment and Authority

This Program Comment was originally issued by the ACHP on October 23, 2009 pursuant to 36 CFR 800.14(e), and was subsequently amended, effective on September 24, 2015 pursuant to its Stipulation VI.

### III. Date of Effect

This Program Comment, as originally issued, went into effect on October 23, 2009. It was subsequently amended to its current version on September 24, 2015, effective on that date.

### IV. Use of This Program Comment To Comply With Section 106 for the Effects of Facilities Construction or Modification Reviewed Under the FCC Nationwide PA and/or the FCC Collocation PA

RUS, NTIA, DHS, FRA, FTA, and FirstNet will not need to comply with Section 106 with regard to the effects of communications facilities construction or modification that has either undergone or will undergo Section 106 review, or is exempt from Section 106 review, by the FCC under the FCC Nationwide PA and/or the FCC Collocation PA. For purposes of this program comment, review under the FCC Nationwide PA means the historic preservation review that is necessary to complete the FCC's Section 106 responsibility for an undertaking that is subject to the FCC Nationwide PA.

When an RUS, NTIA, DHS, FRA, FTA, or FirstNet undertaking includes

both communications facilities construction or modification components that are covered by the FCC Nationwide PA or Collocation PA and components other than such communications facilities construction or modification, RUS, NTIA, DHS, FRA, FTA, or FirstNet, as applicable, will comply with Section 106 in accordance with the process set forth at 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or another applicable alternate procedure under 36 CFR 800.14, for the components other than communications facilities construction or modification. However, RUS, NTIA, DHS, FRA, FTA, or FirstNet will not have to consider the effects of the communications facilities construction or modification component of the undertaking on historic properties.

Whenever RUS, NTIA, DHS, FRA, FTA, or FirstNet uses this Program Comment for such undertakings, RUS, NTIA, DHS, FRA, FTA, or FirstNet will apprise the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) of the use of this Program Comment for the relevant communications facilities construction or modification component.

**V. Reporting**

No later than March 1, 2016, the FCC, RUS, NTIA, DHS, FRA, FTA, and FirstNet will inform the ACHP as to the reporting system that they will utilize to collectively provide annual reports to the ACHP. The intent of the annual reports will be to enable the monitoring of the use of the Program Comment.

**VI. Amendment**

The ACHP may amend this Program Comment after consulting with FCC, RUS, NTIA, DHS, FRA, FTA, FirstNet, and other parties, as appropriate and publishing notice in the **Federal Register** to that effect.

If any other Federal agency wishes to take advantage of this Program Comment, it may notify the ACHP to that effect. An amendment, as set forth above, is needed in order to add such an agency to this Program Comment.

**VII. Sunset Clause**

This Program Comment will terminate on September 30, 2025, unless it is amended to extend the period in which it is in effect.

The ACHP may extend the Program Comment for an additional five years beyond 2025 through an amendment per Stipulation VI of this Program Comment.

**VIII. Termination**

The ACHP may terminate this Program Comment, pursuant to 36 CFR 800.14(e)(6), by publication of a notice in the **Federal Register** thirty (30) days before the termination takes effect.

**Authority:** 36 CFR 800.14(e).

Dated: September 24, 2015.

**Javier E. Marques,**  
*Associate General Counsel.*

[FR Doc. 2015-24713 Filed 9-29-15; 8:45 am]

**BILLING CODE 4310-K6-P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger and Laboratory**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc., has been approved to gauge and accredited to test

petroleum and certain petroleum products for customs purposes for the next three years as of August 27, 2014.

**DATES: Effective Dates:** The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on August 27, 2014. The next triennial inspection date will be scheduled for August 2017.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 230 Marion Ave., Linden, NJ 07036, has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Camin Cargo Control, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3 .....	Tank gauging.
7 .....	Temperature Determination.
8 .....	Sampling.
12 .....	Calculations.
17 .....	Maritime Measurements.

Camin Cargo Control, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01 .....	ASTM D-287	Standard Test Method for API Gravity of Crude Petroleum Products and Petroleum Products (Hydrometer Method).
27-03 .....	ASTM D-4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04 .....	ASTM D-95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06 .....	ASTM D-473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08 .....	ASTM D-86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-13 .....	ASTM D-4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry.
27-48 .....	ASTM D-4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-58 .....	ASTM D-5191	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
N/A .....	ASTM D1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A .....	ASTM D-3606	Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.

CBPL No.	ASTM	Title
N/A .....	ASTM D-5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence.
N/A .....	ASTM D-5599	Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection.
N/A .....	ASTM D-5769	Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry.
N/A .....	ASTM D-2699	Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel.
N/A .....	ASTM D-2700	Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel.
N/A .....	ASTM D-5134	Standard Test Method for Detailed Analysis of Petroleum Naphthas through n-Nonane by Capillary Gas Chromatography.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for the current CBP Approved Gaugers and Accredited Laboratories List. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Date: September 18, 2015.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services Directorate.*

[FR Doc. 2015-24751 Filed 9-29-15; 8:45 am]

**BILLING CODE 9111-14-P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**Approval of SGS North America, Inc., as a Commercial Gauger**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of SGS North America, Inc., as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of July 29, 2014.

**DATES:** The approval of SGS North America, Inc., as a commercial gauger became effective on July 29, 2014. The next triennial inspection date will be scheduled for July 2017.

**FOR FURTHER INFORMATION CONTACT:**

Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that SGS North America, Inc., 6624 Langley Dr., Baton Rouge, LA 70809, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3 .....	Tank gauging.
7 .....	Temperature Determination.
8 .....	Sampling.
12 .....	Calculations.
17 .....	Maritime Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the following Web site for the current CBP Approved Gaugers and Accredited Laboratories List: <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: September 18, 2015.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services Directorate.*

[FR Doc. 2015-24752 Filed 9-29-15; 8:45 am]

**BILLING CODE 9111-14-P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

[Docket No. USCBP-2015-0043]

**Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC)**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security (DHS).

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on October 29, 2015 in Washington, DC. The meeting will be open to the public.

**DATES:** The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on Thursday, October 29, 2015, from 1:00 p.m. to 4:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business.

*Pre-Registration:* Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

- For members of the public who plan to attend the meeting in person, please register either online at [https://apps.cbp.gov/te\\_reg/index.asp?w=47](https://apps.cbp.gov/te_reg/index.asp?w=47); by email to [tradeevents@dhs.gov](mailto:tradeevents@dhs.gov); or by fax to (202) 325-4290 by 5:00 p.m. EDT by October 27, 2015. You must register prior to the meeting in order to attend the meeting in person.
- For members of the public who plan to participate via webinar, please register online at [https://apps.cbp.gov/te\\_reg/index.asp?w=48](https://apps.cbp.gov/te_reg/index.asp?w=48) by 5:00 p.m. EDT by October 27, 2015.



Feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: [https://apps.cbp.gov/te\\_reg/cancel.asp?w=47](https://apps.cbp.gov/te_reg/cancel.asp?w=47) to cancel an in person registration, or [https://apps.cbp.gov/te\\_reg/cancel.asp?w=48](https://apps.cbp.gov/te_reg/cancel.asp?w=48) to cancel a webinar registration.

**ADDRESSES:** The meeting will be held at the International Trade Commission building, in Courtroom B, 500 E Street SW., Washington, DC 20436. There will be signage posted directing visitors to the location of Courtroom B.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at (202) 344-1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee prior to the formulation of recommendations as listed in the "Agenda" section below.

Comments must be submitted in writing no later than October 19, 2015, and must be identified by Docket No. USCBP-2015-0043, and may be submitted by one of the following methods:

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

- **Email:** [Tradeevents@dhs.gov](mailto:Tradeevents@dhs.gov). Include the docket number in the subject line of the message.

- **Fax:** (202) 325-4290.

- **Mail:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

**Instructions:** All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. Do not submit personal information to this docket.

**Docket:** For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> and search for Docket Number USCBP-2015-0043. To submit a comment, see the link on the Regulations.gov Web site for "How do I submit a comment?" located on the right hand side of the main site page.

There will be multiple public comment periods held during the

meeting on October 29, 2015. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, <http://www.cbp.gov/trade/stakeholder-engagement/coac>, at the time of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344-1440; facsimile (202) 325-4290.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. Appendix. The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

#### Agenda

The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will hear from the following subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed on those topics:

1. The Trade Modernization Subcommittee will discuss the progress of the Center of Excellence and Expertise (CEE) Working Group which is addressing the topics of uniformity and levels of service across all of the CEEs. The subcommittee will also discuss the formation of two new working groups, the International Engagement & Trade Facilitation Working Group and the Future Role of Global Supply Chain Parties Working Group.

2. The Global Supply Chain Subcommittee will discuss recommendations related to the use of electronic cargo security devices and their impact on CBP operations. The Pipeline Working Group will provide recommendations pertaining to clear definitions on in-transit pipeline movements and related topics. The subcommittee will also discuss Customs—Trade Partnership Against Terrorism (C-TPAT), land ports of entry

(Canada and Mexico), ocean cargo, in-transit movements and the Air Cargo Advance Screening pilot (ACAS).

3. The Exports Subcommittee Manifest Working Group will continue its review of the **Federal Register** Notices for the Air and Ocean Export Manifest Cargo Tests, and further discuss one of the elements developed from the COAC export mapping exercise, the Progressive Filing Model and Air Environment. The Exports Subcommittee will provide recommendations stemming from the reviews.

4. The One U.S. Government Subcommittee will discuss progress of the Automated Commercial Environment (ACE) Single Window effort and the COAC recommendations. The subcommittee will provide input on trade readiness and partner government agencies' readiness for the upcoming November 1, 2015, ACE implementation of Single Window. There will also be an update from the North American Single Window Vision Working Group. In addition, the Consumer Product Safety Commission (CPSC) and the Food and Drug Administration (FDA) will provide updates on previous COAC recommendations.

5. The Trade Enforcement and Revenue Collection Subcommittee will discuss the establishment of the 14th Term Intellectual Property Rights Working Group, the Trade Enforcement Vision Working Group, and progress made on the Antidumping and Countervailing Duty Working Group.

6. The Trusted Trader Subcommittee will report on the Trusted Trader Pilot and discussions on the implementation of the second phase for testing U.S. Customs and Border Protection (CBP) and partner government agency trade benefits.

Meeting materials will be available by October 26, 2015, at: <http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>

Dated: September 25, 2015.

**Maria Luisa Boyce,**

*Senior Advisor for Private Sector Engagement, Office of Trade Relations.*

[FR Doc. 2015-24750 Filed 9-29-15; 8:45 am]

**BILLING CODE 9111-14-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2015-0001]

**Changes in Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final Notice.

**SUMMARY:** New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

**DATES:** The effective date for each LOMR is indicated in the table below.

**ADDRESSES:** Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain

qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov).

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Date: September 9, 2015.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Idaho:					
Blaine, (FEMA Docket No.: B-1503).	Unincorporated areas of Blaine County, (15-10-0206P).	Mr. Lawrence Schoen, Chairman, Blaine County Board of Commissioners, 206 1st Avenue South, Suite 300, Hailey, ID 83333.	Blaine County Planning and Zoning, 219 First Avenue South, Suite 208, Hailey, ID 83333.	Jul. 2, 2015 .....	165167
Teton, (FEMA Docket No.: B-1503).	City of Driggs, (14-10-1657P).	The Honorable Hyrum Johnson, Driggs City Hall, Post Office Box 48, Driggs, ID 83422.	Driggs City Hall, 60 S. Main Street, Driggs, ID 83422.	Jul. 3, 2015 .....	160166
Teton, (FEMA Docket No.: B-1503).	Unincorporated areas of Teton County, (14-10-1657P).	The Honorable Bill Leake, Chair, County Commissioners, Teton County Courthouse, 150 Courthouse Drive, Driggs, ID 83422.	Bruce Nye, 89 N. Main Street, Suite 6, Driggs, ID 83422.	Jul. 3, 2015 .....	160230
Illinois:					
McHenry, FEMA Docket No.: B-1506).	Village of Johnsborg, (14-05-5961P).	The Honorable Edwin P. Hettermann, President, Village of Johnsborg, 1515 Channel Beach Avenue, Johnsborg, IL 60051.	1515 West Channel Beach Avenue, Johnsborg, IL 60050.	Jul. 14, 2015.	
Will, (FEMA Docket No.: B-1503).	City of Naperville, (15-05-1166P).	The Honorable A. George Pradel, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	City Hall, 400 South Eagle Street, Naperville, IL 60540.	Jul. 2, 2015 .....	170213
Will, (FEMA Docket No.: B-1503).	Unincorporated areas of Will County, (15-05-1166P).	The Honorable Lawrence Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	Will County Land Use, 58 East Clinton Street, Suite 500, Joliet, IL 60432.	Jul. 2, 2015 .....	170695
Indiana:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Hamilton, (FEMA Docket No.: B-1503).	City of Carmel, (14-05-1139P).	The Honorable James Brainard, Mayor, City of Carmel, City Hall, One Civic Square, Carmel, IN 46032.	City of Carmel Department of Community Services, One Civic Square, Carmel, IN 46032.	Jun. 19, 2015 .....	180081
Marion, (FEMA Docket No.: B-1503).	City of Indianapolis, (14-05-1139P).	The Honorable Gregory A. Ballard, Mayor, City of Indianapolis, 2501 City County Building, 200 East Washington Street, Indianapolis, IN 46204.	City-County Building, 200 East Washington Street, Indianapolis, IN 46204.	Jun. 19, 2015 .....	180159
Kansas: Johnson, (FEMA Docket No.: B-1503).	City of Overland Park, (14-07-1371P).	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	Jun. 25, 2015 .....	200174
Minnesota: Hennepin, (FEMA Docket No.: (B-1509).	City of Brooklyn Park, (14-05-9322P).	The Honorable Jeffrey Lunde, Mayor, City of Brooklyn Park, 5200 85th Avenue North, Brooklyn Park, MN 55443.	Planning Department, 5200 85th Avenue North, Brooklyn Park, MN 55443.	Jun. 26, 2015 .....	270152
Ohio:					
Hocking, FEMA Docket No.: (B-1506).	City of Logan, (14-05-9281P).	The Honorable J. Martin Irvine, Mayor, City of Logan, 10 South Mulberry Street, Logan, OH 43138.	10 S. Mulberry Street, Logan, OH 43138.	Jul. 13, 2015 .....	390274
Hocking, FEMA Docket No.: (B-1506).	Unincorporated areas of Hocking County, (14-05-9281P).	Mr. Larry Dicken, County Commissioner, Hocking County, 1 East Main Street, Logan, OH 43138.	88 South Market Street, Logan, OH 43138.	Jul. 13, 2015 .....	390272
Warren, FEMA Docket No.: (B-1506).	City of Mason, (14-05-9134P).	The Honorable David Nichols, Mayor, City of Mason, 6000 Mason-Montgomery Road, Mason, OH 45040.	6000 Mason-Montgomery Road, Mason, OH 45040.	Jul. 06, 2015 .....	390559
Wisconsin:					
Washington, FEMA Docket No.: (B-1506).	Village of Newburg, (15-05-0254P).	The Honorable William R. Sackett, President, Village of Newburg, Post Office Box 50, 614 Main Street, Newburg, WI 53060.	614 Main Street, Newburg, WI 53060.	Jul. 1, 2015 .....	550056
Washington, FEMA Docket No.: (B-1506).	Unincorporated areas of Washington County, (15-05-0254P).	The Honorable Herbert J. Tennes, Chairperson, Washington County, Courthouse Government Center, 432 East Washington Street, Suite 3029, West Bend, WI 53095.	432 East Washington Street, West Bend, WI 53095.	Jul. 1, 2015 .....	550471
Outagamie, FEMA Docket No.: (B-1503).	Unincorporated areas of Outagamie County, (15-05-1349P).	The Honorable Thomas M. Nelson, Outagamie County Executive, County Administration Building, 410 South Walnut Street, Appleton, WI 54911.	410 South Walnut Street, Appleton, WI 54911.	Jun. 24, 2015 .....	550302

[FR Doc. 2015-24757 Filed 9-29-15; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2015-0020]

#### Recovery Policy: Stafford Act Section 705, Disaster Grant Closeout Procedures

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Policy *Stafford Act Section 705, Disaster Grant Closeout Procedures*.

**DATES:** Comments must be received by November 2, 2015.

**ADDRESSES:** Comments must be identified by docket ID FEMA-2015-0020 and may be submitted by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

*Mail:* Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW., Washington, DC 20472-3100.

**FOR FURTHER INFORMATION CONTACT:** Howard Stronach, Public Assistance Division, FEMA, 202-646-3834.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

*Instructions:* All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or

material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy & Security Notice" link in the footer of [www.regulations.gov](http://www.regulations.gov).

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

*Docket:* The proposed policy is available in docket ID FEMA-2015-0020. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov> and search for the docket ID. Submitted comments may also be inspected at

FEMA, Office of Chief Counsel, 8NE, 500 C Street SW., Washington, DC 20472.

## II. Background

FEMA is requesting comment on a proposed policy describing FEMA's procedures for implementing section 705 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Specifically, it sets forth guidelines FEMA proposes to follow to determine whether section 705(c) applies to bar FEMA from deobligating grant funding. The proposed policy does not have the force or effect of law.

FEMA seeks comment on the proposed policy, which is available online at <http://www.regulations.gov> in docket ID FEMA-2015-0020. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at <http://www.regulations.gov>. The final policy will not have the force or effect of law.

**Authority:** 42 U.S.C. 5205.

Dated: September 25, 2015.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2015-24872 Filed 9-29-15; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2015-0001; Internal Agency Docket No. FEMA-B-1537]

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood

Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 9, 2015.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community, No.
Arizona: Maricopa .....	City of Chandler, (15-09-0578P).	The Honorable Jay Tibshraeny, Mayor, City of Chandler, 175 South Arizona Avenue, Chandler, AZ 85225.	Public Works Department, 215 East Buffalo Street, Chandler, AZ 85244.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Oct. 9, 2015 .....	040040
Maricopa .....	City of Goodyear, (15-09-0312P).	The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	City Hall, 190 North Litchfield Road, Goodyear, AZ 85338.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Dec. 4, 2015 .....	040046
Maricopa .....	Town of Gilbert, (15-09-0578P).	The Honorable John Lewis, Mayor, Town of Gilbert, 50 East Civic Center Drive, Gilbert, AZ 85296.	Municipal Center, 50 East Civic Center Drive, Gilbert, AZ 85296.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Oct. 9, 2015 .....	040044
Maricopa .....	Unincorporated areas of Maricopa County, (15-09-0312P).	The Honorable Steve Chucru, Chairman, Maricopa County Board of Supervisors, 301 W. Jefferson, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Dec. 4, 2015 .....	040037
Maricopa .....	Unincorporated areas of Maricopa County, (15-09-0578P).	The Honorable Denny Barney, District 1 Supervisor Maricopa County, 301 West Jefferson Street, Phoenix, AZ 85003.	Flood Control District, Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Oct. 9, 2015 .....	040037
Pima .....	City of Tucson, (15-09-0584P).	The Honorable Jonathon Rothschild, Mayor, City of Tucson, City Hall, 255 W. Alameda St., Tucson, AZ 85701.	Planning and Development Services, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Nov. 13, 2015 ....	040076
California: Los Angeles	City of Burbank, (15-09-0591P).	The Honorable Bob Frutos, Mayor, City of Burbank, 275 East Olive Avenue, Burbank, CA 91502.	Public Works Department, 275 East Olive Avenue, Burbank, CA 91502.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Dec. 10, 2015 ....	065018
Sacramento ..	City of Citrus Heights, (15-09-1345P).	The Honorable Sue Frost, Mayor, City of Citrus Heights, 6237 Fountain Square Drive, Citrus Heights, CA 95621.	General Services Department, Engineering Division, 6237 Fountain Square Drive, Citrus Heights, CA 95621.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Oct. 22, 2015 ....	060765
San Diego ....	City of Santee, (15-09-0699P).	The Honorable Randy Voepel, Mayor, City of Santee, 10601 Magnolia Avenue, Santee, CA 92071.	City Hall, 10601 Magnolia Avenue, Santee, CA 92071.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Nov. 20, 2015 ....	060703
Ventura .....	City of Simi Valley, (15-09-1169P).	The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	Public Works Department, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Oct. 19, 2015 ....	060421
Nevada: Clark .....	City of Henderson, (15-09-0952P).	The Honorable Andy A. Hafen, Mayor, City of Henderson, 240 Water Street, Henderson, NV 89015.	Public Works Department, 240 Water Street, Henderson, NV 89015.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Dec. 10, 2015 ....	320005
Clark .....	Unincorporated areas of Clark County, (15-09-1082P).	The Honorable Steve Sisolak, Chairman, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Office of the Director of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a> .	Oct. 14, 2015 ....	320003

[FR Doc. 2015-24753 Filed 9-29-15; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency****[Internal Agency Docket No. FEMA-4236-DR; Docket ID FEMA-2015-0002]****West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA-4236-DR), dated August 7, 2015, and related determinations.**DATES:** *Effective Date:* September 17, 2015.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 7, 2015.

Jackson County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2015–24759 Filed 9–29–15; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1532]

**Proposed Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the

Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before December 29, 2015.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

You may submit comments, identified by Docket No. FEMA–B–1532, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or

pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at [http://floodsrp.org/pdfs/srp\\_fact\\_sheet.pdf](http://floodsrp.org/pdfs/srp_fact_sheet.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, “Flood Insurance.”)

Dated: September 9, 2015.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

I. Watershed-based studies:

Community	Community map repository address
<b>Lower Big Blue Watershed</b>	
Maps Available for Inspection Online at: <a href="http://www.fema.gov/preliminaryfloodhazarddata">http://www.fema.gov/preliminaryfloodhazarddata</a>	
<b>Marshall County, Kansas, and Incorporated Areas</b>	
City of Axtell .....	City Hall, 306 Maple Street, Axtell, KS 66403.
City of Beattie .....	City Hall, 302 Center Street, Beattie, KS 66406.
City of Blue Rapids .....	City Hall, 04 Public Square, Blue Rapids, KS 66411.
City of Frankfort .....	City Hall, 109 North Kansas Avenue, Frankfort, KS 66427.
City of Marysville .....	City Hall, 209 North 8th Street, Marysville, KS 66508.
City of Oketo .....	City Hall, 106 Center Street, Oketo, KS 66518.
City of Vermillion .....	City Hall, 102 Main Street, Vermillion, KS 66544.
City of Waterville .....	City Hall, 136 East Commercial Street, Waterville, KS 66548.
Unincorporated Areas of Marshall County .....	County Courthouse, 1201 Broadway Street, Marysville, KS 66508.

**Cuyahoga Watershed**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Portage County, Ohio, and Incorporated Areas**

City of Kent .....	Building Services Division, 930 Overholt Road, Kent, OH 44240.
Unincorporated Areas of Portage County .....	Portage County Building Department, 449 South Meridian Street, 1st Floor, Ravenna, OH 44266.

II. Non-watershed-based studies:

Community	Community map repository address
<b>Alameda County, CA and Incorporated Areas</b>	
Maps Available for Inspection Online at: <a href="http://www.fema.gov/preliminaryfloodhazarddata">http://www.fema.gov/preliminaryfloodhazarddata</a>	
<b>Project: 11-09-1226S Preliminary Date: April 16, 2015</b>	
City of Alameda .....	City Hall West, 950 West Mall Square, Room 110, Alameda, CA 94501.
City of Albany .....	City Hall, 1000 San Pablo Avenue, Albany, CA 94706.
City of Berkeley .....	Permit Service Center, 2120 Milvia Street, Berkeley, CA 94704.
City of Emeryville .....	Engineering Department, 1333 Park Avenue, Emeryville, CA 94608.
City of Hayward .....	Public Works Administration, 777 B Street, Hayward, CA 94541.
City of Oakland .....	Permit Center, 250 Frank H. Ogawa Plaza, Room 2114, 2nd Floor, Oakland, CA 94612.
City of San Leandro .....	Division of Building & Safety, 835 East 14th Street, San Leandro, CA 94577.
Unincorporated Areas of Alameda County .....	Public Works Agency, 399 Elmhurst Street, #113, Hayward, CA 94544.

**Riverside County, CA and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 10-09-0021S Preliminary Date: October 27, 2014**

City of La Quinta .....	City Hall, Community Development Department, 78-495 Calle Tampico, La Quinta, CA 92253.
City of San Jacinto .....	166 East Main Street, Suite #2, San Jacinto, CA 92583.
Unincorporated Areas of Riverside County .....	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.

**Riverside County, CA and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 15-09-0361S Preliminary Date: June 8, 2015**

City of Coachella .....	Community Development Department, 1515 Sixth Street, Coachella, CA 92236.
City of Indio .....	Engineering Services Division, 100 Civic Center Mall, Indio, CA 92201.
City of La Quinta .....	City Hall, Community Development Department, 78-495 Calle Tampico, La Quinta, CA 92253.

Community	Community map repository address
Unincorporated Areas of Riverside County .....	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.

**Sacramento County, CA and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 15-09-0380S Preliminary Date: April 30, 2015**

City of Galt .....	495 Industrial Drive, Galt, CA 95632.
Unincorporated Areas of Sacramento County .....	827 7th Street, Suite 301, Sacramento, CA 95814.

**San Joaquin County, CA and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 15-09-0380S Preliminary Date: April 30, 2015**

Unincorporated Areas of San Joaquin County .....	1810 East Hazelton Avenue, Stockton, CA 95205.
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**Clinton County, IA and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 11-07-0653S Preliminary Date: April 30, 2015**

City of Clinton .....	City Hall, 611 South 3rd Street, Clinton, IA 52732.
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**Crow Wing County, MN and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 12-05-8953S Preliminary Date: June 30, 2011**

City of Baxter .....	City Hall, 13190 Memorywood Drive, Baxter, MN 56425.
City of Brainerd .....	City Hall, 501 Laurel Street, Brainerd, MN 56401.
City of Breezy Point .....	City Hall, 8319 County Road 11, Breezy Point, MN 56472.
City of Crosby .....	City Hall, 2 Second Street Southwest, Crosby, MN 56441.
City of Crosslake .....	City Hall, 37028 County Road 66, Crosslake, MN 56442.
City of Cuyuna .....	City Hall, 24945 Minnesota Avenue, Deerwood, MN 56444.
City of Deerwood .....	City Hall, 23770 Forest Road, Deerwood, MN 56444.
City of Emily .....	City Hall, 39811 State Highway 6, Emily, MN 56447.
City of Fifty Lakes .....	City Hall, 40447 Town Hall Road, Fifty Lakes, MN 56448.
City of Fort Ripley .....	930 Oak Drive North, Fort Ripley, MN 56449.
City of Garrison .....	City Hall, 27069 Central Street, Garrison, MN 56450.
City of Ironton .....	City Hall, 309 3rd Street, Ironton, MN 56455.
City of Jenkins .....	City Hall, 33861 Cottage Avenue, Jenkins, MN 56474.
City of Manhattan Beach .....	City Hall, 39148 County Road 66, Manhattan Beach, MN 56442.
City of Nisswa .....	City Hall, 5442 City Hall Street, Nisswa, MN 56468.
City of Pequot Lakes .....	City Hall, 4638 County Road 11, Pequot Lakes, MN 56472.
City of Riverton .....	City Hall, 16663 Main Street, Riverton, MN 56455.
City of Trommald .....	City Hall, 18105 Whitetail Street, Trommald, MN 56441.
Unincorporated Areas of Crow Wing County .....	Land Services Office, Environmental Services, 322 Laurel Street, Suite 14, Brainerd, MN 56401.

**Passaic County, NJ (All Jurisdictions)**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 10-02-0672S Preliminary Date: January 9, 2015**

Borough of Bloomingdale .....	Municipal Building, Clerk's Office, 101 Hamburg Turnpike, Bloomingdale, NJ 07403.
Borough of Haledon .....	Municipal Complex, Building Department, 510 Belmont Avenue, Haledon, NJ 07508.
Borough of Hawthorne .....	Borough Hall, Building Department, 445 Lafayette Avenue, Hawthorne, NJ 07506.
Borough of North Haledon .....	Municipal Building, Construction Office, 103 Overlook Avenue, North Haledon, NJ 07508.
Borough of Pompton Lakes .....	Municipal Building, 25 Lenox Avenue, Pompton Lakes, NJ 07442.
Borough of Prospect Park .....	Municipal Building, 106 Brown Avenue, Prospect Park, NJ 07508.
Borough of Ringwood .....	Municipal Building, Clerk's Office, 60 Margaret King Avenue, Ringwood, NJ 07456.
Borough of Totowa .....	Municipal Complex, Clerk's Office, 537 Totowa Road at Cherba Place, Totowa, NJ 07512.



Community	Community map repository address
Borough of Wanaque .....	Municipal Building, 579 Ringwood Avenue, Wanaque, NJ 07465.
Borough of Woodland Park .....	Municipal Building, Code Enforcement Office, 5 Brophy Lane, Woodland Park, NJ 07424.
City of Clifton .....	City Hall, Engineering Department, 900 Clifton Avenue, Clifton, NJ 07013.
City of Passaic .....	City Hall, 330 Passaic Street, Passaic, NJ 07055.
City of Paterson .....	City Hall, Clerk's Office, 155 Market Street, Paterson, NJ 07505.
Township of Little Falls .....	Township Hall, 225 Main Street, Little Falls, NJ 07424.
Township of Wayne .....	Township Hall, Engineering Department, 475 Valley Road, Wayne, NJ 07470.
Township of West Milford .....	Department of Public Works Administration Building, Engineering Division, 30 Lycosky Drive, West Milford, NJ 07480.

**Somerset County, NJ (All Jurisdictions)**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project:15-02-1292S Preliminary Date: June 30, 2014**

Borough of Manville .....	Municipal Complex, 325 North Main Street, Manville, NJ 08835.
Borough of Millstone .....	Millstone Borough Hall, 1353 Main Street, Hillsborough, NJ 08844.
Borough of Rocky Hill .....	Municipal Building, 15 Montgomery Avenue, Rocky Hill, NJ 08553.
Township of Franklin .....	Township of Franklin Engineering Department, 475 Demott Lane, Somerset, NJ 08873.
Township of Hillsborough .....	Municipal Complex, Engineering Department, 379 South Branch Road, Hillsborough, NJ 08844.
Township of Montgomery .....	Township of Montgomery Municipal Offices, 2261 Route 206 North, Belle Mead, NJ 08502.

**Island County, Washington, and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 11-10-0425S Preliminary Date: March 12, 2015**

City of Langley .....	City Hall, 112 2nd Street, Langley, WA 98260.
City of Oak Harbor .....	City Hall, 865 Southeast Barrington Drive, Oak Harbor, WA 98277.
Town of Coupeville .....	Town Hall, 4 Northeast 7th Street, Coupeville, WA 98239.
Unincorporated Areas of Island County .....	Island County Annex, 1 Northeast 6th Street, Coupeville, WA 98239.

[FR Doc. 2015-24758 Filed 9-29-15; 8:45 am]

**BILLING CODE 9110-12-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5894-N-01]

**Notice of Intent to Prepare an Environmental Impact Statement for the Lambert Houses Redevelopment Project, Bronx, NY**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of intent to prepare an EIS.

**SUMMARY:** This provides notice to the public, agencies, and Indian tribes that the City of New York—Department of Housing Preservation & Development (HPD), as the Responsible Entity in accordance with 24 CFR 58.2(a)(7), and the lead agency in accordance with City Environmental Quality Review (CEQR), Executive Order No. 91, and the New York State Environmental Quality

Review Act (SEQRA), 6 NYCRR 617, intend to prepare a Draft Environmental Impact Statement (EIS) for the Lambert Houses Redevelopment Project. The EIS will be compliant with the National Environmental Policy Act (NEPA) and CEQR. The EIS will satisfy requirements of SEQR (6 NYCRR 617.8) and CEQR (Sections 6-08 and 6-12 of Executive Order No. 91 of 1977 as amended), which require that state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects. The project is subject to NEPA due to the reassignment of project-based rental assistance contracts through HUD and potential future construction financing from HPD (made available through HUD). This notice has been prepared in accordance with the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500-1508.

A Draft EIS will be prepared for the proposed action described herein. Comments relating to the Draft EIS are requested and will be accepted by the

contact person listed below. When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest in the Draft EIS and particularly in the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below up to 30 days following publication of this notice.

The EIS will be a NEPA document intended to satisfy requirements of federal environmental statutes. In accordance with specific statutory authority applicable to HUD's Section 8 project-based rental assistance program and HOME program, and HUD's regulations at 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has provided for assumption of its NEPA authority and NEPA lead agency responsibility by the City of New York. The EIS will be a CEQR document intended to satisfy State and City environmental statutes as described above.

**ADDRESSES:** All interested agencies, tribes, groups, and persons are invited to submit written comments on the project named in this notice and on the Draft EIS to the contact person shown in this notice. The office of the contact person should receive comments and all comments so received will be considered prior to the preparation and distribution of the Draft EIS. Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues that the EIS should consider, recommended mitigation measures, and alternatives associated with the proposed action. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interest and indicate their readiness to aid in the EIS effort as a "Cooperating Agency."

**FOR FURTHER INFORMATION CONTACT:** Patrick Blanchfield, Executive Director of Environmental Planning, City of New York—Department of Housing Preservation & Development, 100 Gold Street, Room 7A-3, New York, NY 10038; email: [blanchfp@hpd.nyc.gov](mailto:blanchfp@hpd.nyc.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

HPD, acting under authority of HUD's regulations at 24 CFR part 58, in cooperation with other interested agencies, will prepare an EIS to analyze potential impacts of the Lambert Houses Redevelopment Project.

HPD, on behalf of the project sponsor, Phipps Houses, is seeking approval of several discretionary actions (the "Proposed Actions") to facilitate the redevelopment of Lambert Houses, an existing residential and commercial development occupying approximately 12 acres in the East Tremont neighborhood of the Bronx, New York ("the Proposed Project"). The Project Area includes parcels 1, 3, 5, and 10 in the northern section of the Bronx Park South Large-Scale Residential Development (LSRD). Parcel 1 (Block 3138, Lot 1) is an approximately 2.9-acre parcel located along the west side of Boston Road between East 180th Street and Bronx Park South and is comprised of a group of four interconnected six-story buildings containing 237 residential units. Parcel 3 (Block 3132, Lot 1) is an approximately 4.5-acre parcel located along the west side of Boston Road between East 179th and East 180th Streets which currently contains 325 residential units in seven interconnected six-story buildings. Parcel 5 (Block 3140, Lot 7) is an approximately 1.8-acre parcel located at

the southeast corner of Boston Road and East 180th Street which currently contains 169 residential units in a group of three interconnected six-story buildings. Parcel 10 (Block 3139, Lots 1 and 19) is an approximately 2.5-acre parcel bounded to the west by Boston Road, to the south by East Tremont Avenue, to the east by the Bronx River Greenway, and to the north by East 179th Street. Parcel 10 currently contains one two-story building containing approximately 48,610 sq. ft., including an approximately 39,490 sq. ft. of retail uses and a 375-space parking garage. An approximately 3,720-sq. ft. city-owned lot (Block 3139, Lot 50) just south of Parcel 10 would be conveyed to Phipps Houses and become part of Parcel 10. This lot currently contains seating, trees and plantings. In total, the approximately 12-acre Project Area contains five groupings of six-story buildings containing 731 residential units, and one two-story building containing approximately 39,490 sq. ft. of retail use and 375 parking spaces.

Construction of the Proposed Project has a Build Year of 2029, as construction would occur over a build out period of approximately 15 years. During construction of the Proposed Project, current tenants would be relocated from buildings to be demolished to other locations within the Lambert Houses development. Once relocated, the unoccupied buildings would be demolished and construction of new buildings would proceed. Tenants of the next buildings to be demolished would be relocated within the Lambert Houses Project Area to the newly constructed buildings, and the demolition and construction process would begin again. This process would be repeated through completion of the Proposed Project. Overall, the Proposed Project would redevelop the Project Area with the following:

- A total of approximately 1,665 residential units at the completion of the project, for an increment of approximately 934 units over the No Action condition. The proposed residential units would all be affordable.
- Approximately 61,100 sq. ft. of retail, for an increment of 21,610 sq. ft. over the No-Action condition.
- A new public school of approximately 86,608 sq. ft. on a portion of Parcel 10. It is expected that this school would be a 500-seat elementary school.
- A reduction in the amount of parking at the site, for a total of 110 spaces.

In order to address a projected shortfall of seats in the project area's public schools, the New York City

School Construction Authority (SCA) will be given an option to acquire the site for proposed school for a nominal fee. If SCA were to decline to exercise this option and construct the school, a residential building with approximately 55 units would be constructed in its place. The environmental impacts of the scenario in which a residential building would replace the school will be analyzed in the Alternatives chapter of the EIS.

The Proposed Project would be facilitated by the following discretionary actions:

- Disposition of City-owned property (Block 3139, Lot 50) and designation as an Urban Development Action Area Project (UDAAP).

- Zoning Map Amendment to rezone Parcels 1, 3 and 5 from R7-1 and Parcel 10 from R7-1/C1-4 as follows:

- Parcel 1: R7-1 to a mix of R7-1, R8, and R8/C1-4
- Parcel 3: R7-1 to a mix of R7-1, R8, and R8/C1-4
- Parcel 5: R7-1 to a mix of R7-1 and R8
- Parcel 10: R71/C1-4 to R8/C1-4

- Establishment of a new LSRD consisting of Parcels 1, 3, 5, 10, as well as Block 3139, Lot 50. The remainder of the Bronx Park South LSRD is proposed to become a new LSRD based on a separate action sponsored by the Association of New York Catholic Homes.

- Authorizations under ZR Section 78-311 and Special Permits under ZR Section 78-312:

- To permit distribution of the total floor area, lot coverage and number of dwelling units permitted by the applicable district regulations to be distributed without regard for zoning lot lines or zoning district boundaries.
- To permit the total open space required by the applicable district regulations to be distributed without regard for zoning lot lines or zoning district boundaries.
- To permit variations in the front height and setback regulations including variation in the maximum height and number of stories of the front wall within the initial setback distance, modification of the initial setback distance, and to permit penetration of the sky exposure plane.
- To modify the required rear yard setback for tall buildings per Section 23-663.
- To permit an interim condition in which the minimum distance between buildings is waived between the new Building 3A and the existing building to the south.
- Special Permit pursuant to ZR 74-53 to permit the provision of off-street

accessory parking spaces to be located in a parking lot on the roof of a building.

- Zoning text amendment to modify ZR Section 78–42 to permit a reduction of parking requirements for affordable housing units in LSRDs in Community District 6 in the Borough of the Bronx.
- Zoning text amendment consistent with the City's proposed Mandatory Inclusionary Housing text amendment.
- Coastal zone consistency determination.
- Site plan approval by the Mayor and City Council pursuant to SCA requirements for the proposed school on Parcel 10.

The Proposed Project may also seek funding from HPD, the New York City Housing Development Corporation (HDC), New York State Homes and Community Renewal (HCR), and other State agencies for affordable housing construction. In addition, the Proposed Project would require approval by HUD of the reassignment of project-based rental assistance contracts, and may also seek HOME funds or other federal funding originating from HUD.

The Proposed Project is intended to improve the quality of life for current Lambert Houses residents while increasing the number of affordable housing units in the Project Area. The Project Area is underdeveloped, with less floor area than even the current zoning districts allow, and less density than much of the surrounding neighborhood. The existing buildings were constructed between 1970 and 1973 and have antiquated and inefficient building systems. Furthermore, the configuration and circulation plan of the buildings, with multiple entrances and egresses, compromise building security by making control of access difficult. The retail space currently on the site is inefficient, with storefronts set back far from the street wall, poor frontage, and inadequate storage space for merchants.

The proposed new LSRD and associated special permits and authorizations, including waivers of height and setback requirements, are being requested in order to allow for the redistribution of floor area across the entire project area, creating a site plan, building layout and design superior to what would be allowed as-of-right under the current LSRD.

#### *Alternatives to the Proposed Project*

Alternatives to the Proposed Project will be analyzed in the EIS. Typically, the Alternatives section in an EIS examines development options that would tend to reduce project-related impacts. The full range of alternatives will be defined when the full extent of

the Proposed Project's impacts is identified, but at this time, it is anticipated that they will include the following:

#### Alternative 1—No Action Alternative

The No Action Alternative assumes that the existing uses in the Project Area would remain.

#### Alternative 2—All Residential Scenario on Parcel 10 (No School) Alternative

This alternative would analyze an additional 55 residential units on Parcel 10 (no school would be proposed).

#### Alternative 3—No Unmitigated Adverse Impacts Alternative

If significant adverse impacts are identified in the EIS, this alternative would describe the modifications to the project that would be needed to avoid any such impacts.

Other possible alternatives may be developed in consultation with the project sponsor, DCP, and HPD during the EIS preparation process and may be suggested by the public during the scoping of the EIS.

#### **B. Need for the EIS**

The proposed project may constitute an action significantly affecting the quality of the human environment and an EIS will be prepared on this project in accordance with CEQR and NEPA. Responses to this notice will be used to: (1) Determine significant environmental issues, (2) identify data that the EIS should address, and (3) identify agencies and other parties that will participate in the EIS process and the basis for their involvement.

#### **C. Scoping**

A public EIS scoping meeting will be held at 4:00 p.m. on Wednesday, October 21, 2015 at the Daly Community Room located at 921 E. 180th Street, Bronx, New York 10460. The EIS scoping meeting, which will also satisfy the scoping meeting requirement for SEQR/CEQR, will provide an opportunity for the public to learn more about the project and provide input to the environmental process. At the meeting, an overview of the project will be presented and members of the public will be invited to comment on the proposed project and the scope of work for the environmental analyses in the EIS. Written comments and testimony concerning the scope of the EIS will be accepted by HPD at this meeting and will also be accepted until the close of business on November 2, 2015. In accordance with 40 CFR 1501.7 affected Federal, State, and local agencies, any affected Native American

tribe, and other interested parties will be sent a scoping notice. To satisfy the requirements of 6 NYCRR 617.8, the scoping hearing will be preceded by a public notice published in the New York State Department of Environmental Conservation (DEC) Environmental Notice Bulletin (ENB) and the New York City Record at least 30 days prior to the hearing date.

#### **D. Probable Environmental Effects**

The following subject areas will be analyzed in the combined EIS for probable environmental impacts: Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design/Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation (including traffic, parking, pedestrian conditions, and transit); Air Quality; Greenhouse Gas Emissions; Noise; Neighborhood Character; Construction Impacts; Public Health; and Environmental Justice.

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: September 21, 2015.

#### **Harriet Tregoning,**

*Principal Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 2015–24850 Filed 9–29–15; 8:45 am]

**BILLING CODE 4210–67–P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

[FWS–HQ–WSFR–2015–N190;  
FVWF941009000007B–XXX–FF09W11000;  
FVWF51100900000–XXX–FF09W11000]

#### **Information Collection Request Sent to the Office of Management and Budget for Approval; Wildlife and Sport Fish Grants and Cooperative Agreements**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to Office of Management and Budget (OMB) for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on September 30, 2015. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

**DATES:** You must submit comments on or before October 30, 2015.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA\_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–

3803 (mail), or *hope\_grey@fws.gov* (email). Please include “1018–0109” in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey at *hope\_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

**SUPPLEMENTARY INFORMATION:**  
**Information Collection Request**

*OMB Control Number:* 1018–0109.  
*Title:* Wildlife and Sport Fish Grants and Cooperative Agreements, 50 CFR parts 80, 81, 84, 85, and 86.  
*Service Form Number:* None.

*Type of Request:* Revision of a currently approved collection.

*Description of Respondents:* States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; the territories of Guam, U.S. Virgin Islands, and American Samoa; federally recognized tribal governments; institutions of higher education; and nongovernmental organizations.

*Respondent’s Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually for applications for new grants; on occasion for amendments; and annually and at the end of the project for performance reports. We may require more frequent reports under the conditions stated at 2 CFR 200.205 and 2 CFR 200.207.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours
Initial Application (project narrative) .....	200	2,500	37	92,500
Revision of Award Terms (Amendment) .....	150	1,500	3	4,500
Performance Reports .....	200	3,500	8	28,000
<b>Totals .....</b>	<b>550</b>	<b>7,500</b>	<b>.....</b>	<b>125,000</b>

*Estimated Annual Nonhour Burden Cost:* None.

*Abstract:* The Wildlife and Sport Fish Restoration Program (WSFR), U.S. Fish and Wildlife Service, administers financial assistance programs in whole or in part (see 80 FR 31061, June 1, 2015). We award most financial assistance as grants, but cooperative agreements are possible if the Federal Government will be substantially involved in carrying out the project. You can find a description of most programs in the Catalog of Federal Domestic Assistance. Some financial assistance programs are directly funded through WSFR, others are funded through non-WSFR Federal programs and WSFR administers various aspects of the financial assistance. When WSFR administers a grant in part or in whole, it follows the same processes for information collection to ensure the recipient complies with Federal laws, regulations, and policies applicable to financial assistance.

Authorities and implementing regulations establish the purposes of the grant programs and the types of projects to be funded. Some list eligibility criteria as well as activities ineligible for funding. The authorities and implementing regulations for the competitive programs establish preferences or ranking factors for the selection of projects to be funded. These legal requirements make it essential for

an awarding agency to have certain information so that it funds only eligible projects, and, in the case of competitive programs, to select those projects that will result in the greatest return on the Federal investment.

Some grants are mandatory and receive funds according to a formula set by law or policy. Other grants are discretionary, and we award them based on a competitive process. Mandatory grant recipients must give us specific, detailed project information during the application process so that we can ensure that projects are eligible for the mandatory funding, are substantial in character and design, and comply with all applicable Federal laws. All grantees must submit financial and performance reports that contain information necessary for us to track costs and accomplishments.

In February 2014, OMB approved our request to use a new electronic system (Wildlife Tracking and Reporting Actions for the Conservation of Species (Wildlife TRACS)) to collect application and performance reporting information on our grant programs. OMB assigned OMB Control No. 1018–0156, which expires February 28, 2017. Wildlife TRACS allows us to take advantage of newer technology and gives applicants direct access to enter project information that can be used to submit an application through <http://www.grants.gov> (Grants.gov). Grantees

can also report performance accomplishments in Wildlife TRACS. We are including the use of Wildlife TRACS and the collection of additional information in this revision to OMB Control No. 1018–0109. If OMB approves this revision, we will discontinue OMB Control No. 1018–0156.

We may require all States to directly enter project information and performance reporting into Wildlife TRACS by October 1, 2016. We continue to offer training and support to States on entering information into the new system. When States fully engage in directly entering all application and project performance reporting into Wildlife TRACS, we expect there will be a reduction in the burden to report the information. States will become more adept with experience, and efficiencies of the electronic system will be realized starting in the second full year of use. A majority of WSFR-administered projects are continuations of similar actions and/or at the same locations. Wildlife TRACS is designed to ease the administrative burden of applying for and reporting on grants for projects that fall into these parameters. The table above reflects the burden reduction that we expect over the next 3 years. Not all grantees will directly enter information into Wildlife TRACS. We will enter information when we determine that it is not efficient or in the best interest of

the program to have grantees enter information.

To apply for financial assistance funds, you must submit an application that describes in substantial detail project locations, benefits, funding, and other characteristics. Materials to assist applicants in formulating project proposals are available on Grants.gov. We use the application to determine:

- Eligibility.
- Scale of resource values or relative worth of the project.
- If associated costs are reasonable and allowable.
- Potential effect of the project on environmental and cultural resources.
- How well the proposed project will meet the purposes of the program's establishing legislation.
- If the proposed project is substantial in character and design.
- For competitive programs, how the proposed project addresses ranking criteria.

Persons or entities receiving grants must submit periodic performance reports that contain information necessary for us to track costs and accomplishments. Information for amendments to grants will be collected as needed.

We will collect the following information under OMB Control No. 1018-0109:

- Applications.
- Summary and project narratives that describe the proposed project;
  - Need for assistance;
  - Approach;
  - Timelines;
  - Budget information including a budget narrative;
  - Geospatial entry of project location;
  - Project status (active, completed, etc.);
  - Project leader contact information;
  - Partner information;
  - Objectives, including output measures and desired future values;
  - Public description;
  - Action status (active, completed, etc.);
  - Summary trend information, as applicable;
  - Estimated costs, by action. (non-auditable);
  - Effectiveness measures (initially for State Wildlife Grants);
  - Plan information (for projects connected to plans);
  - Information related to outcomes; and
  - Addressing ranking factors, as required by competitive grant programs.
- For research and demonstration assistance requests:
- A biographical sketch of the program director with the following

information: Name, address, telephone number, background, and other qualifying experience for the project; and

- The name, training, and background for other key personnel engaged in the project.

For real property acquisition projects:

- Maps, images, and other data that reflect project location and benefits;
- Transactions, such as dates, method of transfer, title holder, and seller;
- Identifiers, such as State and Federal Record ID, parcel number, and property name;
- Values such as appraised value, purchase price and other cost information, and acres or acre feet;
- Encumbrances;
- Partners;
- Copies of any options, purchase agreements, mineral assessment reports, and draft conservation easements; and
- Information needed for legal compliance; and copies of documents that demonstrate the grantee complied with 49 CFR 24, 2 CFR 200, program regulations, and other mandatory legal requirements.

Amendments. Most grantees must explain and justify requests for amendments to terms of the grant. We use this information to determine the eligibility and allowability of activities and to comply with the requirements of 2 CFR 200.

Performance Reports. All grantees must submit performance reports in the format requested by the Service. We use this information to ensure that the grantee is accomplishing the work on schedule and to identify any problems that the grantee may be experiencing in accomplishing that work. Grantees submit annual reports; however, reporting periods may be adjusted according to regulations at 2 CFR 200.328. Reports may include:

- A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both.
- Reasons why established goals were not met, if appropriate.
- Other pertinent information including, when appropriate, (1) analysis and explanation of cost overruns or high unit costs and (2) for land acquisition projects, a copy of the deed or other conveyance document and a copy of the Notice of Federal Participation.

#### Comments Received and Our Responses

On June 1, 2015, we published in the **Federal Register** (80 FR 31061) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments

for 60 days, ending on July 31, 2015. We received comments from eight States and one individual.

Whether or not the collection of information is necessary, including whether or not the information will have practical utility.

*Comment:* Two respondents agreed that the collection of information is necessary and has always been a requirement of WSFR. However, they expressed concerns with the format, saying that using Wildlife TRACS is forcing States to change their established procedures.

*Response:* We agree that States have always had the responsibility to develop and submit performance reports for projects/grants. Prior to Wildlife TRACS, States submitted written reports to the Service. Service staff then interpreted and entered the information into the electronic system (Federal Aid Information Management System (FAIMS)). The Department of the Interior decommissioned FAIMS on October 1, 2012. We are required by law to collect performance information. Wildlife TRACS gives us the opportunity to allow States to more accurately report information by entering it directly. We agree that both Federal and State procedures for information sharing/data entry are changing following the decommissioning of FAIMS and the introduction of Wildlife TRACS. We are working closely with States to improve information collection and data entry so that the adjustment to using Wildlife TRACS will lead to more efficient and effective reporting. We are open to suggestions for further improvements.

*Comment:* One commenter stated that rather than thinking of Wildlife TRACS as an "increase in the amount of data" that grantees will be required to submit, using Wildlife TRACS should be thought of as a "change in the format" that the data is submitted. States are already providing the information, just in a different format. This new format will not constitute a significant increase in the time or resources required to either create or report on a project.

*Response:* We agree and thank the respondent for recognizing that using Wildlife TRACS is changing the format for collecting information to a more efficient and effective electronic system.

*Comment:* Two respondents stated that the Wildlife TRACS structure does not provide a clear benefit to either States or Regional FWS Offices.

*Response:* We disagree. The Wildlife TRACS structure is intuitive and helps users enter information in a logical progression. The fields provided assist users to consider all needed

information, allowing the Service to more efficiently review and approve projects. Once States become familiar with the Wildlife TRACS format, it will allow users to better design Wildlife TRACS-ready projects and provide the Service with adequate information to make decisions. As more projects are entered into Wildlife TRACS, States and the Service will be able to run more robust reports that will help identify trends, determine best processes, quantify results, and inform future actions. As additional system improvements are made, more reporting and data analyses tools will be available to provide benefit to the Service and users.

*Comment:* One respondent stated that Wildlife TRACS is forcing States to alter the format of existing grants and performance reporting to fit the Wildlife TRACS format, rather than a format that States feel works best for their particular projects.

*Response:* We agree that Wildlife TRACS is a different format for data collection, but disagree that the change in format affects the ability of States to design and implement projects. Wildlife TRACS does not represent a change in program requirements or substantiality in character or design. We will not require users to retroactively enter information into Wildlife TRACS. Wildlife TRACS data entry will only be required going forward. We have imported information on past projects from FAIMS into Wildlife TRACS as legacy data.

*Comment:* One respondent objected to using the tools in Wildlife TRACS, such as targeted fields and drop down menus, and connecting them back to SMART (Specific, Measurable, Achievable, Relevant, Time-bound) objectives that have significant limitations and questionable utility for reporting.

*Response:* We disagree. The interface and tools in Wildlife TRACS are designed to logically guide the user and allow less complicated and varied data entry. The selections provided in drop down menus have been vetted through Federal/State teams and it is believed that they cover all possible choices for the information needed. Often, a single metric may be characterized through many variations in language. Standardizing certain entries by limiting selections allows us to generate reports that include all projects that have similar components without having to search for all the variations in language. Using SMART objectives is integral to project management and helps users focus on the desired outputs. Wildlife TRACS is designed to give users the flexibility to use the SMART objective

fields or to create SMART objectives in narrative format.

*Comment:* One respondent stated that Wildlife TRACS is explained as a way of collecting and reporting useful information for all grant-funded actions. However, the type and purposes of grants is so varied, with such wide-ranging objectives, that Wildlife TRACS information can only be captured and reported effectively at a very high level.

*Response:* We agree that a large variety of projects will be reported in Wildlife TRACS, but we disagree with the respondent's statement that suggests reporting won't be relevant. Reporting is required down to the "Action level" for most projects. This allows us to produce reports that address both high-level and detailed perspectives, depending on need. Wildlife TRACS offers both standardized and customizable approaches for describing objectives in an effort to encapsulate the varied grant types and purposes.

*Comment:* Two respondents stated that the grants submission and reporting process, which has been successful for many years, provides the Service with the necessary information to approve grants. Wildlife TRACS is not a system that can readily be used to develop, edit, and write a proposal. It is simply a repository of the information, so there is duplication of workload from Wildlife TRACS data entry.

*Response:* We disagree. Paper submissions often lacked required information and led to additional workload for both Federal and State grant managers. Wildlife TRACS is designed to guide users to address all pertinent project information. We offer training for project leaders that will assist them in using Wildlife TRACS to help build projects. Although Wildlife TRACS is not a grant application system, users can produce reports from Wildlife TRACS that they can then use when submitting grant applications through Grants.gov. Future enhancements to Wildlife TRACS may include the ability to transmit a proposal to Grants.gov for approval. Wildlife TRACS does not create a duplication of effort as we do not require that the information entered into Wildlife TRACS also be submitted on paper.

*Comment:* Two respondents expressed that the Service should retain the responsibility to enter data into Wildlife TRACS. One stated that the information collected has no practical utility for State programs, which will be charged with managing data input. Their opinion is that Wildlife TRACS is strictly a Service project that is geared for the benefit of the Service. The States

are well-served for State purposes by the present grant reporting system, which allows States to submit usable products as evidence of grant/project completion. The easing of burdens is only realized by Service staff, not by States. The other respondent stated the transfer of workload will greatly increase administrative costs for States.

*Response:* We disagree. The information collection will give States the ability to accurately reflect project objectives and accomplishments, as well as providing information that will help States to better assess conservation needs and accomplishments. Wildlife TRACS will allow users to directly enter information, reducing errors from misinterpretation by Service staff tasked with translating and transmitting information from paper to an electronic system. Wildlife TRACS will also help States address increased grant-recipient responsibilities and provide for better reporting of State accomplishments. The reporting mechanisms in Wildlife TRACS will help States provide evidence of project/agency successes to their elected representatives and the public. Planning and reporting on projects are already being done, so it is a matter of adjusting resources to accommodate Wildlife TRACS. We believe that any increase in administrative costs to States will be temporary and may be addressed through grant funding.

*Comment:* One respondent supported using an electronic system to collect application and performance reporting information to demonstrate program performance to interested stakeholders and the general public. They also appreciate the efforts of the Service to minimize the burden, including the October 1, 2016, date for State data entry.

*Response:* We agree and thank the respondent for the support. Accuracy of our estimate of the burden for this collection of information.

*Comment:* One respondent stated that many grants are ongoing and have been in effect for more than 50 years. The need to alter the structure of these grants is overly burdensome.

*Response:* We believe the respondent is referring to ongoing projects and not ongoing grants. Grants have a period of performance that is much less than 50 years. Based on this clarification, we agree that using Wildlife TRACS is a change in the method of reporting information that will require States to initially enter baseline information for ongoing projects. However, once the baseline information is entered, Wildlife TRACS will allow efficiencies for

ongoing similar projects. Users will be able to assign new grants to existing projects or to copy projects forward through simple steps that will reduce burden.

*Comment:* Three respondents commented on their concerns about performance reports. These concerns addressed:

(1) The performance report that was previously one paragraph in length must now be reported through multiple tabs within Wildlife TRACS to produce a lengthy report;

(2) The ability to copy forward a project will not produce the burden reduction the Service suggests;

(3) The reports contain redundant information; and

(4) Performance reports change from year to year, so significant time must still be spent to update pertinent information.

*Response:* We disagree for the following reasons:

(1) Data entry fields in Wildlife TRACS are designed to guide the user to make choices that will build the project information, increasing accuracy and efficiency. This does not affect the length of reports;

(2) Once the baseline information for an ongoing project is entered, Wildlife TRACS allows the information to be copied forward. This improves efficiency in that the user will not be required to repeat entering all information for continued projects or new, similar projects. Once a project is copied forward, adjustments can be made in selected fields to reflect desired changes from the existing, copied project. We remind users that the Wildlife TRACS function to copy projects forward is an option for users as an efficiency, but doing so is not a requirement. States may choose which method of input is most efficient and effective for their needs;

(3) Reports are created from information in the fields, so if there is redundant information it is because that is what the user entered; and

(4) Users will not be required to pull out reports and make changes; the adjustments will be made through logical changes in applicable fields. In addition, when a project is copied forward, it becomes a new project with new performance reporting. There is no requirement under the current reporting system to revise performance information on a completed project based on other projects, nor will it be a requirement when using Wildlife TRACS.

*Comment:* One respondent stated that the Uniform Administrative Requirements, Cost Principles, and

Audit Requirements for Federal Awards at 2 CFR part 200 were designed to streamline the grant application process, but they feel the requirements for Wildlife TRACS go above and beyond this, placing an undue burden on States and representing steps backwards.

*Response:* We disagree. The focus of 2 CFR part 200 is to streamline guidance that was previously published as several regulations, into one regulation at 2 CFR part 200. This regulatory update is part of an overall effort to more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. The guidance at 2 CFR part 200 provides a Governmentwide framework for grants management that will be complemented by additional efforts to strengthen program outcomes through innovative and effective use of grant-making models, performance metrics, and evaluation. Wildlife TRACS is the tool that WSFR is using to fulfill this directive.

*Comment:* Three respondents cited several concerns regarding the role of Wildlife TRACS when States apply for grants and when the Service awards grants. Their concerns include:

(1) States must complete Wildlife TRACS data entry before a grant can be approved. The addition of Wildlife TRACS to the grant approval process is excessive and not necessary for the review and approval of grant applications;

(2) Using Wildlife TRACS for grant approval may put a State agency at risk of reverting apportionments;

(3) The requirement to enter data into Wildlife TRACS prior to a grant award results in a duplication of effort, having to submit the grant proposal twice; and

(4) Wildlife TRACS was proposed as a reporting tool and never was supposed to affect the application process.

*Response:* We disagree for the following reasons:

(1) Wildlife TRACS is not used to approve grants, but rather to approve projects. Grantees are not required to enter data for projects funded with one of WSFR's competitive grant programs until after we award a grant. Grantees are required to enter project information and receive approval prior to project start for projects funded under one of WSFR's mandatory grant programs. However, the Service does not award mandatory grants based on Wildlife TRACS data entry. Mandatory grants are apportioned according to a formula set by law. Entering information for mandatory grant projects allows Service staff the opportunity to review projects

to assure they meet program requirements and are substantial in character and design. This process reduces risk and helps States avoid unallowable, unnecessary, or undesirable expenditures;

(2) It is the responsibility of the State to avoid reverting funds. The time required to approve a grant is not related to Wildlife TRACS, but to the availability of WSFR staff to review the proposal, and the completeness of the State's submittal. When States fully engage in Wildlife TRACS, they can use the workflow tool to help save time and more efficiently commit funds;

(3) As stated above, Wildlife TRACS is not a grant-approval tool, so there is no duplication of effort. However, Wildlife TRACS gives users an option to enter information into Wildlife TRACS that can then produce a report that may be used to supplement/support a grant application; and

(4) Wildlife TRACS is a reporting tool. In order to report on project performance, we must know what the project is and be able to compare achievements against the proposal. Wildlife TRACS allows users to enter project information so that the Service can easily see objectives and compare them to achievements.

*Comment:* One respondent stated the requirement to use Wildlife TRACS for project approval may be problematic and asks that the Service retain some flexibility to accommodate urgent and/or unusual situations.

*Response:* The project approval process for mandatory grants requires States to enter information into Wildlife TRACS and route appropriately through the workflow. We must maintain consistent procedures to avoid confusion and assure appropriate project approval. However, having Wildlife TRACS protocols in place does not eliminate the ability of States to coordinate with the Service when special needs or circumstances arise.

*Comment:* Three respondents suggested that Wildlife TRACS be linked to Grants.gov, reducing a duplication of effort and increased workload for applicants. One suggestion was that the Service use Grants.gov instead of Wildlife TRACS to collect project data.

*Response:* We agree that Wildlife TRACS is not currently tied to Grants.gov, but remind the respondents that Wildlife TRACS is not a grant application system. Grants.gov provides a central portal for applicants to find and apply for Federal financial assistance. We do understand that often a single grant may fully fund a project and we continue to develop options that

users may choose to employ to ease the burden of the application process through Grants.gov. In the future, we plan to implement a protocol where Wildlife TRACS will use web services published by Grants.gov to reduce any potential duplication of effort. WSFR anticipates that Wildlife TRACS will offer this capability by December 2017.

*Comment:* Two respondents stated that State agencies often submit multiple grant applications and have a rigorous State review process that includes coordination among multiple employees. A heavy workload to enter information into Wildlife TRACS could fall onto one employee because of the complicated process, or will require States to reassign staff or hire Wildlife TRACS-specific personnel.

*Response:* We disagree, as Wildlife TRACS is not a system that the Service uses to approve grants, but rather assists in efficient project approval. We agree that States will have a transition period while learning Wildlife TRACS, but we disagree that having several project leads is more burdensome using Wildlife TRACS than when using the current, paper-based process. A grant or a project that requires coordination among multiple layers of project leaders and approvers must be managed regardless of whether Wildlife TRACS is used or not. The State processes for reviewing and approving grant applications and project proposals is a State function, determined by the State and not driven by Wildlife TRACS. However, Wildlife TRACS may be customized so that when a State has large grants with multiple actions and several project leads, they can manage workflow among those multiple users. Wildlife TRACS offers a workflow option that can assist States to route information among multiple staff and receive project approvals much faster than would happen if paper copies were circulated. It is ultimately up to States to determine the best approach for managing reporting on all projects, including those that are larger and more complicated. We encourage States to explore ways that Wildlife TRACS can assist them to improve efficiencies during the State preparation, review, and approval phases. The Service is open to suggestions for how Wildlife TRACS might allow further efficiencies for States to use when coordinating projects among multiple employees.

*Comment:* Three respondents stated concerns that the level of cost accounting in Wildlife TRACS will create a need to alter their internal controls and accounting systems. Wildlife TRACS defines a new focus called the action level and requires

associated accounting. Historically, this level of reporting has not been required for WSFR grants and creates an undue burden.

*Response:* We disagree that Wildlife TRACS is forcing States to change internal controls and accounting systems. States must maintain internal controls within their agencies and they should be designed to respond to a variety of altering situations. Wildlife TRACS workflow tools may be used to complement internal processes. Wildlife TRACS is not an accounting system; however, the regulations at 2 CFR part 200.301 require "recipients to provide cost information to demonstrate cost effective practices" as part of their performance measurement. To reduce burden, it may be desirable for States to work with the Service and determine how Wildlife TRACS can best interface with existing State electronic systems. Although it may be advisable to determine how State systems and using Wildlife TRACS can better work together, Wildlife TRACS does not require States to change any of their existing systems or internal controls. The level of reporting is not a new standard, but is a level that should have been reported all along. By separating projects into discrete actions, States and WSFR can each evaluate project success more efficiently.

*Comment:* Three respondents objected to including effectiveness measures in Wildlife TRACS beyond the State Wildlife Grant program. One cited that performance reporting (2 CFR 200.328(b)(2)) does not require effectiveness measures. Also stated was that measuring effectiveness on 1-year grants is not always possible. Reporting effectiveness creates an undue burden on States.

*Response:* We disagree. Performance measurement at 2 CFR 200.301 directs that "the recipient's performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices." The language at 2 CFR 328(b)(2) does not include the term "effectiveness measures," but does state at paragraph (i), "Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement." Our approach is to demonstrate program needs and accomplishments in a meaningful way by moving to strategies that will gather appropriate information that can be used to adequately inform

the Service, States, elected officials, interest organizations, and the public.

*Comment:* One respondent stated that using Wildlife TRACS is taking staff time away from satisfying grants. Given the time constraints on current staff, we are concerned we may have to hire new staff just to address Wildlife TRACS.

*Response:* We agree that States will have a transition period when moving from processing paper documents to embracing an electronic format. However, Wildlife TRACS is not creating additional project requirements, but rather is a platform to allow users to respond to current requirements. Wildlife TRACS is designed to assist by allowing States to create an electronic workflow that suits their current structure and at the same time, will improve efficiency and document access.

*Comment:* Two respondents commented on the accuracy of the estimated burden. One respondent stated that they do not have sufficient information on what type of projects, whether new entries, and what iteration of Wildlife TRACS was used. They stated their opinion that Wildlife TRACS becomes increasingly complex and time-consuming. Since full grant documents must still be submitted, there is no doubt that time invested in Wildlife TRACS data entry will be in addition to grant applications and no savings will be realized by States. The other respondent stated that the estimate of burden is too low. Wildlife TRACS has the potential to reduce burden in the future, but the current burden should be increased by 50 percent.

*Response:* We make no changes in our burden estimates based on these comments. We are estimating the burden that will be realized over the next 3 years. We expect the burden to be slightly higher when States first transition to using Wildlife TRACS. However, once States fully engage in Wildlife TRACS we expect the burden to significantly decrease. We agree that our burden estimates are less comprehensive due to the relatively limited number of States that have fully engaged in Wildlife TRACS. We based burden estimates on information we received from States that responded to our questions, feedback from Service staff, and our planned improvements to Wildlife TRACS. Improvements under development in Wildlife TRACS will make the system more user-friendly and streamlined, while targeting ways to minimize burden. Also, we are developing tools that States may choose to use when applying for grants that will reduce overall workload. The Service



welcomes input and suggestions for continual ways to improve Wildlife TRACS efficiency.

*Comment:* One respondent stated that Wildlife TRACS continues to undergo changes and this makes it impossible to accurately estimate burden.

*Response:* We agree that change is a natural component of modern web application development and maintenance, particularly in response to the rapid pace of technology and security advancements. We have made changes to the user experience in Wildlife TRACS, based primarily on recommendations from States and other partners for ways to improve Wildlife TRACS and reduce burden. We will continue to work with our partners to identify improvements and efficiencies in data collection. Once States are fully engaged in Wildlife TRACS data entry, we will have a greater response base for estimating burden.

*Comment:* One respondent stated that Wildlife TRACS does not effectively accommodate Comprehensive Management System (CMS) reporting and that the CMS enhancement will not be completed by October 1, 2016. Requiring CMS States to enter data into the incomplete Wildlife TRACS system by October 1, 2016, will be an undue burden on CMS States. This deadline should be extended for CMS States until Wildlife TRACS is ready to accept CMS data and the Service gives sufficient time for CMS States to adjust internal processes and train staff.

*Response:* We agree that Wildlife TRACS does not fully accommodate CMS reporting at this time. However, a process has been vetted by a Federal/State team that will allow CMS States to begin to use Wildlife TRACS to capture accomplishment data until the application can be modified to more easily accommodate the CMS structure. The Service will require CMS States to enter reporting information into Wildlife TRACS, consistent with non-CMS States, and will adequately train staff in using the approach identified.

*Comment:* One respondent supports Wildlife TRACS by stating that States have no good mechanism for reporting project outcomes. An effort led by the Association of Fish and Wildlife Agencies developed effectiveness measures for State Wildlife Grants, which are being incorporated into Wildlife TRACS. Although entering more data will constitute an additional reporting burden, this information will allow us to provide Congress and the public with a much better understanding of our accomplishments. We feel the expanded reporting

opportunities will outweigh the additional data entry burden.

*Response:* We agree that it is important to incorporate reporting information into Wildlife TRACS that will fulfill legal requirements, our responsibility to the public, and our desire to inform the course of conservation for the future. We continue to consider approaches that will give the greatest return for the least burden. We thank this respondent for understanding our combined responsibilities and the importance of measuring the effectiveness of our grant programs.

Ways to enhance the quality, utility, and clarity of the information to be collected.

*Comment:* One respondent suggested that geospatial information should only be entered as a component of accomplishments and not required as part of the application process.

*Response:* We make no changes based on this comment. We remind respondents that Wildlife TRACS is not an application system. However, the project statement in a grant application requires location information, so describing the location of a project when applying is not a new requirement. Wildlife TRACS is a geospatial-based system and entering location information is the first step in data entry. We have learned that project location is integral to conservation efforts and expect that reports resulting from Wildlife TRACS and overlapped with other geospatial systems will greatly improve overall conservation. Wildlife TRACS allows for States to initially enter general geospatial information and to improve the information as the project evolves and completes, so perfecting geospatial information comes in the accomplishment phase, as suggested by the respondent.

*Comment:* Two respondents suggested that geospatial information should only be collected at the project level and not at the action level.

*Response:* We agree that there may be projects for which it will be sufficient to report geospatial information on a project level, but others will require more detail. There will also be projects for which the location at the project level and the action level are exactly the same. The project scope is a factor when determining the required level of reporting. Wildlife TRACS enables users to choose the precision of their geospatial data as appropriate for the project scope. The Service has also been working with States to define needs of various programs and the level of detail desired to produce the reports that will best support each program.

*Comment:* One respondent recommended several considerations for upgrading the system, including: Improving the mapping tool and GIS detail, adding fields that allow States to enter all parts of the project statement, resolving some problems that have been encountered with converting data entries to pdf reports, addressing the need for new/flexible standard indicators, and providing fields for additional information related to real property purchases.

*Response:* We thank the respondent for these thoughtful comments for improvements to Wildlife TRACS and will take all of these recommendations under consideration.

*Comment:* One respondent submitted comments asking for increased reporting opportunities that will allow a more complicated and robust inquiry. The respondent gave the following examples of queries not currently supported: Identify all projects within a State on behalf of an individual species or group of species; projects within specific ecoregions or Congressional districts; and collective impacts of related projects over time. The comments recognize Wildlife TRACS' ability to offer opportunities for addressing these reporting needs and even though it may require additional effort at the beginning, the value of the reporting options outweighs the data entry burden.

*Response:* We agree that robust reporting capabilities are vital to our mission and Wildlife TRACS reporting will allow users to generate this type of report. We expect Wildlife TRACS to be fully functional for robust reporting by December 2016.

*Comment:* One respondent suggested that the Service should provide a reporting module that State and Federal staff can use to determine if project detail is sufficient to meet reporting needs. When a report module is provided, we will be able to evaluate the situation and better create best management practices for data entry.

*Response:* We agree that the ability to produce reports from data entered into Wildlife TRACS will help users identify how to improve data entry. New enhancements to the workflow manager will allow users to more easily view validation and workflow status information. We expect Wildlife TRACS to include these enhancements for workflow management by November 2015. We look forward to working with States to refine best practices for data entry.

*Comment:* Two respondents suggested that estimated costs by actions should not be collected. Financial reporting

should be consistent with the Financial and Business Management System (FBMS) and not extend past the subaccount level.

*Response:* We disagree and recognize that a major benefit of action-level costs is to assist both the Service and States in assessing cost effectiveness of projects. There will be an interface with FBMS that gives users some information to assist with cost analysis, but the cost information in Wildlife TRACS is not auditable. The estimated costs States enter into Wildlife TRACS is for a different purpose than the cost information in FBMS.

Ways to minimize the burden of collection of information on respondents.

*Comment:* One respondent stated that while it is preferred to minimize the reporting burden, we also want to ensure that the information we provide is sufficient to meet our responsibilities to the Service, elected officials, and the public. When a reporting module has been developed for Wildlife TRACS, we will be in a better position to evaluate reporting burden. At that time, we will work with the Service to find efficiencies that could minimize burden.

*Response:* We appreciate the commitment to robust reporting and will continue to work with States and other partners to identify efficiencies and to minimize burden.

*Comment:* Two respondents recommended we develop data communication between Wildlife TRACS and Grants.gov to reduce the burden to States for duplicate work.

*Response:* We addressed Wildlife TRACS and applications above. When addressing ways to minimize burden, we agree that communication/interfaces with other electronic systems can help to improve efficiencies and reduce burden. Grants.gov is a grant application system and Wildlife TRACS is a project tracking and reporting system, so there will not always be a direct correlation from Wildlife TRACS to Grants.gov. However, for those projects that fall into the category of being funded through one grant, we will work to offer more options that may improve processing and reduce burden. We currently interface with several other electronic systems that serve to improve the user experience and lessen burden, such as FBMS and databases for identifying species, and we will continue to consider other opportunities. We welcome continued suggestions.

*Comment:* One commenter suggested that Wildlife TRACS should either be upgraded to a full grant-management system, or the Service should retain full responsibility for entering data using

State grant applications as the source for obtaining grant data.

*Response:* We make no change based on this comment. The Department of the Interior made the decision to transition from the various grant and other fiscal management systems being used by programs in the Department to a single fiscal management system, FBMS. Our former system, Federal Aid Information Management System (FAIMS), was decommissioned in October 2012. FAIMS was replaced for financial reporting by the Financial and Business Management System (FBMS), which encompasses all financial and business administrative functions, not only grants programs. FBMS does not address project/grant performance reporting, is not grant-centric, and the system is not accessible to grantees. Wildlife TRACS is focused on filling the gap for performance reporting. There is no change in the responsibility for the grantee to report on project performance. Wildlife TRACS allows States to more accurately report by entering information directly.

*Comment:* One respondent suggested that we should not implement Wildlife TRACS until it is in its final form, ensuring a stable model, reducing the need for retraining, and reducing the need for State staff to adapt to shifting models and expectations.

*Response:* We make no changes based on this comment. The adjustments to Wildlife TRACS are to improve the user experience, efficiency of data collection, and response to information requirements. Many of the improvements are a result of recommendations from States that have engaged in Wildlife TRACS. None of the data entered into Wildlife TRACS will be lost as improvements are made. Continued training opportunities are available for users at: <https://TRACS.fws.gov/learning>.

*Comment:* One commenter stated that the Service should continue to enter data into Wildlife TRACS, resulting in no impact on States to implement this approach.

*Response:* We disagree. We refer to responses above for further details. We will continue to assist States during the transition to address the backlog of projects that need to be entered into Wildlife TRACS. We will also work with States after October 1, 2016, to assess needs and offer options.

*Comment:* One respondent asked us to continue to honor the Federal requirements that grant recipients must only report for those activities that have occurred during the period of performance. Any additional requirements would be especially

burdensome and draw resources away from the programs needed to manage the resources.

*Response:* We agree and will only require reporting on projects during the period of performance. We may ask States to voluntarily assist with information beyond the period of performance, but it is expected that much of the information shared will be from work that States are already accomplishing for their internal needs. We hope to continue to work in partnership with States and other interested organizations to create vital and robust outcome information that will engage and inspire the public; inform our elected officials; and help Federal, State, and local agencies work together for continued conservation successes.

*Comment:* The commenter objected to the use of taxpayer dollars for these financial assistance programs.

*Response:* We note the commenter's objection to funding these grant programs. The commenter did not address the information collection requirements, and we did not make any changes to our requirements based on this comment.

#### Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB or us to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 24, 2015.

**Tina A. Campbell,**  
Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2015-24682 Filed 9-29-15; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[FWS-R1-ES-2015-N151;  
FXES1113010000-156-FF01E00000]

**Endangered and Threatened Wildlife and Plants; Recovery Plan for the Coterminous United States Population of Bull Trout**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final Recovery Plan for the Coterminous United States Population of Bull Trout, including six final recovery unit implementation plans, under the Endangered Species Act of 1973, as amended (Act). The recovery plan includes specific goals, objectives, and criteria that should be met in order to consider removing the species from the Federal List of Endangered and Threatened Wildlife.

**ADDRESSES:** An electronic copy of the recovery plan is available at <http://www.fws.gov/endangered/species/recovery-plans.html> and <http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html>. Copies of the recovery plan are also available by request from the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone (208) 378-5345. Printed copies of the recovery plan will be available for distribution approximately 4 to 6 weeks after publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael Carrier, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, at the above Boise address; telephone (208) 378-5243. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:****Background**

In November 1999, all populations of bull trout (*Salvelinus confluentus*) within the coterminous United States were listed as a threatened species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Act) (64 FR 58910; November 1, 1999). This final listing added bull trout in the Coastal-Puget Sound populations (Olympic Peninsula and Puget Sound regions) and Saint Mary-Belly River populations (east of the Continental Divide in Montana) to the previous

listing of three distinct population segments of bull trout in the Columbia River, Klamath River, and Jarbidge River basins (63 FR 31647, June 10, 1998; 64 FR 17110, April 8, 1999).

Recovery of endangered and threatened animals and plants is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. For the coterminous population of bull trout, three separate draft bull trout recovery plans were completed in 2002 and 2004. The 2002 draft recovery plan (USFWS 2002) addressed bull trout populations within the Columbia, St. Mary-Belly, and Klamath River basins and included individual chapters for 24 separate recovery units. In 2004, draft recovery plans were developed for the Coastal-Puget Sound drainages in western Washington, including two recovery unit chapters (USFWS 2004a), and for the Jarbidge River in Nevada (USFWS 2004b). These draft recovery plans were not finalized, but they have served to identify recovery actions across the range of the species, and provide the framework for implementing numerous recovery actions by our partner agencies, local working groups, and others with an interest in bull trout conservation. A revised draft recovery plan, addressing the overall recovery strategy for bull trout throughout its range in the coterminous United States, was made available for public comment from September 4 through December 3, 2014 (79 FR 52741). Subsequently, from June 4 through July 20, 2015 (80 FR 31916), we made available for public comment our proposed modifications to the recovery criteria, as well as six associated draft recovery unit implementation plans (RUIPs), supplemental recovery planning documents which describe more detailed site-specific conservation actions and implementation schedules for each of the six recovery units (Coastal, Klamath, Mid-Columbia, Columbia Headwaters, Upper Snake, and St. Mary).

We considered information we received from public comments and peer reviewers in our preparation of the final recovery plan. Updated information was incorporated into the

final recovery plan and the six final RUIPs as appropriate, and substantive issues and comments, together with our responses, are summarized in appendices. Comments relating to overall recovery strategy and criteria are addressed in an appendix to the final recovery plan, while those comments specific to individual recovery units are addressed in appendices to each RUIP.

**Recovery Plan Components**

The primary recovery strategy for bull trout in the coterminous United States that we describe in the recovery plan is to: (1) Conserve bull trout so that they are geographically widespread across representative habitats and demographically stable in six recovery units; (2) effectively manage and ameliorate the primary threats in each of six recovery units at the core area scale such that bull trout are not likely to become endangered in the foreseeable future; (3) build upon the numerous and ongoing conservation actions implemented on behalf of bull trout since their listing in 1999, and improve our understanding of how various threat factors potentially affect the species; (4) use that information to work cooperatively with our partners to design, fund, prioritize, and implement effective conservation actions in those areas that offer the greatest long-term benefit to sustain bull trout and where recovery can be achieved; and (5) apply adaptive management principles to implementing the bull trout recovery program to incorporate new information.

Bull trout population status is stable or increasing in some core areas. However, in developing this recovery plan, we also acknowledge that despite our best conservation efforts, it is possible that some existing bull trout core areas may become extirpated due to various factors, including the effects of small populations and isolation. Our current approach to developing recovery criteria and necessary recovery actions for bull trout is intended to ensure adequate conservation of genetic diversity, life history features, and broad geographical representation of bull trout populations while acknowledging some local extirpations may occur.

We may initiate an assessment of whether recovery has been achieved and delisting is warranted when the recovery criteria below have been met in each recovery unit. Alternatively, if recovery criteria are met in an individual recovery unit, we may initiate an assessment of whether it is possible to designate that recovery unit as a distinct population segment and if

delisting of that distinct population segment would be warranted.

For the Coastal, Mid-Columbia, and Upper Snake Recovery Units, the recovery criteria provide that primary threats must be managed effectively in at least 75 percent of all core areas, representing 75 percent or more of bull trout local populations within each of these three recovery units. For the Columbia Headwaters Recovery Unit, the recovery criteria provide that primary threats must be managed effectively in at least 75 percent of complex core areas and at least 75 percent of simple core areas, representing 75 percent or more of bull trout local populations within the recovery unit. For the Klamath and St. Mary Recovery Units, the recovery criteria provide that all primary threats must be managed effectively in all existing core areas, representing all existing local populations. In addition, because 9 of the 17 known local populations in the Klamath Recovery Unit have been extirpated and others are significantly imperiled and require active management, we believe that the geographic distribution of bull trout within this recovery unit needs to be substantially expanded before it can be considered to have met recovery goals. To achieve recovery, we seek to add seven additional local populations distributed among the three core areas (two in the Upper Klamath Lake core area, three in the Sycan core area, and two in the Upper Sprague core area). In recovery units where shared foraging/migratory/overwintering (FMO) habitat outside core areas has been identified, connectivity and habitat in these shared FMO areas should be maintained in a condition sufficient for regular bull trout use and successful dispersal among the connecting core areas for those core areas to meet the criterion.

If threats are effectively managed at these thresholds, we expect that bull trout populations will respond accordingly and reflect the biodiversity principles of resiliency, redundancy, and representation. Specifically, achieving the recovery criteria in each recovery unit would result in geographically widespread and demographically stable local bull trout populations within the range of natural variation, with their essential cold water habitats connected to allow their diverse life history forms to persist into the foreseeable future; therefore, the species would be brought to the point where the protections of the Act are no longer necessary.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 3, 2015.

**Robyn Thorson,**

*Regional Director, Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2015-24670 Filed 9-29-15; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS-HQ-IA-2015-0152; FXIA1671090000-156-FF09A30000]**

#### Endangered Species; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the applications to conduct certain activities with endangered species and migratory birds. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities. The public is also invited to comment on the following applications for approval to conduct certain activities with bird species covered under the Wild Bird Conservation Act of 1992, which was enacted to ensure that exotic bird species are not harmed by international trade and to encourage wild bird conservation programs in countries of origin.

**DATES:** We must receive comments or requests for documents on or before October 30, 2015.

**ADDRESSES:** *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-HQ-IA-2015-0152.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-HQ-IA-2015-0152; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

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

*Viewing Comments:* Comments and materials we receive will be available

for public inspection on <http://www.regulations.gov>, or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone 703-358-2095.

#### FOR FURTHER INFORMATION CONTACT:

*Endangered Species Applications:* Brenda Tapia, Program Analyst/Data Administrator, Division of Management Authority, U.S. Fish and Wildlife Service Headquarters, MS: IA; 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone 703-358-2104; facsimile 703-358-2280.

*Wild Bird Conservation Act Applications:* Craig Hoover, Chief, Division of Management Authority, U.S. Fish and Wildlife Service Headquarters, MS: IA; 5275 Leesburg Pike, Falls Church, VA 22041-3803; telephone 703-358-2095; facsimile 703-358-2298.

If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Comment Procedures

*A. How do I obtain copies of applications or comment on submitted applications?*

For how to obtain copies of the complete applications, and how to submit written data or comments, see **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider comments sent to an email or address not listed under **ADDRESSES**.

Please make your comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review on [regulations.gov](http://regulations.gov) and at the address found in **ADDRESSES**.

## II. Permit Applications

### A. Endangered Species

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576,

“Delivering an Efficient, Effective, and Accountable Government,” and the President’s Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

*Applicant:* Valley Zoological Society, Brownsville, TX; PRT–63567B

The applicant requests a permit to import four captive-bred Philippine crocodile (*Crocodylus mindorensis*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

*Applicant:* White Oak Conservation Holdings, LLC, Yulee, FL; PRT–58992B

The applicant requests a permit to import one female captive-bred Andean condor (*Vultur gryphus*) for the purpose of enhancement of the survival of the species from Taronga Zoo, Mosman, New South Wales, Australia.

*Applicant:* Cleveland Metroparks Zoo, Cleveland, OH; PRT–69476B

The applicant requests a permit to export one female captive-bred Golden Lion Tamarin (*Leontopithecus rosalia*) for the for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant:* Wildlife & Environmental Conservation, Inc., Moorpark, CA; PRT–75313B

The applicant requests a permit to purchase in interstate commerce two captive-born male African leopards (*Panthera pardus*) from Living Treasures Wild Animal Park, New Castle, Pennsylvania, for the purpose of

enhancement of the survival of the species.

*Applicant:* University of Colorado Denver, Aurora, CO; PRT–64101B

The applicant requests a permit to import biological samples from 129 brush-tailed bettong (*Bettongia penicillata*) from the wild for purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1-year period.

*Applicant:* Bhagavan Antle, Myrtle Beach, SC; PRT–71654B

The applicant requests a permit to export and re-import 18 captive-born tigers (*Panthera tigris*) for the purpose of enhancement of the survival of the species to and from Cancun, Quintana Roo, Mexico. This notification covers activities to be conducted by the applicant over a 3-year period.

*Applicant:* City of Bridgeton/Cohanzick Zoo, Bridgeton, NJ; PRT–63829B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Radiated tortoise (*Astrochelys radiata*), spotted pond turtle (*Geoclemys hamiltonii*), aquatic box turtle (*Terrapene coahuila*), Jamaican boa (*Epicrates subflavus*), Cabot’s tragopan (*Tragopan caboti*), Moluccan cockatoo (*Cacatua moluccensis*), White cockatoo (*Cacatua alba*), Blue-throated macaw (*Ara glaucogularis*), ring-tailed lemur (*Lemur catta*), cottontop tamarin (*Saguinus oedipus*), lar gibbon (*Hylobates lar*), and spotted leopard (*Panthera pardus*). This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant:* Peter Langeegger, Silt, CO; PRT–64786B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Radiated tortoise (*Astrochelys radiata*), Bolson tortoise (*Gopherus flavomarginatus*), aquatic box turtle (*Terrapene coahuila*), yellow-spot river turtle (*Podocnemis unifilis*), spotted pond turtle (*Geoclemys hamiltonii*), and Galapagos tortoise (*Chelonoidis nigra*). This notification covers activities to be conducted by the applicant over a 5-year period.

### Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the

purpose of enhancement of the survival of the species.

*Applicant:* Jared Golding, Draper, UT; PRT–66604B

*Applicant:* Anden Neal Van Beek, Beresford, SD; PRT–73793B

*Applicant:* Luke Snyder, Springfield, MO; PRT–76168B

### B. Wild Bird Conservation Act

The public is invited to comment on the following applications for approval to conduct certain activities with bird species covered under the Wild Bird Conservation Act of 1992 (16 U.S.C. 4901–4916). This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

*Applicant:* The Peregrine Fund, Boise, Idaho

The applicant seeks to establish a cooperative breeding program for Taita falcon (*Falco fasciinucha*). The applicant wishes to be an active participant in this program, along with Weaver Ranch, Causey, New Mexico. If approved, the program will be overseen by The Peregrine Fund, Boise, Idaho.

*Applicant:* John Aynes, Oklahoma City, Oklahoma

The applicant seeks to establish a cooperative breeding program for grey parrot (*Psittacus erithacus*). The applicant wishes to be an active participant in this program along with Susan Clubb, DVM, Loxahatchee, Florida, and Walter Frey, Parrot Ranch, Idabel, Oklahoma. If approved, the program will be overseen by the Zoological Association of America, Punta Gorda, Florida.

## III. Public Comments

You may submit your comments and materials concerning this notice by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment 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 comments on <http://www.regulations.gov>.

**IV. Authority**

Wild Bird Conservation Act of 1992 (16 U.S.C. 4901–4916).

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2015–24692 Filed 9–29–15; 8:45 am]

**BILLING CODE 4310–55–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FW–HQ–MB–2015–N186; FF09M29000–156F1611MD–FXMB12320900000]

**Proposed Information Collection; Depredation Orders for Double-Crested Cormorants**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on February 29, 2016. We 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.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by November 30, 2015.

**ADDRESSES:** Send your comments on the IC to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope\_grey@fws.gov* (email). Please include “1018–0121” in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Hope Grey at *hope\_grey@fws.gov* (email) or 703–358–2482 (telephone).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This information collection is associated with regulations implementing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*). Under the MBTA, it is unlawful to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, migratory birds or their parts, nests, or eggs, except as authorized by regulations implementing the MBTA.

The regulations in the Code of Federal Regulations (CFR) at 50 CFR 21.47 (Aquaculture Depredation Order) authorize aquaculture producers and the U.S. Department of Agriculture (APHIS—Wildlife Services) in 13 States to take double-crested cormorants when the birds are found committing or about to commit depredations on commercial freshwater aquaculture stocks. The regulations at 50 CFR 21.48 (Public

Resource Depredation Order) authorize State fish and wildlife agencies, APHIS—Wildlife Services, and federally recognized tribes in 24 States to take double-crested cormorants to prevent depredations on the public resources of fish, wildlife, plants, and their habitats.

Both 50 CFR 21.47 and 21.48 impose reporting and recordkeeping requirements on those operating under the depredation orders. We use the information collected to:

- Help assess the impact of the depredation orders on double-crested cormorant populations.
- Protect nontarget migratory birds or other species.
- Ensure that agencies and individuals are operating in accordance with the terms, conditions, and purpose of the orders.
- Help gauge the effectiveness of the orders at mitigating cormorant-related damages.

**II. Data**

*OMB Control Number:* 1018–0121.

*Title:* Depredation Orders for Double-Crested Cormorants, 50 CFR 21.47 and 21.48.

*Service Form Number(s):* 3–202–18–2147; 3–202–19–2148.

*Type of Request:* Extension of a currently approved collection.

*Description of Respondents:* Aquaculture producers, States, and tribes.

*Respondent’s Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually for reports; ongoing for recordkeeping.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
Report take of migratory bird species other than double-crested cormorants (21.47(d)(7); 21.48(d)(7))	1	1	1	1
Report take of species protected under Endangered Species Act (21.47(d)(8); 21.48(d)(8))	1	1	1	1
Written notice of intent to conduct control activities (21.48(d)(9))	12	12	3	36
Report of control activities (21.48(d)(10) and (11))	12	12	20	240
Report effects of management activities (21.48(d)(12))	9	9	75	675
Recordkeeping (21.47(d)(9))	325	325	7	2,275
<b>Totals</b>	<b>360</b>	<b>360</b>		<b>3,228</b>

*Estimated Annual Nonhour Burden Cost:* None.

**III. Comments**

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including

whether or not the information will have practical utility;

- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and

- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: September 24, 2015.

**Tina A. Campbell,**

*Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.*

[FR Doc. 2015-24704 Filed 9-29-15; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Request for Nominations for the Invasive Species Advisory Committee

**AGENCY:** National Invasive Species Council, Office of the Secretary, Interior.

**ACTION:** Request for nominations.

**SUMMARY:** The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council (NISC), proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

**DATES:** Nominations must be postmarked by November 30, 2015.

**ADDRESSES:** Nominations should be sent to Jamie K. Reaser, Executive Director, National Invasive Species Council (OS/NISC), Regular/Express Mail: 1849 C Street NW. (Mailstop 3530), Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Brantley, Program Specialist and ISAC Coordinator, at (202) 208-4122, fax: (202) 208-4118, or by email at [Kelsey\\_Brantley@ios.doi.gov](mailto:Kelsey_Brantley@ios.doi.gov).

**SUPPLEMENTARY INFORMATION:**

#### Advisory Committee Scope and Objectives

Executive Order (EO) 13122 authorized the National Invasive Species Council (NISC) to provide interdepartmental coordination, planning, and leadership for the Federal Government on the prevention, eradication, and control of invasive species. NISC is currently comprised of thirteen Federal Departments and Agencies. The Co-chairs of NISC are the Secretaries of the Interior, Agriculture, and Commerce. The Invasive Species

Advisory Committee (ISAC) advises NISC. NISC is requesting nominations for individuals to serve on the ISAC.

NISC provides high-level interdepartmental coordination of Federal invasive species actions and works with other Federal and non-Federal groups to address invasive species issues at the national level. NISC duties, as outlined in EO 13112 are to: Oversee implementation of EO 13112, while working to ensure that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective; encourage planning and action at local, tribal, state, regional, and ecosystem-based level to achieve strategic goals; develop recommendations for international cooperation; work with the Council on Environmental Quality (CEQ) to develop guidance to Federal Agencies pursuant to the National Environmental Policy Act (NEPA); facilitate development of a coordinated network among Federal Agencies to document, evaluate, and monitor invasive species impacts; and prepare, issue (implement), and update a National Invasive Species Management Plan (Management Plan).

ISAC is chartered under the Federal Advisory Committee Act (FACA; 5 U.S.C. App. 2). At the request of NISC, ISAC provides advice to NISC member Departments and Agencies on topics related to NISC's aforementioned duties. As a multi-stakeholder advisory committee, ISAC is intended to play a key role in recommending plans and actions to be taken at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan. It is hoped that, collectively, ISAC will represent the views of the broad range of individuals and communities knowledgeable of and affected by invasive species.

Prospective members of ISAC need to have substantial expertise in the prevention, eradication, and/or control of invasive species, as well as to demonstrate a high degree of capacity for: advising individuals in leadership positions, team work, project management, tracking relevant Federal government programs and policy making procedures, and networking with and representing their peer-community of interest. ISAC members need not be scientists. Membership from a wide range of disciplines and professional sectors is encouraged. At this time, we are particularly interested in applications from representatives of tribes, states, non-governmental organizations, the private sector, and large-scale land management entities (urban and rural).

After consultation with the other members of NISC, the Secretary of the Interior will appoint members to ISAC. NISC will select members based on their individual qualifications, as well as the overall need to achieve a balanced representation of viewpoints, subject matter expertise, regional knowledge, and representation of communities of interests. ISAC member terms are limited to three (3) years from their date of appointment to ISAC. Following completion of their first term, an ISAC member may request consideration for reappointment to an additional term. Reappointment is not guaranteed.

Typically, the ISAC meets twice per year (spring and fall). Between these meetings, ISAC members are expected to participate in committee work via conference calls and email exchanges. Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of title 5, United States Code. Employees of the Federal Government ARE NOT eligible for nomination or appointment to ISAC. Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department of the Interior to contact a potential member.

Any interested person or entity may nominate one or more qualified individuals for membership on the ISAC. Self-nominations are also accepted. Persons or entities submitting nomination packages on the behalf of others must confirm that the individual(s) is/are aware of their nomination. Nominations must be postmarked no later than November 30, 2015 to Jamie K. Reaser, Executive Director, National Invasive Species

Council (OS/NISC), Regular Mail: 1849 C Street NW. (MS 3530), Washington, DC 20240.

Dated: September 23, 2015.

**Jamie K. Reaser,**

*Executive Director, Native Invasive Species Council.*

[FR Doc. 2015-24818 Filed 9-29-15; 8:45 am]

**BILLING CODE 4334-63-P**

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

[156D0102DM DS62200000 DLSN00000.000000 DX.62201]

**Proposed Renewal of Information Collection: OMB Control Number 1090-0009, Donor Certification Form**

**AGENCY:** Office of the Secretary, Office of Financial Management, Department of the Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Financial Management, Office of the Secretary, Department of the Interior has submitted a request for renewal of this information collection to the Office of Management and Budget (OMB), and requests public comments on this submission.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by October 30, 2015, in order to be assured of consideration.

**ADDRESSES:** Send your written comments by facsimile (202) 395-5806 or email (*OIRA\_Submission@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer (1090-0009). Also, please send a copy of your comments to Paul Batlan, Office of Financial Management, 1849 C St. NW., MS 2557 MIB, Washington, DC 20240, or email him at *Paul\_Batlan@ios.doi.gov*. Individuals providing comments should reference the "Donor Certification Form, OMB Control Number 1090-0009".

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the *Information Collection Request* or the Donor Certification Form, should be directed to Paul Batlan, Office of Financial Management, 1849 C St. NW., MS 2557 MIB, Washington, DC 20240, or email him at *Paul\_Batlan@ios.doi.gov*. You may also review the information collection request online at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This notice identifies an information collection activity that the Office of Financial Management has submitted to OMB for approval for the Department and its bureaus to continue to collect information from proposed donors relative to their relationship(s) with the Department. The Department and its individual bureaus have gift acceptance authorities. In support of the variety of donation authorities in the Department and increasing numbers of donations, it is the policy of the Department to ask those proposing to donate gifts valued at \$25,000 or more to provide information regarding their relationship with the Department. The purpose of this policy is to ensure that the acceptance of a gift does not create legal or ethical issues for the Department, its bureaus, or potential donors. The information will be gathered through the use of a form that collects information relevant to the acceptability of the proposed donation in conformance with the Department's donations policy. The form is completed and certified by the prospective donor then submitted to the Department or its bureau for review. Having the donor certify his or her interactions with the Department gives the staff vetting the proposed donation basic information to be verified, resulting in a more efficient and timely donation review process. The information collected is as follows:

Information collected	Reason for collection
Name, and indication whether executing in individual capacity, or on behalf of an organization.	To identify the donor, and whether the donor is acting individually or on behalf of an organization.
Declaration whether the donor is involved with litigation or controversy with the Department.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration whether the donor is engaged in any financial or business relationship with the Department.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration whether the donor has been debarred, excluded or disqualified from the non-procurement common rule, or otherwise declared ineligible from doing business with any Federal agency.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration as to whether the donation is expected to be involved with marketing or advertising.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration whether the donor is seeking to attach conditions to the donation.	To assist the Department in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Declaration whether this proposed donation is or is not part of a series of donations to the Department.	To assist the Department in determining the scope and context of the donation, and to assist in determining whether there are any issues associated with the proffer of the gift that need to be more closely examined.
Signature, Printed Name, Date, Organization, Email address, City, State, Zip, and daytime or work phone number.	To establish the contact information of the potential donor, and have the certifier sign the certification form.

**II. Data**

(1) *Title:* Donor Certification Form.  
*OMB Control Number:* 1090-0009.  
*Current Expiration Date:* September 30, 2015.

*Type of Review:* Renewal of an existing collection.

*Affected Entities:* Individuals or households, Businesses, Not-for-profit institutions, Tribal governments.

*Estimated annual number of respondents:* 250.

*Frequency of response:* Once per prospective donor per year.



(2) Annual reporting and record keeping burden.

*Total Annual Reporting per Respondent: 20 minutes.*

*Total Annual Burden Hours: 83 hours.*

(3) Description of the need and use of the information: This information will provide Department staff with the basis for beginning the evaluation as to whether the Department will accept the proposed donation. The authorized employee will receive the donor certification form in advance of accepting the proposed donation. The employee will then review the totality of circumstances surrounding the proposed donation to determine whether the Department can accept the donation and maintain its integrity, impartiality, and public confidence.

(4) As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on June 23, 2015 (80 FR 35971). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity.

### III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

"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.

It is our policy to make all comments available to the public for review. Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us in your comment to withhold PII from public view, we cannot guarantee that we will be able to do so.

If you wish to view any comments received, you may do so by scheduling an appointment via the contact information provided in the **ADDRESSES** section. A valid picture identification is required for entry into the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: September 25, 2015.

**Douglas A. Glenn,**

*Deputy Chief Financial Officer and Director, Office of Financial Management, Department of the Interior.*

[FR Doc. 2015-24745 Filed 9-29-15; 8:45 am]

**BILLING CODE 4334-63-P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

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6100.241A0 DN18000000]

### Proposed Appointment to the National Indian Gaming Commission

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** The Indian Gaming Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the Chair, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide public notice of a proposed appointment and allow a comment period. Notice is hereby given of the proposed appointment of E. Sequoyah Simermeyer as an associate member of the National Indian Gaming Commission for a term of 3 years.

**DATES:** Submit comments on or before October 30, 2015.

**ADDRESSES:** Send comments to the Director, Office of the Executive Secretariat and Regulatory Affairs, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 7328, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Hoenig, National Indian Gaming Commission, c/o Department of the Interior, 1849 C Street NW., Mail Stop 1621, Washington, DC 20240; telephone (202) 632-7003; facsimile (202) 632-7066.

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et. seq.*, established the National Indian Gaming Commission (Commission), composed of three full-time members. Commission members serve for a term of 3 years. The Chair is appointed by the President with the advice and consent of the Senate. The two associate members are appointed by the Secretary of the Interior. Before appointing an associate member to the Commission, the Secretary is required to "publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and . . . allow a period of not less than thirty days for receipt of public comments." See 25 U.S.C. 2704(b)(2)(B).

The Secretary proposes to appoint E. Sequoyah Simermeyer as an associate member of the Commission for a term of 3 years. Mr. Simermeyer is well qualified to be a member of the National Indian Gaming Commission by virtue of his extensive background and experience in a broad spectrum of Native American issues.

In his current position at the United States Senate Committee on Indian Affairs, Mr. Simermeyer has provided legislative proposals, committee reports, and extensive briefing materials on matters that impact Federal relations with American Indians, Alaska Natives, and tribal governments. He has further experience serving as the deputy chief of staff and counselor to the Assistant Secretary for Indian Affairs. Mr. Simermeyer has taught undergraduate and graduate courses pertaining to Indian law and leadership development, and has served on the board of many law associations, often serving as president. His leadership and community outreach has aided in the educational and social service needs of Native Americans.

Mr. Simermeyer's wide experience in community service, legal affairs, and organizational administration make him a highly qualified candidate for membership on the National Indian

Gaming Commission. His broad perspective as a result of this experience will enrich the Commission's deliberations and contribute to informed decisions that promote economic well-being.

Mr. Simermeyer does not have any financial interests that would make him ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Any person wishing to submit comments on this proposed appointment of E. Sequoyah Simermeyer may submit written comments to the address listed above. Comments must be received by October 30, 2015.

**Sally Jewell,**

*Secretary of the Interior.*

[FR Doc. 2015-24701 Filed 9-29-15; 8:45 am]

**BILLING CODE 4334-63-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLCAN01000 L10200000.XZ0000 16X LXSI0VHD0000]

#### Notice of Public Meeting: Northern California Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northern California Resource Advisory Council will meet as indicated below.

**DATES:** The meeting will be held Thursday and Friday, Nov. 5 and 6, 2015, at the Red Lion Hotel, 1929 Fourth Street, Eureka, California. On Nov. 5, the council will convene at 9 a.m. and depart for a field tour focused on aspects of the California Coastal National Monument. Members of the public are welcome. They must provide their own transportation, meals and beverages. On Nov. 6, the council will convene a business meeting at 8 a.m. in the Red Lion Hotel Conference Center. The meeting is open to the public. Public Comments will be accepted at 11 a.m.

**FOR FURTHER INFORMATION CONTACT:** Nancy Haug, BLM Northern California District manager, (530) 224-2160; or Joseph J. Fontana, public affairs officer, (530) 252-5332. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 800-877-8339, to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management on BLM-administered lands in northern California and far northwest Nevada. At this meeting the RAC will discuss land use planning issues affecting public lands managed by the BLM Redding and Arcata Field Offices and land use plan amendments for sage grouse conservation affecting the Eagle Lake and Applegate Field Offices. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

**Martha Maciel,**

*Deputy State Director Communications.*

[FR Doc. 2015-24694 Filed 9-29-15; 8:45 am]

**BILLING CODE 4310-40-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-CR-19413; PPBSADA0, PPMPSAS1Y.Y00000 (155)]

#### Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Nomination of Properties for Listing in the National Register of Historic Places

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on September 30, 2015. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

**DATES:** You must submit comments on or before October 30, 2015.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or *OIRA\_Submission@omb.eop.gov* (email). Please provide a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Room 2C114, Mail Stop 242, Reston, VA 20192; or *madonna\_baucum@nps.gov* (email). Please include "1024-0018" in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Lisa Deline at *Lisa.Deline@nps.gov* (email) or at 202-354-2239 (telephone). You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The National Register of Historic Places (National Register) is the official Federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. National Register properties have significance to the history of communities, States, or the Nation. The National Historic Preservation Act of 1966 requires the Secretary of the Interior to maintain and expand the National Register, and to establish criteria and guidelines for including properties on the National Register.

National Register properties must be considered in the planning for Federal or federally assisted projects, and listing on the National Register is required for eligibility for Federal rehabilitation tax incentives. Listing on the National Register provides formal recognition of a property's historical, architectural, or archeological significance based on national standards used by every State. The listing places no obligations on private property owners, and there are no restrictions on the use, treatment, transfer, or disposition of private property.

The National Park Service administers the National Register. Nominations

listing historic properties come from State Historic Preservation Officers, from Federal Preservation Officers for properties owned or controlled by the United States Government, and from Tribal Historic Preservation Officers, for properties on tribal lands. Regulations at 36 CFR parts 60 and 63 establish the criteria and guidelines for listing and for determining the eligibility of properties. We use three forms for nominating properties and providing documentation for the proposed listings:

- NPS Form 10–900 (National Register of Historic Places Registration Form).
- NPS Form 10–900–a (National Register of Historic Places Continuation Sheet).
- NPS Form 10–900–b (National Register of Historic Places Multiple Property Documentation Form).

These forms and supporting documentation go to the Historic Preservation Office where the property is located. The State Historic Preservation Officer, Federal Preservation Officer, or Tribal Historic Preservation Officer can take one of several options:

- Reject the property.
- Ask for more information.
- In the case of the State Historic Preservation Officer, list the property just with the State.
- Send the forms to NPS for listing on the National Register.

Once we receive the forms, we conduct a similar review process to determine eligibility for listing on the National Register.

*Comments Received and Our Responses*

On January 28, 2015, we published in the **Federal Register** (80 FR 4589) a notice of our intent to request that OMB approve the collection of information associated with nominations of properties for inclusion in the National Register of Historic properties. We did not receive any comments in response to that notice.

We published an amended notice on June 26, 2015 (80 FR 36845). The amended notice extended the comment

date and provided the public with more detailed information about the five types of package submissions that we receive along with additional information on the respective burden estimates. We solicited comments for 60 days ending on August 25, 2015. We received comments from nine States:

*Comment:* Four States provided clarifications on the State burden estimates published in the amended notice, but did not provide any additional comments regarding the collection of information.

*Response:* We have considered and included, as appropriate, the information provided in our burden estimates.

*Comment:* One State responded that the collection of information was essential to meet the mandates of the National Historic Preservation Act. The State acknowledged the burden estimates for their State were accurate and added that there is a wide variation between response times from an individual compared to an experienced consultant. It was suggested that the NPS redesign the NR form so that it takes up fewer pages and to fix the “quirks” of the existing form. Finally, the State felt the burden could not be reduced unless additional funding is provided to the State Historic Preservation Offices to hire additional staff.

*Response:* The forms are provided as Word templates, which allow for rolling text from one page to the next. Some respondents choose not to fill out NPS Form 10–900 completely and simply place most documentation on NPS Form 10–900-a. Blank spaces may be deleted so there are fewer pages. The current forms allow for this flexibility. The current and projected out-year funding levels do not support the possibility of hiring additional staff or increasing the operating budget for the program. However, hiring additional staff would not reduce the burden, only spread it out among a larger staff.

*Comment:* One State commented that a category for State Historic Preservation

Offices that prepare NR nominations should have been included in the burden estimates.

*Response:* We agree and have included the burden in this ICR.

*Comment:* One State commented that the information collected is adequate and useful and would not recommend any changes to what is requested. The State believes that providing workshops and further guidance would help respondents to more fully understand the requirements. The State also commented that it would be difficult to reduce the burden because most States are concerned with local administration of the Federal tax program and incentives are tied to being listed on the National Register.

*Response:* We agree. The NR Program provides easily accessible guidance online via the National Register Bulletins and webinars that are posted on the NR Web site, as well as offering yearly workshops to assist with the documentation process.

*Comment:* One State commented that the collection of information was neither necessary nor useful and had no practical utility in the nomination of properties.

*Response:* We disagree. The information we collect is necessary to properly identify, evaluate, and protect properties nominated to the National Register of Historic Places.

**II. Data**

*OMB Control Number:* 1024–0018.

*Title:* Nomination of Properties for Listing in the National Register of Historic Places, 36 CFR 60 and 63.

*Service Form Number(s):* 10–900, 10–900–a, and 10–900–b.

*Type of Request:* Revision of a currently approved collection.

*Description of Respondents:* Individuals; businesses; organizations; and State, local, and tribal local governments.

*Respondent’s Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

Activity	Number of respondents	Number of annual responses	Completion time per response	Total annual burden hours
Preparation and Submission of Nomination Forms .....	100	100	250	25,000
Historic Preservation Office Review of Nomination Forms .....	100	1,282	6	7,692
Individual Nominations <sup>1</sup> .....	.....	635	.....	0
District Nominations <sup>1</sup> .....	.....	435	.....	0
Nominations Submitted under Existing MPS Covers <sup>1</sup> .....	.....	75	.....	0
New Proposed MPS Cover Documents <sup>1</sup> .....	.....	36	.....	0
New Nominations .....	.....	1	.....	0
<b>Totals</b> .....	<b>200</b>	<b>2,564</b>	.....	<b>32,692</b>

<sup>1</sup> Prepared by consultants.

*Estimated Annual Nonhour Burden Cost:* \$19,398,000 for consultant costs for preparing nominations.

### III. Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 23, 2015.

**Madonna L. Baucum,**

*Information Collection Clearance Officer,  
National Park Service.*

[FR Doc. 2015-24653 Filed 9-29-15; 8:45 am]

**BILLING CODE 4310-EH-P**

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

[Docket No. ONRR-2011-0021; DS63610000 DR2PS0000.CH7000 156D0102R2; OMB Control Number 1012-0002]

### Agency Information Collection Activities: Indian Oil and Gas Valuation; Comment Request

**AGENCY:** Office of Natural Resources Revenue, Interior.

**ACTION:** Notice of extension.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Office of Natural Resources Revenue (ONRR) is notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR parts 1202, 1206, and 1207. This notice also provides the public a second opportunity to comment on the

paperwork burden of these regulatory requirements.

**DATES:** OMB has up to 60 days to approve or disapprove this information collection request but may respond after 30 days; therefore, you should submit your public comments to OMB by October 30, 2015, for the assurance of consideration.

**ADDRESSES:** You may submit your written comments directly to the Desk Officer for the Department of the Interior (OMB Control Number 1012-0002), Office of Information and Regulatory Affairs, OMB, by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or telefax at (202) 395-5806. Please also mail a copy of your comments to Mr. Luis Aguilar, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61030A, Denver, Colorado 80225-0165, or email [Luis.Aguilar@onrr.gov](mailto:Luis.Aguilar@onrr.gov). Please reference OMB Control Number 1012-0002 in your comments.

**FOR FURTHER INFORMATION CONTACT:** For any questions, contact Mr. Luis Aguilar, telephone (303) 231-3418, or email at [Luis.Aguilar@onrr.gov](mailto:Luis.Aguilar@onrr.gov). You may also contact Mr. Aguilar to obtain copies (free of charge) of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the information collection request online at <http://www.reginfo.gov/public/do/PRAMain>.

### SUPPLEMENTARY INFORMATION:

#### I. Abstract

The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibility is to manage mineral resources production on Federal and Indian lands and the OCS, collect royalties due, and distribute the funds collected under those laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral leases on Federal and Indian lands are available at [http://www.onrr.gov/Laws\\_R\\_D/PubLaws/default.htm](http://www.onrr.gov/Laws_R_D/PubLaws/default.htm).

Information collections that we cover in this ICR are found at 30 CFR part 1202, subparts C and J, which pertain to royalties; part 1206, subparts B and E, which govern the valuation of oil and

gas produced from leases on Indian lands; and part 1207, which pertains to recordkeeping. Indian Tribes and individual Indian mineral owners receive all royalties generated from their lands. Determining product valuation is essential to ensure that Indian Tribes and individual Indian mineral owners receive payment on the full value of the minerals removed from their lands. Failure to collect the data that we describe in this ICR could result in the undervaluation of leased minerals on Indian lands. All data reported is subject to subsequent audit and adjustment.

#### Indian Oil

Regulations at 30 CFR part 1206, subpart B, govern the valuation for royalty purposes of all oil produced from Indian oil and gas leases (Tribal and allotted), except leases on the Osage Indian Reservation, and are consistent with mineral leasing laws, other applicable laws, and lease terms. Generally, these regulations provide that lessees determine the value of oil based upon the higher of (1) the gross proceeds under an arm's-length contract; or (2) major portion analysis. The value that a lessee determines may be eligible for a transportation allowance.

From information collected on Form ONRR-4110, Oil Transportation Allowance Report, ONRR and Tribal audit personnel evaluate (1) whether lessee-reported transportation allowances are within regulatory allowance limitations and calculated under applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties. Lessees must use Form ONRR-4110 for both arm's-length and non-arm's-length contracts.

#### Indian Gas

Regulations at 30 CFR part 1206, subpart E, govern the valuation for royalty purposes of natural gas produced from Indian oil and gas leases (Tribal and allotted). These regulations apply to all gas production from Indian oil and gas leases, except leases on the Osage Indian Reservation.

Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. Lessees must elect to perform actual dual accounting as defined in 30 CFR 1206.176, or alternative dual accounting as defined in 30 CFR 1206.173. Lessees use Form ONRR-4410, Accounting for Comparison [Dual Accounting], to certify that dual accounting is not required on an Indian lease or to make

an election for actual or alternative dual accounting for Indian leases.

The regulations require lessees to submit Form ONRR-4411, Safety Net Report, when they sell gas production from an Indian oil or gas lease beyond the first index pricing point. The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian oil and gas leases. This reporting requirement ensures that Indian lessors receive all royalties due and aids ONRR compliance efforts.

From information collected on Form ONRR-4295, Gas Transportation Allowance Report, ONRR and Tribal audit personnel evaluate (1) whether lessee-reported transportation allowances are within regulatory allowance limitations and calculated under applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties.

From information collected on Form ONRR-4109, Gas Processing Allowance Summary Report, ONRR and Tribal audit personnel evaluate (1) whether lessee-reported processing allowances are within regulatory allowance limitations and calculated under applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalty.

*Indian Oil and Gas*

Lessees must submit Form ONRR-4393, Request to Exceed Regulatory Allowance Limitation, for both Federal and Indian leases to request to exceed the regulatory allowance limitation. Most of the burden hours are incurred on Federal leases; therefore, OMB approved the form under OMB Control Number 1012-0005, pertaining to Federal oil and gas leases. However, we include a discussion of the form in this ICR, as well as the burden hours for Indian leases. To request permission to exceed a regulatory allowance limit, lessees must (1) submit a letter to ONRR explaining why a higher allowance limit is necessary; and (2) provide supporting documentation, including a completed Form ONRR-4393. This form provides ONRR with the data necessary to make a decision whether to approve or deny the request.

*OMB Approval*

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the inability to confirm the accurate royalty value to Indian Tribes and individual Indian mineral owners. ONRR protects proprietary information

that it receives and does not collect items of a sensitive nature. The requirement to report is mandatory for Form ONRR-4410, Accounting for Comparison [Dual Accounting], and for Form ONRR-4411, Safety Net Report, under certain circumstances. For all other forms in this collection, the requirement to report is required to obtain a benefit.

**II. Data**

*Title:* 30 CFR parts 1202, 1206, and 1207, Indian Oil and Gas Valuation.

*OMB Control Number:* 1012-0002.

*Bureau Form Number:* Forms ONRR-4109, ONRR-4110, ONRR-4295, ONRR-4393, ONRR-4410, and ONRR-4411.

*Frequency of Response:* Annually and on occasion.

*Estimated Number and Description of Respondents:* 148 Indian Mineral extractors holding leases on Indian Lands.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* 2,269 hours.

We have not included in our estimates certain requirements performed in the normal course of business that are considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
<b>PART 1202—ROYALTIES</b>				
<b>Subpart C—Federal and Indian Oil</b>				
1202.101 .....	Standards for reporting and paying royalties ..... Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F. . . .	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		
<b>Subpart J—Gas Production From Indian Leases</b>				
1202.551(b) .....	How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)? (b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes. . . .	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		
1202.551(c) .....	(c) You and all other persons paying royalties on the lease may ask ONRR for permission . . . to report entitlements . . .	1 .....	1	1
1202.558(a) and (b) .....	What standards do I use to report and pay royalties on gas? (a) You must report gas volumes as follows: . . . (b) You must report residue gas and gas plant product volumes as follows: . . .	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
<b>PART 1206—PRODUCT VALUATION</b>				
<b>Subpart B—Indian Oil</b>				
1206.56(b)(2) .....	Transportation allowances—general ..... (b)(2) Upon request of a lessee, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. . . . An application for exception (using Form ONRR-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination. . . .	4 .....	1	4
1206.57(a)(1)(i) .....	Determination of transportation allowances ..... (a) <i>Arm's-length transportation contracts.</i> (1)(i) . . . The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
1206.57(a)(1)(i) .....	(a) <i>Arm's-length transportation contracts</i> ..... (1)(i) . . . Before any deduction may be taken, the lessee must submit a completed page one of Form ONRR-4110 (and Schedule 1), Oil Transportation Allowance Report . . .	Burden covered under § 1206.57(c)(1)(i) and (iii).		
1206.57(a)(1)(iii) .....	(a) <i>Arm's-length transportation contracts</i> ..... (1)(iii) . . . When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	AUDIT PROCESS. See note.		
1206.57(a)(2)(i) .....	(a) <i>Arm's-length transportation contracts</i> ..... (2)(i) . . . Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without ONRR approval.	Burden covered under § 1206.57(a)(3).		
1206.57(a)(2)(ii) .....	(a) <i>Arm's-length transportation contracts</i> ..... (2)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported. . . .	20 .....	1	20
1206.57(a)(3) .....	(a) <i>Arm's-length transportation contracts</i> ..... (3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR. . . . The lessee shall submit all available data to support its proposal. . . .	40 .....	1	40
1206.57(b)(1) .....	(b) <i>Non-arm's-length or no contract</i> ..... (1) . . . A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form ONRR-4110 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee. . . .	Burden covered under § 1206.57(c)(2)(i) and (iii).		
1206.57(b)(1) .....	(b) <i>Non-arm's-length or no contract</i> ..... (1) . . . When necessary or appropriate, ONRR may direct a lessee to modify its actual transportation allowance deduction.	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		
1206.57(b)(2)(iv) .....	(b) <i>Non-arm's-length or no contract</i> .....	20 .....	1	20

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(2)(iv) . . . After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of ONRR.			
1206.57(b)(2)(iv)(A) .....	(b) <i>Non-arm's-length or no contract</i> ..... (2)(iv)(A) . . . After an election is made, the lessee may not change methods without ONRR approval. . . .	20 .....	1	20
1206.57(b)(3)(i) .....	(b) <i>Non-arm's-length or no contract</i> ..... (3)(i) . . . Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty bearing without ONRR approval.	40 .....	1	40
1206.57(b)(3)(ii) .....	(b) <i>Non-arm's-length or no contract</i> ..... (3)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported. . . .	20 .....	1	20
1206.57(b)(4) .....	(b) <i>Non-arm's-length or no contract</i> ..... (4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to ONRR. . . . The lessee shall submit all available data to support its proposal. . . .	20 .....	1	20
1206.57(b)(5) .....	(b) <i>Non-arm's-length or no contract</i> ..... (5) A lessee may apply to ONRR for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. . . .	20 .....	1	20
1206.57(c)(1)(i) .....	(c) <i>Reporting requirements</i> ..... (1) <i>Arm's-length contracts</i> . (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form ONRR-4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS-2014, Report of Sales and Royalty Remittance. . . .	4 .....	1	4
1206.57(c)(1)(iii) .....	(c) <i>Reporting requirements</i> ..... (1) <i>Arm's-length contracts</i> . (iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form ONRR-4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	4 .....	1	4
1206.57(c)(1)(iv) .....	(c) <i>Reporting requirements</i> ..... (1) <i>Arm's-length contracts</i> . (iv) ONRR may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.	AUDIT PROCESS. See note.		
1206.57(c)(2)(i) .....	(c) <i>Reporting requirements</i> ..... (2) <i>Non-arm's-length or no contract</i> .	6 .....	1	6

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form ONRR-4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form ONRR-2014. . . . The initial report may be based upon estimated costs.			
1206.57(c)(2)(iii) .....	(c) <i>Reporting requirements</i> ..... (2) <i>Non-arm's-length or no contract.</i> (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form ONRR-4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form ONRR-4110 its estimated costs for the next calendar year. . . . ONRR must receive the Form ONRR-4110 within 3 months after the end of the previous reporting period, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	6 .....	1	6
1206.57(c)(2)(iv) .....	(c) <i>Reporting requirements</i> ..... (2) <i>Non-arm's-length or no contract.</i> (iv) For new transportation facilities or arrangements, the lessee's initial Form ONRR-4110 shall include estimates of the allowable oil transportation costs for the applicable period. . .	Burden covered under § 1206.57(c)(2)(i).		
1206.57(c)(2)(v) .....	(c) <i>Reporting requirements</i> ..... (2) <i>Non-arm's-length or no contract.</i> (v) . . . only those allowances that have been approved by ONRR in writing . . .	Burden covered under § 1206.57(c)(2)(i).		
1206.57(c)(2)(vi) .....	(c) <i>Reporting requirements</i> ..... (2) <i>Non-arm's-length or no contract.</i> (vi) Upon request by ONRR, the lessee shall submit all data used to prepare its Form ONRR-4110. The data shall be provided within a reasonable period of time, as determined by ONRR.	AUDIT PROCESS. See note.		
1206.57(c)(4) and (e)(2) .....	(c) <i>Reporting requirements</i> ..... (4) Transportation allowances must be reported as a separate line item on Form ONRR-2014, . . . (e) <i>Adjustments.</i> (2) For lessees transporting production from Indian leases, the lessee must submit a corrected Form ONRR-2014 to reflect actual costs, . . .	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		
1206.59 .....	May I ask ONRR for valuation guidance? ..... You may ask ONRR for guidance in determining value. You may propose a value method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary. . . .	20 .....	1	20
1206.61(a) and (b) .....	What records must I keep and produce? ..... (a) On request, you must make available sales, volume, and transportation data for production you sold, purchased, or obtained from the field or area. You must make this data available to ONRR, Indian representatives, or other authorized persons.	AUDIT PROCESS. See note.		



30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(b) You must retain all data relevant to the determination of royalty value. . . .			
<b>PART 1206—PRODUCT VALUATION Subpart E—Indian Gas</b>				
1206.172(b)(1)(ii) .....	How do I value gas produced from leases in an index zone? (b) <i>Valuing residue gas and gas before processing.</i> (1)(ii) Gas production that you certify on Form ONRR-4410, . . . is not processed before it flows into a pipeline with an index but which may be processed later; . . .	4 .....	58	232
1206.172(e)(6)(i) and (iii) .....	(e) <i>Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.</i> (6)(i) You must report the safety net price for each index zone to ONRR on Form ONRR-4411, Safety Net Report, no later than June 30 following each calendar year; . . . (iii) ONRR may order you to amend your safety net price within one year from the date your Form ONRR-4411 is due or is filed, whichever is later. . . .	3 .....	11	33
1206.172(e)(6)(ii) .....	(e) <i>Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.</i> (6)(ii) You must pay and report on Form ONRR-2014 additional royalties due no later than June 30 following each calendar year; . . .	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		
1206.172(f)(1)(ii), (f)(2), and (f)(3).	(f) <i>Excluding some or all tribal leases from valuation under this section.</i> (1) An Indian tribe may ask ONRR to exclude some or all of its leases from valuation under this section. . . . (ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, ONRR will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation. (2) An Indian tribe may ask ONRR S to terminate exclusion of its leases from valuation under this section. . . . (3) The Indian tribe's request to ONRR under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution. . . .	40 .....	1	40
1206.173(a)(1) .....	How do I calculate the alternative methodology for dual accounting? (a) <i>Electing a dual accounting method.</i> (1) . . . You may elect to perform the dual accounting calculation according to either § 1206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).	2 .....	12	24
1206.173(a)(2) .....	(a) <i>Electing a dual accounting method</i> .....	Burden covered under § 1206.173(a)(1).		
1206.174(a)(4)(ii) .....	How do I value gas production when an index-based method cannot be used? (a) <i>Situations in which an index-based method cannot be used.</i>	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(4)(ii) If the major portion value is higher, you must submit an amended Form ONRR-2014 to ONRR by the due date specified in the written notice from ONRR of the major portion value. ...			
1206.174(b)(1)(i) and (iii); (b)(2); (d)(2).	(b) <i>Arm's-length contracts</i> .....  (1)(i) You have the burden of demonstrating that your contract is arm's-length. . . . (iii) . . . In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your value. . . . (2) ONRR may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product. (d) <i>Supporting data</i> . (2) You must make all such data available upon request to the authorized ONRR or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons. . . .	AUDIT PROCESS. See note.		
1206.174(d) .....	(d) <i>Supporting data</i> . If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to determination of royalty value.	Burden covered under OMB Control Number 1012-0004.		
1206.174(f) .....	(f) <i>Value guidance</i> . You may ask ONRR for guidance in determining value. You may propose a valuation method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary. . . .	40 .....	1	40
1206.175(d)(4) .....	How do I determine quantities and qualities of production for computing royalties? (d)(4) You may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. . . .	20 .....	1	20
1206.176(b) .....	How do I perform accounting for comparison? ..... (b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 1206.173 instead of the provisions in paragraph (a) of this section.	Burden covered under § 1206.173(a)(1).		
1206.176(c) .....	(c) . . . If you do not perform dual accounting, you must certify to ONRR that gas flows into such a pipeline before it is processed.	Burden covered under § 1206.172(b)(1)(ii).		
<b>Transportation Allowances</b>				
1206.177(c)(2) and (c)(3) .....	What general requirements regarding transportation allowances apply to me? (c)(2) If you ask ONRR, ONRR may approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section. . . . (3) Your application for exception (using Form ONRR-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.	Burden covered under § 1206.56(b)(2).		
1206.178(a)(1)(i) .....	How do I determine a transportation allowance? .. (a) <i>Determining a transportation allowance under an arm's-length contract</i> .	1 .....	18	18

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(1)(i) . . . You are required to submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your report which claims the allowance on the Form ONRR-2014.			
1206.178(a)(1)(iii) .....	(a) <i>Determining a transportation allowance under an arm's-length contract.</i> (1)(iii) If ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties . . . In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your transportation costs.	AUDIT PROCESS. See note.		
1206.178(a)(2)(i) and (ii) .....	(a) <i>Determining a transportation allowance under an arm's-length contract.</i> (2)(i) . . . you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without ONRR approval, or without lessor approval on tribal leases. (ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported. . . .	20 .....	1	20
1206.178(a)(3)(i) and (ii) .....	(a) <i>Determining a transportation allowance under an arm's-length contract.</i> (3)(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to ONRR. . . . (ii) You are required to submit all relevant data to support your allocation proposal. . . .	40 .....	1	40
1206.178(b)(1)(ii) .....	(b) <i>Determining a transportation allowance under a non-arm's-length contract or no contract.</i> (1)(ii) . . . You must submit the actual cost information to support the allowance to ONRR on Form ONRR-4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies. . . .	15 .....	5	75
1206.178(b)(2)(iv) .....	(b) <i>Determining a transportation allowance under a non-arm's-length contract or no contract.</i> (2)(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. . . . you may not later elect to change to the other alternative without ONRR approval.	20 .....	1	20
1206.178(b)(2)(iv)(A) .....	(b) <i>Determining a transportation allowance under a non-arm's-length contract or no contract.</i> (2)(iv)(A) . . . Once you make an election, you may not change methods without ONRR approval. . . .	20 .....	1	20
1206.178(b)(3)(i) .....	(b) <i>Determining a transportation allowance under a non-arm's-length contract or no contract.</i> (3)(i) . . . Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without ONRR approval.	40 .....	1	40

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.178(b)(3)(ii) .....	(b) <i>Determining a transportation allowance under a non-arm's-length contract or no contract.</i> (3)(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported. . . .	20 .....	1	20
1206.178(b)(5) .....	(b) <i>Determining a transportation allowance under a non-arm's-length contract or no contract.</i> (5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR. . . . You are required to submit all relevant data to support your proposal. . . .	40 .....	1	40
1206.178(d)(1) .....	(d) <i>Reporting your transportation allowance</i> ..... (1) If ONRR requests, you must submit all data used to determine your transportation allowance . . .	AUDIT PROCESS. See note.		
1206.178(d)(2), (e), and (f)(1)	(d) <i>Reporting your transportation allowance</i> ..... (2) You must report transportation allowances as a separate entry on Form ONRR-2014. . . . (e) <i>Adjusting incorrect allowances.</i> If for any month the transportation allowance you are entitled to is less than the amount you took on Form ONRR-2014, you are required to report and pay additional royalties due, plus interest computed under 30 CFR 1218.54 from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due. . . . (f) <i>Determining allowable costs for transportation allowances.</i> . . . (1) <i>Firm demand charges paid to pipelines.</i> . . . You must modify the Form ONRR-2014 by the amount received or credited for the affected reporting period.	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		

**Processing Allowances**

1206.180(a)(1)(i) .....	How do I determine an actual processing allowance? (a) <i>Determining a processing allowance if you have an arm's-length processing contract.</i> (1)(i) . . . You have the burden of demonstrating that your contract is arm's-length. You are required to submit to ONRR a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your first report that deducts the allowance on the Form ONRR-2014.	1 .....	2	2
1206.180(a)(1)(iii) .....	(a) <i>Determining a processing allowance if you have an arm's-length processing contract.</i> (1)(iii) If ONRR determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties . . . In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your processing costs.	AUDIT PROCESS. See note.		
1206.180(a)(3) .....	(a) <i>Determining a processing allowance if you have an arm's-length processing contract.</i>	40 .....	1	40

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR. . . . You are required to submit all relevant data to support your proposal. . . .			
1206.180(b)(1)(ii) .....	(b) <i>Determining a processing allowance if you have a non-arm's-length contract or no contract.</i> (1)(ii) . . . You must submit the actual cost information to support the allowance to ONRR on Form ONRR-4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies. . . .	100 .....	12	1,200
1206.180(b)(2)(iv) .....	(b) <i>Determining a processing allowance if you have a non-arm's-length contract or no contract.</i> (2)(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. . . . you may not later elect to change to the other alternative without ONRR approval.	20 .....	1	20
1206.180(b)(2)(iv)(A) .....	(b) <i>Determining a processing allowance if you have a non-arm's-length contract or no contract.</i> (2)(iv)(A) . . . Once you make an election, you may not change methods without ONRR approval. . . .	20 .....	1	20
1206.180(b)(3) .....	(b) <i>Determining a processing allowance if you have a non-arm's-length contract or no contract.</i> (3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and ONRR agree to an alternative.	20 .....	1	20
1206.180(c)(1) .....	(c) <i>Reporting your processing allowance</i> ..... (1) If ONRR requests, you must submit all data used to determine your processing allowance. . . .	AUDIT PROCESS. See note.		
1206.180(c)(2) and (d) .....	(c) <i>Reporting your processing allowance</i> ..... (2) You must report gas processing allowances as a separate entry on the Form ONRR-2014. . . . (d) <i>Adjusting incorrect processing allowances.</i> If for any month the gas processing allowance you are entitled to is less than the amount you took on Form ONRR-2014, you are required to pay additional royalties, plus interest computed under 30 CFR 1218.54 from the first day of the first month you deducted a processing allowance until the date you pay the royalties due. . . .	Burden covered under § 1210.52 in OMB Control Number 1012-0004.		
1206.181(c) .....	How do I establish processing costs for dual accounting purposes when I do not process the gas? (c) A proposed comparable processing fee submitted to either the tribe and ONRR (for tribal leases) or ONRR (for allotted leases) with your supporting documentation submitted to ONRR. If ONRR does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the ONRR Director under 30 CFR part 1290.	40 .....	1	40

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
<b>PART 1207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS Subpart A—General Provisions</b>				
1207.4(b) .....	Contracts made pursuant to old form leases ..... (b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows . . .	AUDIT PROCESS. See note.		
1207.5 .....	Contract and sales agreement retention ..... Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized ONRR, State or Indian representatives, other ONRR or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to ONRR within a reasonable period of time, as determined by ONRR. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR part 1212.	AUDIT PROCESS. See note.		
Total Burden .....	.....		148	2,269

**Note:** AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions.

*Estimated Annual Reporting and Recordkeeping “Non-hour” Cost Burden:* We have identified no “non-hour” cost burdens associated with this information collection.

**III. Request for Comments**

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

*Comments:* Section 3506(c)(2)(A) of the PRA requires each agency to “\* \* \* provide 60-day notice in the **Federal Register** \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*.” Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of

automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on March 16, 2015 (80 FR 13619), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. No comments were received.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 30, 2015.

*Public Comment Policy:* ONRR will post all comments, including names and addresses of respondents at <http://www.regulations.gov>. Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us, in your comment, to withhold PII from public

view, we cannot guarantee that we will be able to do so.

Dated: September 25, 2015.  
**Gregory J. Gould,**  
*Director, Office of Natural Resources Revenue.*  
[FR Doc. 2015–24840 Filed 9–29–15; 8:45 am]  
**BILLING CODE 4335–30–P**

**DEPARTMENT OF THE INTERIOR**  
**Bureau of Ocean Energy Management**  
[Docket No. BOEM–2015–0091]

**Request for Information on the State of the Offshore Renewable Energy Industry—Request for Feedback; MMAA104000**

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.  
**ACTION:** Request for Feedback.

**SUMMARY:** BOEM invites public comment on the aspects of BOEM’s renewable energy program that stakeholders have found to be successful, and those program areas where there appear to be opportunities for improvement.

**DATES:** Stakeholders should submit comments electronically or postmarked no later than December 29, 2015.

**ADDRESSES:** Comments should be submitted in one of the two following ways:

1. *Electronically:* <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," search for BOEM-2015-0091. Follow the instructions to submit public comments in response to this document.

2. *Written Comments:* In written form, delivered by hand or by mail, enclosed in an envelope labeled "Comments on Request for Feedback" to: Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166.

**FOR FURTHER INFORMATION CONTACT:**

Mary Borcharding, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1826 or [Mary.Borcharding@boem.gov](mailto:Mary.Borcharding@boem.gov); Jennifer Golladay, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1688 or [Jennifer.Golladay@boem.gov](mailto:Jennifer.Golladay@boem.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority**

This notice is published pursuant to subsection 8(p) of the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1337(p)), added by section 388 of the Energy Policy Act of 2005, and the implementing regulations at 30 CFR 585.116. This regulatory provision states that the Director, "may . . . solicit information from industry and other relevant stakeholders (including State and local agencies), as necessary, to evaluate the state of the offshore renewable energy industry, including the identification of potential challenges or obstacles to its continued development. Such requests for information may relate to the identification of environmental, technical, regulatory, or economic matters that promote or detract from continued development of renewable energy technologies on the OCS. From the information received, the Director may evaluate certain refinements to the OCS Alternative Energy Program that promote development of the industry in a safe and environmentally responsible manner, and that ensure fair value for use of the Nation's OCS."

**Purpose**

Since BOEM promulgated its renewable energy regulations in 2009, BOEM has made substantial progress in planning and leasing for renewable energy development on the OCS. BOEM has issued nine commercial wind

energy leases, generated more than \$14.5 million in winning bids from offshore wind lease sales, and established 13 intergovernmental task forces with Federal, State, local, and tribal partners to assist in identifying areas for potential renewable energy development.

Now that BOEM's Renewable Energy Program has gained experience in implementing its regulations, it is appropriate to evaluate and assess our existing processes. BOEM believes stakeholder feedback is crucial to this effort. To that end, BOEM invites comments and feedback on any aspects of BOEM's Renewable Energy Program that our governmental partners, the offshore renewable energy industry, and other affected stakeholders have found to be particularly effective. At the same time, BOEM is also interested in constructive criticism and feedback. Therefore, BOEM requests recommendations for improving aspects of our program that stakeholders believe to be ineffective or unnecessarily burdensome, and requests descriptions of the benefits those program changes would create. BOEM will use the information submitted to inform our strategic planning efforts and in determining whether and how we should change our existing renewable energy processes, including, if warranted, our regulations.

For more information about BOEM's renewable energy efforts, please visit: <http://www.boem.gov/Renewable-Energy/>.

**Protection of Privileged or Confidential Information**

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, except as required by FOIA. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of your company). Information that is not labeled as privileged or confidential will

be regarded by BOEM as suitable for public release.

Dated: September 16, 2015.

**Abigail Ross Hopper,**  
Director, Bureau of Ocean Energy  
Management.

[FR Doc. 2015-24406 Filed 9-29-15; 8:45 am]

BILLING CODE 4310-MR-P

**INTERNATIONAL TRADE  
COMMISSION**

**[Investigation Nos. 701-TA-545-547 and  
731-TA-1291-1297 (Preliminary)]**

**Certain Hot-Rolled Steel Flat Products  
From Australia, Brazil, Japan, Korea,  
the Netherlands, Turkey, and the  
United Kingdom: Determinations**

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission ("Commission") determines,<sup>2</sup> pursuant to the Tariff Act of 1930 ("the Act"), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain hot-rolled steel flat products ("hot-rolled steel") from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom, provided for in subheadings 7208.10.15, 7208.10.30, 7208.10.60, 7208.25.30, 7208.25.60, 7208.26.00, 7208.27.00, 7208.36.00, 7208.37.00, 7208.38.00, 7208.39.00, 7208.40.60, 7208.53.00, 7208.54.00, 7208.90.00, 7210.70.30, 7210.90.90, 7211.14.00, 7211.19.15, 7211.19.20, 7211.19.30, 7211.19.45, 7211.19.60, 7211.19.75, 7211.90.00, 7212.40.10, 7212.40.50, 7212.50.00, 7214.91.00, 7214.99.00, 7215.90.50, 7225.11.00, 7225.19.00, 7225.30.30, 7225.30.70, 7225.40.70, 7225.99.00, 7226.11.10, 7226.11.90, 7226.19.10, 7226.19.90, 7226.91.50, 7226.91.70, 7226.91.80, 7226.99.01, and 7228.60.60 of the Harmonized Tariff Schedule of the United States, that are allegedly sold in the United States at less than fair value ("LTFV"), and by imports of hot-rolled steel that are allegedly subsidized by the governments of Brazil, Korea, and Turkey.

**Commencement of Final Phase  
Investigations**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Commissioner F. Scott Kieff not participating.

published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce ("Commerce") of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Background**

On August 11, 2015, AK Steel Corporation (West Chester, Ohio), ArcelorMittal USA, LLC (Chicago, Illinois), Nucor Corporation (Charlotte, North Carolina), SSAB Enterprises, LLC (Lisle, Illinois), Steel Dynamics, Inc. (Fort Wayne, Indiana), and United States Steel Corporation (Pittsburgh, Pennsylvania) filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of hot-rolled steel from Brazil, Korea, and Turkey and LTFV imports of hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom. Accordingly, effective August 11, 2015, the Commission, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation Nos. 701-TA-545-547 and antidumping duty investigation Nos. 731-TA-1291-1297 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 18, 2015 (80 FR 50028). The conference was held in Washington, DC, on September 1, 2015 and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on September 25, 2015. The views of the Commission are contained in USITC Publication 4570 (October 2015), entitled *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom*: Investigation Nos. 701-TA-545-547 and 731-TA-1291-1297 (Preliminary).

By order of the Commission.

Issued: September 25, 2015.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015-24760 Filed 9-29-15; 8:45 am]

**BILLING CODE 7020-02-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**[Docket No. DEA-392]**

**Bulk Manufacturer of Controlled Substances Application: Cerilliant Corporation**

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before November 30, 2015.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrisette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant

Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on July 15, 2015, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665-2402, applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
3-Fluoro-N-methylcathinone (3-FMC) (1233)	I
Cathinone (1235)	I
Methcathinone (1237)	I
4-Fluoro-N-methylcathinone (4-FMC) (1238)	I
Pentdrone (alpha-methylaminovalerophenone) (1246)	I
Mephedrone (4-(Methyl-N-methylcathinone) (1248)	I
4-Methyl-N-ethylcathinone (4-MEC) (1249)	I
Naphyrone (1258)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylamine (1503)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma Hydroxybutyric Acid (2010)	I
Methaqualone (2565)	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) (6250)	I
SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole) (7008)	I
5-Fluoro-UR-144 and XLR11 [1-(5-fluoro-pentyl)-1H-indol-3-yl][2,2,3,3-tetramethylcyclopropyl]methanone (7011)	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide) (7012)	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) (7019)	I
AB-PINACA (N-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (7023)	I
THJ-2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalene-1-yl)methanone (7024)	I
AB-CHIMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide) (7031)	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide) (7035)	I
APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide) (7048)	I



Controlled substance	Schedule	Controlled substance	Schedule	Controlled substance	Schedule
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole) (7081).	I	3,4-Methylenedioxy-N-ethylamphetamine (7404).	I	Dihydromorphine (9145) .....	I
SR-19 and RCS-4 (1-Pentyl-3[(4-methoxy)-benzoyl] indole (7104).	I	3,4-Methylenedioxyamphetamine (7405).	I	Heroin (9200) .....	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl) indole) (7118).	I	4-Methoxyamphetamine (7411) ...	I	Hydromorphanol (9301) .....	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole) (7122).	I	5-Methoxy-N-N-dimethyltryptamine (7431).	I	Methyldesorphine (9302) .....	I
UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (7144).	I	Alpha-methyltryptamine (7432) ....	I	Methyldihydromorphine (9304) ....	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole) (7173).	I	Bufotenine (7433) .....	I	Morphine methylbromide (9305) ..	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) indole) (7200).	I	Diethyltryptamine (7434) .....	I	Morphine methylsulfonate (9306)	I
AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole) (7201).	I	Dimethyltryptamine (7435) .....	I	Morphine-N-oxide (9307) .....	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole) (7203).	I	Psilocybin (7437) .....	I	Normorphine (9313) .....	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate) (7222).	I	Psilocyn (7438) .....	I	Pholcodine (9314) .....	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate) (7225).	I	5-Methoxy-N,N-diisopropyltryptamine (7439).	I	Acetylmethadol (9601) .....	I
Alpha-ethyltryptamine (7249) .....	I	N-Ethyl-1-phenylcyclohexylamine (7455).	I	Allylprodine (9602) .....	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol] (7297).	I	1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I	Alphacetylmethadol except levo-alphaacetylmethadol (9603).	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol] (7298).	I	1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I	Alphameprodine (9604) .....	I
Lysergic acid diethylamide (7315)	I	N-Benzylpiperazine (7493) .....	I	Alphamethadol (9605) .....	I
2,5-Dimethoxy-4-(n-propylthiophenethylamine (2C-T-7) (7348).	I	4-Methyl-alpha-pyrrolidinopropiophenone (4-mePPP) (7498).	I	Betacetylmethadol (9607) .....	I
Marihuana (7360) .....	I	2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D) (7508).	I	Betameprodine (9608) .....	I
Tetrahydrocannabinols (7370) .....	I	2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E) (7509).	I	Betamethadol (9609) .....	I
Parahexyl (7374) .....	I	2-(2,5-Dimethoxyphenyl) ethanamine (2C-H) (7517).	I	Betaprodine (9611) .....	I
Mescaline (7381) .....	I	2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I) (7518).	I	Dipipanone (9622) .....	I
2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C-T-2) (7385).	I	2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-H) (7519).	I	Hydroxypethidine (9627) .....	I
3,4,5-Trimethoxyamphetamine (7390).	I	2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N) (7521).	I	Noracymethadol (9633) .....	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I	2-(2,5-Dimethoxy-4-(n-propylphenyl) ethanamine (2C-P) (7524).	I	Norlevorphanol (9634) .....	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I	2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4) (7532).	I	Normethadone (9635) .....	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I	MDPV (3,4-Methylenedioxypropylvalerone) (7535).	I	Trimeperidine (9646) .....	I
2,5-Dimethoxyamphetamine (7396).	I	2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe) (7536).	I	Phenomorphan (9647) .....	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole (7398).	I	2-(4-chloro-2,5-dimethoxyphenyl) N-(2-methoxybenzyl) ethanamine (25C-NBOMe) (7537).	I	1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I	2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe) (7538).	I	Tilidine (9750) .....	I
3,4-Methylenedioxyamphetamine (7400).	I	Methylone (3,4-Methylenedioxy-N-methylcathinone) (7540).	I	Para-Fluorofentanyl (9812) .....	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I	Butylone (7541) .....	I	3-Methylfentanyl (9813) .....	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I	Pentylone (7542) .....	I	Alpha-methylfentanyl (9814) .....	I
		alpha-pyrrolidinopentiophenone (a-PVP) (7545).	I	Acetyl-alpha-methylfentanyl (9815).	I
		alpha-pyrrolidinobutiophenone (a-PBP) (7546).	I	Beta-hydroxyfentanyl (9830) .....	I
		AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole) (7694).	I	Beta-hydroxy-3-methylfentanyl (9831).	I
		Acetyldihydrocodeine (9051) .....	I	Alpha-methylthiofentanyl (9832) ...	I
		Benzylmorphine (9052) .....	I	3-Methylthiofentanyl (9833) .....	I
		Codeine-N-oxide (9053) .....	I	Thiofentanyl (9835) .....	I
		Desomorphine (9055) .....	I	Amphetamine (1100) .....	II
		Codeine methylbromide (9070) ...	I	Methamphetamine (1105) .....	II
				Lisdexamfetamine (1205) .....	II
				Phenmetrazine (1631) .....	II
				Methylphenidate (1724) .....	II
				Amobarbital (2125) .....	II
				Pentobarbital (2270) .....	II
				Secobarbital (2315) .....	II
				Glutethimide (2550) .....	II
				Nabilone (7379) .....	II
				1-Phenylcyclohexylamine (7460)	II
				Phencyclidine (7471) .....	II
				1-Piperidinocyclohexanecarbonitrile (8603).	II
				Alphaprodine (9010) .....	II
				Cocaine (9041) .....	II
				Codeine (9050) .....	II
				Dihydrocodeine (9120) .....	II
				Oxycodone (9143) .....	II
				Hydromorphone (9150) .....	II
				Diphenoxylate (9170) .....	II
				Ecgonine (9180) .....	II
				Ethylmorphine (9190) .....	II
				Hydrocodone (9193) .....	II
				Levomethorphan (9210) .....	II
				Levorphanol (9220) .....	II
				Isomethadone (9226) .....	II
				Meperidine (9230) .....	II
				Meperidine intermediate-A (9232)	II
				Meperidine intermediate-B (9233)	II
				Meperidine intermediate-C (9234)	II
				Metazocine (9240) .....	II

Controlled substance	Schedule
Methadone (9250) .....	II
Methadone intermediate (9254) ...	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Levo-alphaacetylmethadol (9648) ..	II
Oxymorphone (9652) .....	II
Noroxymorphone (9668) .....	II
Racemethorphan (9732) .....	II
Alfentanil (9737) .....	II
Remifentanil (9739) .....	II
Sufentanil (9740) .....	II
Carfentanil (9743) .....	II
Tapentadol (9780) .....	II
Fentanyl (9801) .....	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

Dated: September 21, 2015.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator.*

[FR Doc. 2015-24748 Filed 9-29-15; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA-392]

**Manufacturer of Controlled Substances Registration: Noramco, Inc.**

**ACTION:** Notice of registration.

**SUMMARY:** Noramco, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Noramco, Inc. registration as a manufacturer of those controlled substances.

**SUPPLEMENTARY INFORMATION:** By notice dated April 14, 2015, and published in the **Federal Register** on April 22, 2015, 80 FR 22555, Noramco, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801-4417 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by

inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances:

Controlled substance	Schedule
Codeine-N-oxide (9053) .....	I
Dihydromorphine (9145) .....	I
Morphine-N-oxide (9307) .....	I
Amphetamine (1100) .....	II
Methylphenidate (1724) .....	II
Phenylacetone (8501) .....	II
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Hydrocodone (9193) .....	II
Morphine (9300) .....	II
Oripavine (9330) .....	II
Thebaine (9333) .....	II
Opium extracts (9610) .....	II
Opium fluid extract (9620) .....	II
Opium tincture (9630) .....	II
Opium, powdered (9639) .....	II
Opium, granulated (9640) .....	II
Oxymorphone (9652) .....	II
Noroxymorphone (9668) .....	II
Tapentadol (9780) .....	II

The company plans to manufacture the above-listed controlled substances in bulk for distribution to its customers.

Dated: September 21, 2015.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator.*

[FR Doc. 2015-24747 Filed 9-29-15; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Notice of Lodging of Proposed Consent Decree Under the Clean Air Act**

On September 24, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court of the Virgin Islands in the lawsuit entitled *United States of America v. Virgin Islands Water and Power Authority*, Civil Action No. 3:14-cv-00086.

The Consent Decree resolves Clean Air Act violations alleged in the Complaint filed by the United States on October 30, 2014. The violations alleged in the Complaint with respect to VIWAPA's St. Thomas facility include VIWAPA's failure to properly operate and/or maintain its water injection systems on its gas turbine units, failure to operate in compliance with NO<sub>x</sub>,

sulfuric acid mist, particulate matter and VOC emission limits, failure to operate in compliance with opacity limits, failure to perform required audits and maintain required quality data availability, failure to properly operate and calibrate the continuous emission monitoring systems (CEMS) for NO<sub>x</sub> and CO, failure to conduct stack testing every 30 months, and failure to properly report non-compliance. The violations alleged in the Complaint with respect to VIWAPA's St. John facility concern VIWAPA's failure to comply with the RICE NESHAP regulations, failure to timely submit a Title V renewal application and operation without a Title V permit, and failure to conduct stack testing every 30 months.

The Consent Decree requires VIWAPA to generate a high percentage of its KWh from liquid propane gas or liquid natural gas and renewables, to implement a spare parts inventory program, to control NO<sub>x</sub> emissions through improved operation of its water injection system, to maintain and operate continuous emissions monitoring systems on specified units, to operate a video camera system for visible emissions, to perform stack testing, and to conduct targeted self-audits and third party audits given its long term compliance problems. The Consent Decree also requires a \$1,300,000 penalty to be paid within two years of the Effective Date of the Consent Decree. The penalty amount was based upon VIWAPA's limited financial ability to pay a penalty.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, and should refer to *United States v. Virgin Islands Water and Power Authority*, DOJ Ref. # 90-5-2-1-10424. All comments must be submitted no later than thirty days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: <http://>

[www.justice.gov/enrd/consent-decrees](http://www.justice.gov/enrd/consent-decrees). We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. Please enclose a check or money order for \$22.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Robert E. Maher Jr.,**

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2015–24711 Filed 9–29–15; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 24, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Pennsylvania in the lawsuit entitled *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. INDSPEC Chemical Corporation*, Civil Action No. 2:15–cv–01252–JFC.

The United States and Commonwealth of Pennsylvania Department of Environmental Protection filed this lawsuit under the Clean Air Act and Pennsylvania Air Pollution Control Act against INDSPEC Chemical Corporation, seeking injunctive relief and civil penalties for alleged violations of the regulations that govern leak detection and repair of equipment at its chemical manufacturing facility in Petrolia, Pennsylvania. The Complaint alleges violations of Section 112 of the Clean Air Act, 42 U.S.C. 7412, and the implementing regulations at 40 CFR part 63, and violations of Sections 4006.1 and 4006.6 of the Pennsylvania Air Pollution Control Act of January 8, 1960, Public Law 2119, *as amended*, 35 P.S. §§ 4006.1 and 4006.6, and the adopted and incorporated regulations at 25 Pa. Code § 127.35(b). The Consent Decree requires the defendant to perform injunctive relief by implementing an enhanced leak detection and repair program at its facility, and pay a \$153,100 civil penalty.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should

refer to *United States and Commonwealth of Pennsylvania Department of Environmental Protection v. INDSPEC Chemical Corporation*, D.J. Ref. No. 90–5–2–1–10431. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$14.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Maureen Katz,**

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–24708 Filed 9–29–15; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

[OMB Number 1140–0039]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Federal Firearms Licensee Firearms Inventory Theft/Loss Report ATF F 3310.11

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

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until November 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Larry Penninger, [Larry.Penninger@atf.gov](mailto:Larry.Penninger@atf.gov) Chief, National Tracing Center, 244 Needy Road, Martinsburg, WV 20226.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is ATF F 3310.11.

4. The applicable component within the Department of Justice is the Bureau of Alcohol, Tobacco, Firearms and Explosives.

5. *Affected public who will be asked or required to respond, as well as a brief abstract:* The information collection does not impact small business or other small entities. On September 12, 1994, the Violent Crime Control and Law

Enforcement Act (The Crime Bill) was signed into law, amending the Gun Control Act of 1968 (GCA), as amended Section 923(g) of Title 18 United States Code states that "Each licensee shall report the theft or loss of a firearms from the licensee's inventory or collection within 48 hours after the theft or loss is discovered to the Attorney General and to the appropriate local authorities."

ATF F 3310.11 is the method used to determine compliance with the provision of the Crime Bill. The title of this form "Federal Firearms Licensee Firearms Inventory Theft/Loss Report," satisfies the provisions of the Act which requires that licensees report the theft or loss of firearms to the Attorney General and the appropriate authorities. The information on this form is required by 18 U.S.C. 923(g)(6).

A separate form is required for each theft/loss report. The form must be prepared in ink, signed and dated. Upon completion of this form by the licensee reporting the theft or loss of firearms, the original will be forwarded to the Firearms Interstate Theft Program Manager and a copy will be retained as part of the licensee's permanent records.

6. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 4,000 respondents will complete this form. Based on pilot testing, an average of 24 minutes per respondent is needed to complete form ATF F 3310.11.

7. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 960 hours. It is estimated that respondents will take 24 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to 4,000 (4,000 respondents × .24 hours = 960 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: September 25, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-24765 Filed 9-29-15; 8:45 am]

**BILLING CODE 4410-FY-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1140-0019]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection; Federal Firearms License (FFL) RENEWAL Application

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

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until November 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, Tracey Robertson, *tracey.robertson@atf.gov*, Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 20226.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

## Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Federal Firearms License (FFL) RENEWAL Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: ATF F 8 (5310.11) Part 11.

4. The applicable component within the Department of Justice is the Bureau of Alcohol, Tobacco, Firearms and Explosives.

5. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The form is filed by the licensee desiring to renew a Federal firearms license. It is used to identify the applicant, locate the business/collection premises, identify the type of business/collection activity, and determine the eligibility of the applicant.

6. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 30,000 respondents will complete a 30 minute form.

7. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 15,000 hours. It is estimated that respondents will take .50 or 30 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to 30,000 (30,000 respondents × .50 hours = 15,000 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: September 25, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-24766 Filed 9-29-15; 8:45 am]

**BILLING CODE 4410-FY-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 30, 2015. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Li Ling Hamady, ACA Permit Officer, at the above address or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov) or (703) 292-7149.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

#### Application Details

##### 1. Applicant Permit Application: 2016-015

James Droney, Vice President of Itinerary and Destination Planning, The World of Redinsea II, Ltd., 1551 Sawgrass Corporate Parkway, Suite 200, Fort Lauderdale, FL 33323.

##### Activity for Which Permit Is Requested

Waste permit: The applicant wishes to fly small, battery operated, remotely controlled copters (Unmanned Aerial Systems or UASs) equipped with cameras to take commercial photos and film of the Antarctic. The UASs would not be flown over concentrations of birds or mammals or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The UASs would only be flown by operators with

extensive experience (>20 hours), who are pre-approved by the Expedition Leader. Several measures would be taken to prevent against loss of the UAS or damage to the environment including painting them a highly visible color; only flying when the wind is less than 25 knots; flying for only 15 minutes at a time to preserve battery life; having prop guards on propeller tips, a flotation device if operated over water, and a "go home" feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; having a Zodiac on standby in case of an unplanned water landing; and ensuring that the separation between the operator and UAV does not exceed an operational range of 500 meters. The applicant is seeking a Waste Permit to cover any accidental releases that may result from flying a UAS.

##### Location

Antarctic Peninsula region.

##### Dates

December 23, 2015 to March 31, 2020.

##### Nadene G. Kennedy,

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2015-24706 Filed 9-29-15; 8:45 am]

**BILLING CODE 7555-01-P**

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 52-043; ASLBP No. 15-943-01-ESP-BD01]

#### PSEG Power, LLC and PSEG Nuclear, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.*, 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

#### PSEG Power, LLC and PSEG Nuclear, LLC (Early Site Permit Application)

This Board is being established pursuant to a Notice of Hearing and Opportunity to Petition for Leave to Intervene regarding the May 25, 2010 application filed by PSEG Power, LLC and PSEG, Nuclear, LLC (applicants) pursuant to Subpart A of 10 CFR part 52 for an early site permit for the PSEG site to be located in Salem County, New Jersey. *See* 75 FR 68,624, 68,625 (Nov. 8, 2010). No petition for leave to

intervene was received in response to the notice in the **Federal Register**. Because the applicants seek an early site permit, a mandatory hearing is required. *See* Atomic Energy Act of 1954, section 189a., 42 U.S.C. 2239(a).

The Board is comprised of the following administrative judges:

Paul S. Ryerson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Dr. Craig M. White, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: September 25, 2015.

#### E. Roy Hawkens,

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 2015-24793 Filed 9-29-15; 8:45 am]

**BILLING CODE 7590-01-P**

#### OVERSEAS PRIVATE INVESTMENT CORPORATION

[OPIC-248, OMB 3420-0032]

#### Submission for OMB Review; Comments Request

**AGENCY:** Overseas Private Investment Corporation (OPIC).

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing previously approved information collection for OMB review and approval and requests public review and comment on the submission. OPIC received no comments in response to the sixty (60) day notice. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

The proposed changes to OPIC-248 clarify existing questions, incorporate sector-specific development impact questions, and eliminate ineffective questions in an effort to harmonize development impact indicators with other Development Finance Institutions (“DFIs”). OPIC is a signatory to a “Memorandum of Understanding” with 25 partnering DFIs to harmonize developmental impact metrics where possible. The goal of this effort is to reduce the burden on clients that seek financing from multiple DFIs and to instill best practices in the collection and the reporting on OPIC’s developmental impacts. In order to minimize the reporting burden on respondents, OPIC has designed OPIC-248 as an electronic form that has multiple drop-down options, in which the respondent only responds to questions that are applicable to their investment.

**DATES:** Comments must be received within thirty (30) calendar days of publication of this Notice.

**ADDRESSES:** Mail all comments and requests for copies of the subject form to OPIC’s Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

**FOR FURTHER INFORMATION CONTACT:** OPIC Agency Submitting Officer: James Bobbitt, (202) 336-8558.

**SUPPLEMENTARY INFORMATION:** OPIC received no comments in response to the sixty (60) day notice published in **Federal Register** volume 80 page 38241 on July 2, 2015. All mailed comments and requests for copies of the subject form should include form number OPIC-248 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to [James.Bobbitt@opic.gov](mailto:James.Bobbitt@opic.gov), subject line OPIC248.

### Summary Form Under Review

*Type of Request:* Revision of a currently approved information collection.

*Title:* Office of Investment Policy Questionnaire.

*Form Number:* OPIC-248.

*Frequency of Use:* One per investor per project.

*Type of Respondents:* Business or other institution (except farms); individuals.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. companies or citizens investing overseas.

*Reporting Hours:* 644 (2.8 hours per form).

*Number of Responses:* 230 per year.

*Federal Cost:* \$28,389.

*Authority for Information Collection:* Sections 231, 231A, 239(d), 239(h), 240A of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The Office of Investment Policy Questionnaire is the principal document used by OPIC to prepare a developmental impact profile and determine the projected impact on the United States, as well as to determine the project’s compliance with environmental and labor policies, as consistent with OPIC’s authorizing legislation.

Dated: September 25, 2015.

**Nichole Skoyles,**

*Administrative Counsel, Department of Legal Affairs.*

[FR Doc. 2015-24798 Filed 9-29-15; 8:45 am]

**BILLING CODE 3210-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75978; File No. SR-NYSEArca-2015-79]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund

September 24, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 11, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the average portfolio duration of the PIMCO Intermediate Municipal

Bond Active Exchange-Traded Fund. The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (“Shares”) of the PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund (“Fund”) under NYSE Arca Equities Rule 8.600,<sup>4</sup> which governs the listing and trading of Managed Fund Shares.<sup>5</sup> The Shares are offered by PIMCO ETF Trust (the “Trust”), a statutory trust organized under the laws of the State of Delaware

<sup>4</sup> See Securities Exchange Act Release No. 60619 (September 3, 2009), 74 FR 46820 (September 11, 2009) (SR-NYSEArca-2009-79) (notice of filing of proposed rule change relating to listing and trading of Shares of the Fund and four other funds of the PIMCO ETF Trust on the Exchange) (“Prior Notice”); Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 11, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of Shares of the Fund and four other funds of the PIMCO ETF Trust on the Exchange) (“Prior Order” and, together with the Prior Notice, the “Prior Release”).

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

and registered with the Commission as an open-end management investment company.<sup>6</sup> The investment manager to the Fund is Pacific Investment Management Company LLC (“PIMCO” or the “Adviser”). The Fund’s Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

According to the Registration Statement and the Prior Release, the average portfolio duration of the Fund normally varies from three to eight years, based on PIMCO’s forecast for interest rates.<sup>7</sup>

Going forward, the average portfolio duration of the Fund normally would vary within (negative) 2 years to positive 4 years of the portfolio duration of the securities comprising the Barclays 1–15 Year Municipal Bond Index (“Index”), as calculated by PIMCO, which as of June 30, 2015 was 5.11 years.<sup>8</sup> Thus, as of June 30, 2015, average portfolio duration of the Fund normally would vary within approximately 3.11 years and 9.11 years.

The Adviser represents that the proposed change to the average portfolio duration of the Fund is consistent with the Fund’s investment objective, and will further assist the Adviser to achieve such investment objective. Except for the change noted above, all other representations made in the Prior Release remain unchanged.<sup>9</sup> The Fund will continue to comply with all initial

<sup>6</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On October 27, 2014, the Trust filed with the Commission the most recent post-effective amendment to its registration statement under the Securities Act of 1933 (15 U.S.C. 77a) (“1933 Act”) and under the 1940 Act relating to the Fund (File Nos. 333–155395 and 811–22250) (the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. A change to the name of the Fund from PIMCO Intermediate Municipal Bond Strategy Fund to PIMCO Intermediate Municipal Bond Exchange-Traded Fund was reflected in an amendment to the Registration Statement, effective October 31, 2012. A change to the name of the Fund from PIMCO Intermediate Municipal Bond Exchange-Traded Fund to PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund was reflected in an amendment to the Registration Statement, effective October 31, 2014. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (“Exemptive Order”).

<sup>7</sup> Duration is a measure used to determine the sensitivity of a security’s price to changes in interest rates. The longer a security’s duration, the more sensitive it will be to changes in interest rates.

<sup>8</sup> The Exchange notes that the Commission has approved the listing and trading of other issues of Managed Fund Shares that have applied a comparable average portfolio duration to that proposed for the Fund. See, e.g., the Prior Release, note 4, *supra*.

<sup>9</sup> See note 4, *supra*. All terms referenced but not defined herein are defined in the Prior Release.

and continued listing requirements under NYSE Arca Equities Rule 8.600.

The Adviser represents that the investment objective of the Fund is not changing.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the change to the average portfolio duration of the Fund will not adversely impact investors or Exchange trading. Such change would accommodate a duration that, while generally comparable to the existing average portfolio duration normally of three to eight years, will provide the Fund with additional flexibility in managing the duration of the Fund’s holdings using the average portfolio duration of the Barclays 1–15 Year Municipal Bond Index, as calculated by PIMCO, as the benchmark against which the Fund’s average portfolio duration would be measured. Further, a more flexible duration bandwidth will allow the Fund to respond more effectively to changing market conditions. The Index’s average duration, as calculated by PIMCO, is typically published monthly, while the Fund’s average portfolio duration is typically available daily, on the Fund’s Web site.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change will enhance competition among issues of exchange-traded funds that invest in municipal securities.

### 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.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

## 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<sup>11</sup> and Rule 19b–4(f)(6) thereunder.<sup>12</sup>

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) of the Act<sup>13</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2015–79 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NYSEArca–2015–79. This file number should be included on the subject line if email is used. To help the

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b–4(f)(6). 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.

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

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 Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-79 and should be submitted on or before October 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-24715 Filed 9-29-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75980; File No. 4-668]

### Joint Industry Plan; Order Approving Amendment No. 2 to the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail by BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

September 24, 2015.

#### I. Introduction

On March 6, 2015, BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, "SROs" or "Participants") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> an amendment ("Amendment No. 2") to the National Market System ("NMS") Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail ("Selection Plan").<sup>3</sup> Amendment No. 2 was published for comment in the

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The Selection Plan is an NMS Plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. See Securities Exchange Act Release No. 71596 (Feb. 21, 2014), 79 FR 11152 (Feb. 27, 2014) ("Order Approving Selection Plan"); see also Securities Exchange Act Release No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013) ("Notice of Selection Plan").

*Federal Register* on June 23, 2015.<sup>4</sup> The Commission received no comment letters on this proposal. This Order approves Amendment No. 2 to the Selection Plan.

#### II. Background and Description of the Proposal

##### A. Background

The Commission adopted Rule 613 on July 11, 2012, to require the SROs to jointly submit an NMS plan to create, implement, and maintain a consolidated audit trail ("CAT NMS Plan").<sup>5</sup> In response, the SROs engaged in a request for proposal ("RFP") process to help them develop an NMS Plan proposal and solicit bids ("Bids") for the role of Plan Processor<sup>6</sup> to build, operate, administer, and maintain the consolidated audit trail. The Selection Plan, which was approved by the Commission on February 21, 2014, sets forth the process by which the Participants will review, evaluate, and narrow down the Bids submitted in response to the RFP to "Shortlisted Bids," and ultimately select the Plan Processor following Commission approval of the proposed CAT NMS Plan.<sup>7</sup> Amendment No. 1 to the Selection Plan, which the Commission approved on June 17, 2015, among other things, permits the SROs to vote to narrow the set of Shortlisted Bids to an even shorter list prior to Commission approval of the proposed CAT NMS Plan.<sup>8</sup> The Selection Plan, as amended, provides that the SROs' Selection Committee will vote to select the Plan Processor from among the remaining bidders, using a two-round voting process, within two months of Commission approval of the proposed CAT NMS Plan.<sup>9</sup>

##### B. Description of the Proposal

Amendment No. 1 included a provision providing that no SRO shall vote in the process narrowing the set of Shortlisted Bidders if a Bid submitted by the SRO or an Affiliate of the SRO is a Shortlisted Bid or if the SRO or its Affiliate is included as a material subcontractor as part of a Bid (a

<sup>4</sup> See Securities Exchange Act Release No. 75193 (June 17, 2015), 80 FR 36006 (June 23, 2015) ("Notice of Amendment No. 2").

<sup>5</sup> Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

<sup>6</sup> Unless otherwise noted, capitalized terms are used as defined in Rule 613, in the Selection Plan, or in this Order.

<sup>7</sup> See Order Approving Selection Plan, *supra* note 3.

<sup>8</sup> See Securities Exchange Act Release No. 75192, 80 FR 36028 (June 23, 2015) ("Order Approving Amendment No. 1").

<sup>9</sup> See Order Approving Selection Plan, *supra* note 3; Order Approving Amendment No. 1, *supra* note 8.



“Bidding Participant”<sup>10</sup>).<sup>11</sup> The same recusal provision exists in the second—but not the first—round of a two-round voting process by the Selection Committee<sup>12</sup> to select the Plan Processor from among the Shortlisted Bidders.<sup>13</sup> The SROs state that they included the recusal provision to address potential conflicts of interest in selecting the Plan Processor.

In Amendment No. 2, the SROs propose to modify the Selection Plan to require that an SRO that is a Bidding Participant be recused from voting in *any round* to select the Plan Processor in which a Bid from or including such Bidding Participant or its Affiliate is being considered.<sup>14</sup> Amendment No. 2 therefore would extend to the first selection round the recusal requirement that is currently only in place for the second selection round and the vote, if any, that narrows the list of Shortlisted Bidders.

The SROs reiterate that the Selection Plan balances the competing goals of ensuring all SROs participate meaningfully in the process of developing the CAT NMS Plan and mitigating potential conflicts of interest related to the involvement of a bidding SRO through information barriers and the voting limitations.<sup>15</sup> The SROs state that, based on their experience with these existing measures, the Selection Plan adequately addresses the potential conflicts of interest related to bidding SROs.<sup>16</sup> Nonetheless, the SROs explain that requiring recusal in all rounds of the selection process will further the SROs’ goal of ensuring the fair and impartial consideration and selection of the CAT Plan Processor.<sup>17</sup>

### III. Discussion

After careful review, the Commission finds that Amendment No. 2 is appropriate in the public interest, for the protection of investors and the

<sup>10</sup> The Selection Plan defines “Bidding Participant” as a Participant that: (1) Submits a Bid; (2) is an Affiliate of an entity that submits a Bid; or (3) is included, or is an Affiliate of an entity that is included, as a Material Subcontractor as part of a Bid. See Notice of Selection Plan, *supra* note 3, Exhibit A, at 2.

<sup>11</sup> See Order Approving Amendment No. 1, *supra* note 8.

<sup>12</sup> The Selection Committee is composed of one senior officer from each Participant. See Section V.A of the Selection Plan.

<sup>13</sup> This two-round voting process would take place after any further narrowing of the Shortlisted Bids, if such narrowing were to occur pursuant to Amendment No. 1. See Order Approving Amendment No. 1, *supra* note 8, at 36029 & n.21.

<sup>14</sup> Notice of Amendment No. 2, *supra* note 4, at 36007.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanisms of, a national market system. By extending the aforementioned recusal requirement to both selection rounds, Amendment No. 2 adds an additional procedural safeguard that is designed to further the fairness and impartiality of the Plan Processor selection.

### IV. Conclusion

For the reasons discussed above, the Commission finds that Amendment No. 2 is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

*It is therefore ordered*, pursuant to Section 11A of the Act,<sup>18</sup> and the rules thereunder, that Amendment No. 2 to the Selection Plan be, and it hereby is, approved.

By the Commission.

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015–24717 Filed 9–29–15; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75979; File No. SR–NYSEArca–2015–80]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change to the Secondary Benchmark Index Applicable to Shares of the PIMCO Global Advantage® Inflation-Linked Bond Active Exchange-Traded Fund

September 24, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on September 11, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>18</sup> 15 U.S.C. 78k–1.

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the secondary benchmark index applicable to shares of the PIMCO Global Advantage® Inflation-Linked Bond Active Exchange-Traded Fund. The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (“Shares”) of the PIMCO Global Advantage® Inflation-Linked Bond Active Exchange-Traded Fund (“Fund”) under NYSE Arca Equities Rule 8.600,<sup>4</sup> which governs the listing and trading of Managed Fund Shares.<sup>5</sup> The Shares are

<sup>4</sup> See Securities Exchange Act Release No. 66381 (February 10, 2012), 77 FR 9281 (February 16, 2012) (SR–NYSEArca–2012–09) (notice of filing of proposed rule change relating to listing and trading of Shares of the Fund on the Exchange) (“Prior Notice”); Securities Exchange Act Release No. 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of Shares of the Fund on the Exchange) (“Prior Order” and, together with the Prior Notice, the “Prior Release”).

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule

offered by PIMCO ETF Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>6</sup> The investment manager to the Fund is Pacific Investment Management Company LLC ("PIMCO" or the "Adviser"). The Fund's Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

According to the Registration Statement and the Prior Release, the Fund utilizes the PIMCO Global Advantage Inflation-Linked Bond Index<sup>®</sup> as a secondary benchmark. Going forward, the Fund proposes to utilize the PIMCO Global Advantage Inflation-Linked Bond Index<sup>®</sup> (USD Partially Hedged) as the Fund's secondary benchmark. The proposal would change the secondary benchmark used by the Fund from an unhedged version of the index to one that is partially-hedged.

The Adviser represents that the proposed change to the secondary benchmark index is consistent with the Fund's investment objective, and will further assist the Adviser to achieve such investment objective. The Adviser further represents that the change to the secondary benchmark index may better optimize the risk/return profile of the Fund as compared to the prior secondary benchmark index. Except for the change noted above, all other representations made in the Prior Release remain unchanged.<sup>7</sup> The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Although the investment objective of the Fund is not changing, it will be

5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>6</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On October 27, 2014, the Trust filed with the Commission the most recent post-effective amendment to its registration statement under the Securities Act of 1933 (15 U.S.C. 77a) ("1933 Act") and under the 1940 Act relating to the Fund (File Nos. 333-155395 and 811-22250) (the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. A change to the name of the Fund from PIMCO Global Advantage<sup>®</sup> Inflation-Linked Bond Exchange-Traded Fund to PIMCO Global Advantage<sup>®</sup> Inflation-Linked Bond Active Exchange-Traded Fund was reflected in such amendment to the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812-13571) ("Exemptive Order").

<sup>7</sup> See note 4, *supra*. All terms referenced but not defined herein are defined in the Prior Release.

indirectly affected by the proposed change because the Fund's investment objective is to seek "total return which exceeds that of its benchmark indexes, consistent with prudent investment management."

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed change to the Fund's secondary benchmark index will not adversely impact investors or Exchange trading. The proposal would change the secondary benchmark used by the Fund from an unhedged version of the index to one that is partially-hedged. The Adviser represents that the proposed change to the secondary benchmark index is consistent with the Fund's investment objective and will further assist the Adviser to achieve such investment objective. The Adviser further represents that the change to the secondary benchmark index may better optimize the risk/return profile of the Fund as compared to the prior secondary benchmark index. Except for the change noted above, all other representations made in the Prior Release remain unchanged.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change will enhance competition among issues of exchange-traded funds that invest in fixed income securities.

### 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.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

## 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<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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) of the Act<sup>11</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-80 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2015-80. This file number should be included on the subject line if email is used. To help the

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). 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.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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 Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-80 and should be submitted on or before October 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-24716 Filed 9-29-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75975; File No. SR-NASDAQ-2015-089]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the 1-3 Month Enhanced Short Duration ETF, a Series of Plus Trust

September 24, 2015.

#### I. Introduction

On July 29, 2015, The NASDAQ Stock Market LLC ("Exchange" or "NASDAQ"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the 1-3 Month Enhanced Short Duration ETF ("Fund"), a series of Plus Trust ("Trust"). The proposed rule change was published for comment in the **Federal Register** on August 19, 2015.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund, an actively managed exchange-traded fund ("ETF"), under NASDAQ Rule 5735, which governs the listing and trading of "Managed Fund Shares" on the Exchange. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 10, 2014.<sup>4</sup> The Exchange states that the Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission.<sup>5</sup> New York Alaska ETF Management, LLC will be the investment adviser ("Adviser") to the Fund.<sup>6</sup> Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon ("BNY Mellon") will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 75694 (August 13, 2015), 80 FR 50358 ("Notice").

<sup>4</sup> The Exchange represents that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 31709 (July 8, 2015). The Exchange further represents that the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

<sup>5</sup> See Registration Statement on Form N-1A for the Trust filed on January 23, 2015 (File Nos. 333-201658 and 811-23019).

<sup>6</sup> The Exchange represents that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund's portfolio holdings and investment restrictions.<sup>7</sup>

#### A. Exchange's Description of the Fund's Principal Investments

The Fund's investment objective is to seek current income consistent with preservation of capital and daily liquidity. Under normal market conditions,<sup>8</sup> the Fund will invest substantially all of its net assets (exclusive of collateral with respect to securities lending, repurchase, and reverse repurchase agreement transactions) in U.S. Treasury securities, which include bills, notes, and bonds issued by the U.S. Treasury, that have remaining maturities of greater than or equal to one month and less than three months.<sup>9</sup> U.S. Treasury bills, notes, and bonds are direct obligations of the U.S. Treasury. U.S. Treasury bills have initial maturities of one year or less, U.S. Treasury notes have initial maturities from two to 10 years, and U.S. Treasury bonds have initial maturities of more than 10 years. While U.S. Treasury securities are supported by the full faith and credit of the U.S. government, such securities are nonetheless subject to credit risk, albeit minimal (*i.e.*, the risk that the U.S. government may be, or may be perceived to be, unable to make interest and principal payments).

In order to enhance income, the Fund intends to enter into securities lending, repurchase agreement, and/or reverse

<sup>7</sup> The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, *supra* notes 3 and 5, respectively.

<sup>8</sup> The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In response to adverse market, economic, political, or other conditions, the Fund reserves the right to invest in cash, without limitation, as determined by the Adviser. In the event the Fund engages in these temporary defensive strategies that are inconsistent with its investment strategies, the Fund's ability to achieve its investment objectives may be limited.

<sup>9</sup> The U.S. Treasury securities in which the Fund may invest will include variable rate U.S. Treasury securities, whose rates are adjusted daily (or at such other increment as may later be determined by the Department of the U.S. Treasury) to correspond with the rate paid on one-month or three-month U.S. Treasury securities, as applicable.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

repurchase agreement<sup>10</sup> transactions in an amount equal to not more than 33% of the Fund's total assets, consistent with the requirements of the 1940 Act.<sup>11</sup> The Fund may lend its portfolio of securities to broker/dealers, institutional investors, banks, and insurance and/or reinsurance companies located in the member countries of The Organization for Economic Co-operation and Development ("OECD").<sup>12</sup>

Securities lending allows the Fund to retain ownership of the securities loaned and, at the same time, to earn additional income. Loans will be made only to parties who have been reviewed and deemed satisfactory by the Adviser, pursuant to guidelines adopted by the Trust's Board of Trustees, and which provide collateral under master agreements issued by SIFMA (The Securities Industry and Financial Markets Association) or ISLA (International Securities Lending Association), which is either (i) 102% cash, or (ii) 102%–115% U.S. Treasury securities of the market value of the loaned securities. The collateral is marked-to-market daily. When the Fund lends portfolio securities, its investment performance will continue to reflect changes in the value of the securities loaned, and the Fund will also receive a fee or interest on the collateral.

The Fund also may enter into repurchase and reverse repurchase agreements with broker/dealers, institutional investors, banks, and insurance and/or reinsurance companies located in the member countries of the OECD. Repurchase transactions involve the purchase of securities with an agreement to resell the securities at an agreed-upon price, date, and interest payment. Reverse repurchase transactions involve the sale of securities with an agreement to

repurchase the securities at an agreed-upon price, date, and interest payment, and have the characteristics of borrowing. With respect to repurchase agreements and reverse repurchase agreements, proceeds (collateral) received under master agreements issued by SIFMA or ICMA (International Capital Markets Association) must be equal to or greater than the market value of the sold securities and (i) cash, (ii) U.S. Treasury securities, or (iii) debt securities secured by U.S. Treasury securities (such debt securities typically will be issued pursuant to Rule 144A and will be secured by a pledge to the note holder of U.S. Treasury securities with a market value equal to or greater than the face value of the debt security). All collateral will have a maturity of three months or less. The collateral is marked-to-market daily and valued in accordance with the Fund's valuation procedures. The price paid to repurchase the security reflects interest accrued during the term of the agreement.

#### *B. Exchange's Description of the Fund's Other Investments*

In order to seek its investment objective, the Fund will not employ other strategies outside of the above-described "Principal Investments." The Exchange represents that the Fund will not use derivative instruments, including options, swaps, forwards, and futures contracts, both listed and over-the-counter. The Fund will not invest in leveraged, inverse, or leveraged inverse exchange-traded products and will not be operated as a "leveraged ETF" designed to seek a multiple of the performance of an underlying reference asset.

In addition, according to the Exchange, the Fund's securities lending and reverse repurchase agreement transactions will be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies, and will not be used to multiply the risks and returns of income producing assets. The Fund will comply with the regulatory requirements of the Commission to maintain assets as "cover," and maintain segregated accounts as needed. With respect to the reverse repurchase agreements entered into by the Fund that involve obligations to make future payments to third parties, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will "set aside" liquid assets, or engage in other measures to "cover" open positions with respect to such transactions. These procedures will be adopted consistent with section 18 of

the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of reverse repurchase agreements, may give rise to leverage, causing the Fund's Shares to be more volatile than if they had not been leveraged.

#### *C. Exchange's Description of the Fund's Investment Restrictions*

Under normal market conditions, the Fund will invest substantially all, but not less than, 80% of its net assets (exclusive of collateral with respect to securities lending, repurchase, and reverse repurchase agreement transactions), plus any borrowings for investment purposes, in U.S. Treasury securities, which include bills, notes, and bonds issued by the U.S. Treasury, that have remaining maturities of greater than or equal to one month and less than three months.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including repurchase and reverse repurchase agreements maturing in more than seven days, and other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets, as determined in accordance with Commission staff guidance.

The Fund intends to qualify for, and to elect to be treated as, a regulated investment company under subchapter M of the Internal Revenue Code of 1986.

### **III. Discussion and Commission's Findings**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act<sup>13</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> In

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> In approving this proposed rule change, the Commission has considered the proposed rule's

<sup>10</sup> A "repurchase agreement" (also known as a repo) is the purchase of securities with the agreement to sell the securities back at a higher price at a specific future date. A "reverse repurchase agreement" (also known as a reverse repo) is the sale of securities with the agreement to buy them back at a higher price at a specific future date. For the party that is selling the security and agreeing to repurchase it in the future, it is a reverse repo; for the party on the other end of the transaction that is buying the security and agreeing to sell in the future, it is a repurchase agreement.

<sup>11</sup> The Exchange represents that securities lending by funds may implicate certain sections of the 1940 Act. For example, the transfer of a fund's portfolio securities to a borrower implicates section 17(f) of the 1940 Act, which generally requires that a fund's portfolio securities be held by an eligible custodian. In addition, a fund's obligation to return collateral at the termination of a loan implicates Section 18 of the 1940 Act, which governs the extent to which a fund may incur indebtedness.

<sup>12</sup> A list of OECD members is available at: <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm>.

particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,<sup>15</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with section 11A(a)(1)(C)(iii) of the Act,<sup>16</sup> which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via NASDAQ proprietary quote and trade services, as well in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans, as applicable. In addition, the Intraday Indicative Value,<sup>17</sup> as defined in Nasdaq Rule 5735(c)(3), will be available on the NASDAQ OMX Information LLC proprietary index data service and will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session.<sup>18</sup> On each business day, before commencement of trading in Shares in the Regular Market Session<sup>19</sup> on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio," as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>20</sup> On a daily basis, the

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>17</sup> The Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio, as defined below.

<sup>18</sup> Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and ETFs. GIDS provides investment professionals with the daily and historical information needed to track or trade NASDAQ OMX indexes, listed ETFs or third-party partner indexes and ETFs.

<sup>19</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. Eastern Time ("E.T."); (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

<sup>20</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day

Disclosed Portfolio will include, as applicable, each portfolio security and other financial instruments of the Fund with the following information on the Fund's Web site: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund's portfolio). The Web site information will be publicly available at no charge. In addition, the Fund's disclosure of securities lending transactions and repurchase and reverse repurchase agreements will include information regarding the income being accrued on such instruments/transactions expressed in a percentage relative to the NAV published by the Fund.

A basket composition file, which will include the security names and quantities of securities and other assets required to be delivered in exchange for Shares, if applicable, together with estimates and actual cash components, will be publicly disseminated prior to the opening of the Exchange via the National Securities Clearing Corporation. The basket will represent one "Creation Unit" of the Fund. The NAV will be determined on each business day as of the close of trading (ordinarily 4:00 p.m. E.T.) on the New York Stock Exchange, now under the umbrella of the Intercontinental Exchange.<sup>21</sup> Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on

("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

<sup>21</sup> NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing this amount by the total number of Shares outstanding. According to the Exchange, with respect to U.S. Treasury securities, which include bills, notes, and bonds issued by the U.S. Treasury, the Fund will value such securities at the price listed at the following sources: Bloomberg, TradeWeb, E-Speed, Tullett Prebon, the U.S. Treasury Department, and/or Interactive Brokers, with the hierarchy of such sources generally in the order listed. Securities lending transactions, repurchase agreements, and reverse repurchase agreements transactions will be valued at the combined value of (i) the value of the underlying Fund asset utilized in the transaction, and (ii) the relative realized profit value, added daily.

brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day, executable price quotations on U.S. Treasury securities are available through subscription services such as Bloomberg, TradeWeb, E-Speed, Tullett Prebon, the U.S. Treasury Department, and/or Interactive Brokers, which can be accessed by Authorized Participants<sup>22</sup> and other investors. In addition, the Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer.<sup>23</sup> The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed

<sup>22</sup> To be eligible to place orders to create a Creation Unit of the Fund, an entity must be a Depository Trust Company ("DTC") participant, such as a broker-dealer, bank, trust company, clearing corporation, or certain other organization ("DTC Participant"). DTC acts as a securities depository for the Shares. The DTC Participant must have executed an agreement with respect to creations and redemptions of Creation Units ("Participant Agreement"). A DTC Participant that has executed a Participant Agreement is referred to as an "Authorized Participant."

<sup>23</sup> See *supra* note 6. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act, which requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of their relationship with their clients as well as compliance with other applicable securities laws. Accordingly, investment advisers must have procedures designed to prevent the communication and misuse of non-public information, consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Portfolio will be made available to all market participants at the same time. Trading in the Shares will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pause provisions under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,<sup>24</sup> and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority<sup>25</sup> that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>26</sup> The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>27</sup> The Exchange further represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Moreover, prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made

<sup>24</sup> These reasons may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.

<sup>25</sup> Nasdaq Rule 5730(c)(4) defines "Reporting Authority."

<sup>26</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

<sup>27</sup> The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

representations, including the following:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"),<sup>28</sup> and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange, if applicable, may obtain information regarding trading in the Shares from markets and other entities that are members of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>29</sup>

(6) Under normal market conditions, the Fund will invest substantially all, but in any event not less than 80%, of its net assets (exclusive of collateral with respect to securities lending,

<sup>28</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>29</sup> See 17 CFR 240.10A-3.

repurchase, and reverse repurchase agreement transactions) in U.S. Treasury securities, which include bills, notes, and bonds issued by the U.S. Treasury, that have remaining maturities of greater than or equal to one month and less than three months. In order to seek its investment objective, the Fund will not employ other strategies outside of the above-described "Principal Investments."

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including repurchase and reverse repurchase agreements maturing in more than seven days, and other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets.

(8) Loans will be made only to parties who have been reviewed and deemed satisfactory by the Adviser, pursuant to guidelines adopted by the Trust's Board of Trustees, and which provide collateral under master agreements issued by SIFMA or ISLA, which is either (i) 102% cash, or (ii) 102%–115% U.S. Treasury securities of the market value of the loaned securities. With respect to repurchase agreements and reverse repurchase agreements, proceeds (collateral) received under master agreements issued by SIFMA or ICMA must be equal to or greater than the market value of the sold securities and (i) cash, (ii) U.S. Treasury securities, or (iii) debt securities secured by U.S. Treasury securities. All collateral will have a maturity of three months or less.

(9) The Fund may enter into securities lending, repurchase agreement, and/or reverse repurchase agreement transactions in an amount equal to not more than 33% of the Fund's total assets, consistent with the requirements of the 1940 Act.

(10) The Fund's investments will be consistent with its investment objective. The Fund will not use derivative instruments, including options, swaps, forwards, and futures contracts, both listed and over-the-counter. The Fund will not invest in leveraged, inverse, or leveraged inverse exchange-traded products and will not be operated as a "leveraged ETF" designed to seek a multiple of the performance of an underlying reference asset.

(11) The Fund's securities lending and reverse repurchase agreement transactions will be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies, and will not be used to multiply the risks and returns of income producing assets. The Fund will comply with the regulatory requirements of the Commission to maintain assets as "cover," and maintain segregated accounts as needed. With respect to the reverse repurchase agreements entered into by the Fund that involve obligations to make future payments to third parties, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will "set aside" liquid assets, or engage in other measures to "cover" open positions with respect to such transactions. These procedures will be adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of reverse repurchase agreements, may give rise to leverage, causing the Fund's Shares to be more volatile than if they had not been leveraged.

(12) A minimum of 50,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund. The Commission notes that the Fund and the Shares must comply with the initial and continued listing criteria in Nasdaq Rule 5735 for the Shares to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>30</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-NASDAQ-2015-089), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-24714 Filed 9-29-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2015-0057]

### Notice of Senior Executive Service Performance Review Board Membership

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before service on said Board begins.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Amy G. Thompson  
Hyacinth Hinojosa  
Michael Kramer  
John Lee \*

Natalie Lu  
Lydia Marshall  
Royce Min  
Patrice Stewart \*  
David E. Thomas  
Laura N. Train  
Nancy Webb \*

\* New Member

Dated: September 22, 2015.

**Reginald F. Wells,**

*Deputy Commissioner for Human Resources.*

[FR Doc. 2015-24782 Filed 9-29-15; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF STATE

[Public Notice: 9293]

### In the Matter of the Designation of Sally-Anne Frances Jones, Also Known as Sally Anne Jones, Also Known as Sally Jones, Also Known as Umm Hussain al-Britani, Also Known as Sakinah Hussain, 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 individual known as Sally-Anne Frances Jones, also known as Sally Anne Jones, also known as Sally Jones, also known as Umm Hussain al-Britani, also known as Sakinah Hussain 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: September 21, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015-24894 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9298]

### In the Matter of the Designation of Jaysh Rijal al-Tariq al-Naqshabandi, Also Known as Army of the Men of the Naqshbandi Order, Also Known as Armed Men of the Naqshabandi Order, Also Known as Naqshbandi Army, Also Known as Naqshabandi Army, Also Known as Men of the Army of al-Naqshbandia Way, Also Known as Jaysh Rajal al-Tariqah al-Naqshbandia, Also Known as JRTN, Also Known as JRN, Also Known as AMNO, 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 Jaysh Rijal al-Tariq al-Naqshabandi also known as Army of the Men of the Naqshbandi Order also

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).

known as Armed Men of the Naqshabandi Order also known as Naqshbandi Army also known as Naqshabandi Army also known as Men of the Army of al-Naqshbandia Way also known as Jaysh Rajal al-Tariqah al-Naqshbandia also known as JRTN also known as JRN also known as AMNO, 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: September 21, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015-24838 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9301]

**In the Matter of the Amendment 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 pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189 ("INA")), and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that Ansar Bayt al-Maqdis, also known under the aliases listed above, uses the alias ISIL Sinai Province, also known as Islamic State-

Sinai Province, also known as Wilayah Sinai, also known as Sinai Province, also known as The State of Sinai, also known as the Islamic State in the Sinai, as its primary name.

Therefore, pursuant to Section 219(b) of the INA, as amended (8 U.S.C. 1189(b)), I hereby amend the designation of Ansar Bayt al-Maqdis as a foreign terrorist organization to include the following new aliases: ISIL Sinai Province, also known as Islamic State-Sinai Province, also known as Wilayah Sinai, also known as Sinai Province, also known as The State of Sinai, also known as the Islamic State in the Sinai, as additional aliases.

This determination shall be published in the **Federal Register**.

Dated: September 22, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015-24866 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9299]

**In the Matter of the Designation of Jaysh Rijal al-Tariq al-Naqshabandi, Also Known as Army of the Men of the Naqshbandi Order, Also Known as Armed Men of the Naqshabandi Order, Also Known as Naqshbandi Army, Also Known as Naqshabandi Army, Also Known as Men of the Army of al-Naqshbandia Way, Also Known as Jaysh Rajal al-Tariqah al-Naqshbandia, Also Known as JRTN, Also Known as JRN, Also Known as AMNO 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 Jaysh Rijal al-Tariq al-Naqshabandi also known as Army of the Men of the Naqshbandi Order also known as Armed Men of the Naqshbandi Order also known as Naqshbandi Army also known as Men of the Army of al-Naqshbandia Way also known as Jaysh Rajal al-Tariqah al-Naqshbandia also known as JRTN also known as JRN also known as AMNO.

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: September 21, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015-24878 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9291]

**In the Matter of the Amendment of the Designation of Islamic State of Iraq and the Levant, Also Known as Islamic State, Also Known as ISIL, Also Known as ISIS, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224**

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 have concluded that there is a sufficient factual basis to find that the Islamic State of Iraq and the Levant uses the additional aliases the Islamic State, ISIL, and ISIS. Therefore, pursuant to Section 1(b) of Executive Order 13224, I hereby amend the designation of the Islamic State of Iraq and the Levant as a Specially Designated Global Terrorist to include the Islamic State, ISIL, and ISIS as aliases.

This determination shall be published in the **Federal Register**.

Dated: September 21, 2015.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2015-24892 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9290]

**In the Matter of the Amendment of the Designation of Islamic State of Iraq and the Levant, Also Known as Islamic State, Also Known as ISIL, Also Known as ISIS, 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 pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189 ("INA")), and in consultation with the Attorney General and the Secretary of the Treasury, I have



concluded that there is a sufficient factual basis to find that the Islamic State of Iraq and the Levant uses the additional aliases the Islamic State, ISIL, and ISIS. Therefore, pursuant to Section 219(b) of the INA, as amended (8 U.S.C. 1189(b)), I hereby amend the designation of the Islamic State of Iraq and the Levant as a Foreign Terrorist Organization to include the Islamic State, ISIL, and ISIS as aliases.

This determination shall be published in the **Federal Register**.

Dated: September 21, 2015.

**John F. Kerry,**  
*Secretary of State.*

[FR Doc. 2015-24893 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9296]

### In the Matter of the Designation of Emilie Konig 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 individual known as Emilie Konig, 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: September 7, 2015.

**John F. Kerry,**  
*Secretary of State.*

[FR Doc. 2015-24896 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9300]

### In the Matter of the Designation of Boubaker Ben Habib Ben Ali Hakim, Boubakeur al-Hakim, Boubakeur el-Hakim, Boubaker el Hakim, Abou al Moukatel, Abou Mouqatel, Abu-Muqatil al-Tunisi 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 individual known as Boubaker Ben Habib Ben Ali Hakim, also known as Boubakeur al-Hakim, also known as Boubakeur el-Hakim, also known as Boubaker el Hakim, also known as Abou al Moukatel, also known as Abou Mouqatel, also known as Abu-Muqatil al-Tunisi, 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: September 21, 2015.

**John F. Kerry,**  
*Secretary of State.*

[FR Doc. 2015-24876 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9292]

### In the Matter of the Designation of Maxime Hauchard, Also Known as Abou Abdallah Al Faransi, 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 individual known as Maxime Hauchard, also known as Abou Abdallah Al Faransi, 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: September 21, 2015.

**John F. Kerry,**  
*Secretary of State.*

[FR Doc. 2015-24890 Filed 9-29-15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9297]

### In the Matter of the Designation of Peter Cherif, Also Known as Peter Cherif, Also Known as Abu Hamza Cherif, 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 individual known as Peter Cherif, also known as

Peter Cheraf, also known as Abu Hamza Cheraf, 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: September 7, 2015.

**John F. Kerry,**  
*Secretary of State.*

[FR Doc. 2015–24899 Filed 9–29–15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9302]

### **In the Matter of the Amendment 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**

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 have concluded that there is a sufficient factual basis to find that Ansar Bayt al-Maqdis, also known under the aliases listed above, uses the alias ISIL Sinai Province, also known as Islamic State-Sinai Province, also known as Wilayat Sinai, also known as Sinai Province, also known as The State of Sinai, also known as the Islamic State in the Sinai, as its primary name.

Therefore, pursuant to Section 1(b) of Executive Order 13224, I hereby amend the designation of Ansar Bayt al-Maqdis as a Specially Designated Global Terrorist to include the following new aliases: ISIL Sinai Province, also known

as Islamic State-Sinai Province, also known as Wilayat Sinai, also known as Sinai Province, also known as The State of Sinai, also known as Islamic State in the Sinai, as additional aliases.

This determination shall be published in the **Federal Register**.

Dated: September 22, 2015.

**John F. Kerry,**  
*Secretary of State.*

[FR Doc. 2015–24861 Filed 9–29–15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9294]

### **In the Matter of the Designation of Mujahidin Indonesia Timur (MIT), aka Mujahideen Indonesia Timor, aka Mujahidin of Eastern Indonesia, aka Mujahidin Indonesia Barat, aka Mujahidin Indonesia Timur, aka Mujahidin of Western Indonesia (MIB), as a Specially Designated Global Terrorist Entity 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 entity known as Mujahidin Indonesia Timur (MIT), also known as Mujahideen Indonesia Timor, also known as Mujahidin of Eastern Indonesia, also known as Mujahidin Indonesia Barat, also known as Mujahidin Indonesia Timur, also known as Mujahidin of Western Indonesia (MIB) 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: September 21, 2015.

**John F. Kerry,**  
*Secretary of State.*

[FR Doc. 2015–24898 Filed 9–29–15; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9295]

### **In the Matter of the Designation of Gulmurod Khalimov 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 individual known as Gulmurod Khalimov, 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: September 16, 2015.

**John F. Kerry,**  
*Secretary of State.*

[FR Doc. 2015–24897 Filed 9–29–15; 8:45 am]

**BILLING CODE 4710-AD-P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Public Hearing

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** The Susquehanna River Basin Commission will hold a public hearing on October 29, 2015, in Grantville, Pennsylvania. At this public hearing, the Commission will hear testimony on

the projects listed in the Supplementary Information section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for December 4, 2015, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects. The deadline for the submission of written comments is November 9, 2015.

**DATES:** The public hearing will convene on October 29, 2015, at 7 p.m. The public hearing will end at 9 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is November 9, 2015.

**ADDRESSES:** The public hearing will be conducted at the East Hanover Township Municipal Building, Main Hall, 8848 Jonestown Road, Grantville, PA 17028 (parking lot entry off of Manada Gap Road; see <http://easthanoverwpdcpa.org/index.php/about-contact>).

**FOR FURTHER INFORMATION CONTACT:** Jason Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436. Information concerning the applications for these projects is available at the SRBC Water Resource Portal at [www.srbc.net/wrp](http://www.srbc.net/wrp). Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at [www.srbc.net/pubinfo/docs/2009-02\\_Access\\_to\\_Records\\_Policy\\_20140115.pdf](http://www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf).

**SUPPLEMENTARY INFORMATION:** The public hearing will cover the following projects:

#### Projects Scheduled for Action

1. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.115 mgd (30-day average) from Dug Road Well.
2. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.038 mgd (30-day average) from Hilltop Well.
3. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Midway Well 1.
4. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.110 mgd (30-day average) from Midway Well 2.
5. Project Sponsor: Byler Golf Management, Inc. Project Facility: Iron Valley Golf Course, Cornwall Borough, Lebanon County, Pa. Modification to authorize additional water use purpose (Docket Nos. 19981206 and 19981206-1).
6. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).
7. Project Sponsor and Facility: East Berlin Area Joint Authority, Reading Township, Adams County, Pa. Application for groundwater withdrawal of up to 0.072 mgd (30-day average) from Well 1.
8. Project Sponsor and Facility: East Berlin Area Joint Authority, Reading Township, Adams County, Pa. Application for groundwater withdrawal of up to 0.108 mgd (30-day average) from Well 2.
9. Project Sponsor and Facility: East Berlin Area Joint Authority, East Berlin Borough, Adams County, Pa. Application for groundwater withdrawal of up to 0.058 mgd (30-day average) from Well 4.
10. Project Sponsor and Facility: East Berlin Area Joint Authority, East Berlin Borough, Adams County, Pa. Application for renewal with modification to increase groundwater withdrawal limit by an additional 0.048 mgd (30-day average), for a total of up to 0.072 mgd (30-day average) from Well 5 (Docket No. 19860601).
11. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.059 mgd (30-day average) from Well 3A.
12. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.028 mgd (30-day average) from Well 4.
13. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.056 mgd (30-day average) from Well 5.
14. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.022 mgd (30-day average) from Well 6.
15. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.046 mgd (30-day average) from Well 7.
16. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.320 mgd (30-day average) from Well 1 (Docket No. 19850901).
17. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.190 mgd (30-day average) from Well 4 (Docket No. 19850901).
18. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.090 mgd (30-day average) from Well 7 (Docket No. 19850901).
19. Project Sponsor and Facility: Montgomery Water and Sewer Authority, Clinton Township, Lycoming County, Pa. Application for groundwater withdrawal of up to 0.360 mgd (30-day average) from Well 4.
20. Project Sponsor and Facility: Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Modification to increase combined withdrawal limit by an additional 0.199 mgd (30-day average), for a total combined withdrawal limit of 1.800 mgd (30-day average) from Wells 1 and 2 (Docket No. 20110617).
21. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Cresson Borough, Cambria County, Pa. Application for groundwater withdrawal from Argyle Stone Bridge Well of up to 6.300 mgd (30-day average) from four sources.
22. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility:

- Cresson Mine Drainage Treatment Plant, Cresson Township, Cambria County, Pa. Application for groundwater withdrawal from Cresson No. 9 Well of up to 6.300 mgd (30-day average) from four sources.
23. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Gallitzin Township, Cambria County, Pa. Application for groundwater withdrawal from Gallitzin Shaft Well 2A (Gallitzin Shaft #2) of up to 6.300 mgd (30-day average) from four sources.
24. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Gallitzin Township, Cambria County, Pa. Application for groundwater withdrawal from Gallitzin Shaft Well 2B (Gallitzin Shaft #1) of up to 6.300 mgd (30-day average) from four sources.
25. Project Sponsor and Facility: Sugar Hollow Water Services, LLC (Susquehanna River), Eaton Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20111214).
26. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20111217).
27. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Modification to increase surface water withdrawal by an additional 1.750 mgd (peak day), for a total of up to 2.500 mgd (peak day) (Docket No. 20140302).
28. Project Sponsor and Facility: SWN Production Company, LLC (Tioga River), Hamilton Township, Tioga County, Pa. Application for surface water withdrawal of up to 2.000 mgd (peak day).
29. Project Sponsor and Facility: Village of Sidney, Delaware County, N.Y. Modification to extend the approval term of the groundwater withdrawal approval (Docket No. 19860201) to provide time for development of a replacement source for existing Well 2–88.

### Project Scheduled for Action Involving a Diversion

1. Project Sponsor: Seneca Resources Corporation. Project Facility: Impoundment 1, receiving groundwater from Seneca Resources Corporation Wells 5H and 6H and Clermont Wells 1, 3, and 4, Norwich and Sergeant Townships, McKean County, Pa. Modification to add two additional sources (Clermont Well 2 and Clermont North Well 2) and increase the into-basin diversion from the Ohio River Basin by an additional 0.504 mgd (peak day), for a total of up to 1.977 mgd (peak day) (Docket No. 20141216).

### Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Rules of conduct will be posted on the Commission's Web site, [www.srbc.net](http://www.srbc.net), prior to the hearing for review. The presiding officer reserves the right to modify or supplement such rules at the hearing. Written comments on any project listed above may also be mailed to Mr. Jason Oyler, General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through [www.srbc.net/pubinfo/publicparticipation.htm](http://www.srbc.net/pubinfo/publicparticipation.htm). Comments mailed or electronically submitted must be received by the Commission on or before November 9, 2015, to be considered.

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: September 24, 2015.

**Stephanie L. Richardson,**  
*Secretary to the Commission.*

[FR Doc. 2015–24684 Filed 9–29–15; 8:45 am]

**BILLING CODE 7040–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

**AGENCY:** Federal Aviation Administration, Transportation.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) and the National Park Service (NPS) are inviting

interested persons to apply to fill one upcoming opening on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). The upcoming opening will represent Native American interests. The selected member will serve a 3-year term.

**DATES:** Persons interested in applying for the NPOAG opening representing Native American interests need to apply by October 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3808, email: [Keith.Lusk@faa.gov](mailto:Keith.Lusk@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides “advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.”

##### Membership

The NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four

members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

The current NPOAG consists of Heidi Williams representing general aviation; Alan Stephen, Mark Francis, and Matthew Zuccaro representing commercial air tour operators; Michael Sutton, Nicholas Miller, Mark Belles, and Dick Hingson representing environmental interests; and Leigh Kuwanwisiwma and Martin Begaye representing Native American interests. Mr. Begaye's 3-year membership expires on October 9, 2015.

### Selection

In order to retain balance within the NPOAG ARC, the FAA and NPS are seeking candidates interested in filling Mr. Begaye's soon to be expiring seat. The open seat to be filled will represent Native American interests. The FAA and NPS invite persons interested in representing Native American interests on the ARC to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the ARC must be made to Mr. Lusk in writing and postmarked or emailed on or before October 30, 2015. The request should indicate whether or not you are a member of a Native American tribe. The request should also state what expertise you would bring to the NPOAG ARC as related to issues and concerns with aircraft flights over national parks. The term of service for NPOAG ARC members is 3 years. Current members may re-apply for another term.

On June 18, 2010, President Obama signed a Presidential Memorandum directing agencies in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in Hawthorne, CA, on September 23, 2015.

#### Keith Lusk,

Program Manager, Special Programs Staff,  
Western-Pacific Region.

[FR Doc. 2015-24901 Filed 9-29-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2015-0043]

#### Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 25, 2015, the Historic Railroad Equipment Association (HREA) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215—Railroad Freight Car Safety Standards and part 223—Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses. FRA assigned the petition Docket Number FRA-2015-0043.

Mr. David Kloke, the principal partner in HREA, is the builder and operator of the Lincoln Funeral Car replica currently on exhibition to celebrate the 150th anniversary of the operation of the Lincoln Funeral Train in 1865. Mr. Kloke is also the builder of the Leviathan #63 and the York, reproductions of 1860s era steam locomotives that are currently in operation. The Lincoln Funeral Car is to be pulled by these locomotives at various tourist railroads to commemorate the operation of the Lincoln Funeral Train. HREA requests a waiver from 49 CFR 215.123—*Defective couplers*, 215.127—*Defective draft arrangement*, and 215.129—*Defective cushioning device* as it pertains to the use of a drawbar instead of a coupler. The Lincoln Funeral Car will be attached to the locomotives by use of a drawbar. Further, HREA requests a waiver from 49 CFR 223.3(b)(3) as it pertains to the use of tempered automobile safety glazing instead of FRA Type I glazing.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by November 16, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy). See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on September 23, 2015.

#### Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-24697 Filed 9-29-15; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2015-0092]

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 30, 2015, the American Short Line and Regional Railroad Association

(ASLRRRA) has petitioned the Federal Railroad Administration (FRA) for an amendment to its existing waiver of compliance in Docket Number FRA–2009–0078. Specifically, this waiver exempts certain ASLRRRA member railroads from provisions of the Federal hours of service laws and regulations contained at 49 CFR 228.405(a)(3). In its petition, ASLRRRA seeks to amend the waiver to include the hours of midnight to 6 a.m. for certain railroads that will participate in a pilot project to measure the effectiveness of certain measures implemented to mitigate any adverse fatigue effects that might otherwise occur if the waiver were expanded to include those hours. These railroads all currently participate in the existing waiver in Docket Number FRA–2009–0078. The pilot project will employ a mandatory napping program for employees operating under the waiver between the hours of midnight and 6 a.m. Followup data (e.g., sleep logs/diaries, self-report questionnaires, and interview responses) will be collected from participants who undertake the napping regimen and report the results. The sample size, if a paired comparison or repeated measures analysis is used, will provide sufficient statistical power to analyze the data and make appropriate generalizations to the industry as a whole. If the data supports it, ASLRRRA will then seek to expand the waiver for all participating railroads to include the hours of midnight to 6 a.m. when approved mitigation measures are employed. Forty ASLRRRA member railroads are proposed to be included in this pilot program. A complete list of the railroads that would like to participate may be found in ASLRRRA's July 30, 2015, petition letter in Docket Number FRA–2015–0092.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 16, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy). See also <http://www.regulations.gov/#/privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on September 24, 2015.

**Ron Hynes,**

*Director, Office of Technical Oversight.*

[FR Doc. 2015–24698 Filed 9–29–15; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. AB 6 (Sub-No. 491X)]

#### **BNSF Railway Company— Abandonment Exemption—in Stearns County, Minn.**

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.45 miles of railroad line located between mileposts 80.66 and 81.11, in St. Joseph, Stearns County, Minn. (the Line). The Line traverses

United States Postal Service Zip Code 56374.

BNSF has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line that would have to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will become effective on October 30, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 13, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 20, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell & Associates, 655 15th Street NW., Suite 225, Washington, DC 20005.

<sup>1</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 CFR 1002.2(f)(25).

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 5, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by BNSF's filing of a notice of consummation by September 30, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: September 24, 2015.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2015-24767 Filed 9-29-15; 8:45 am]

**BILLING CODE 4915-01-P**

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Treasury  
**ACTION:** Notice.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before October 30, 2015 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov) or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

### Departmental Offices, General Law, Ethics and Regulation (GLER)

*OMB Number:* 1505-0204.

*Type of Review:* Revision of a currently approved collection.

*Title:* Prohibition on Funding of Unlawful Internet Gambling.

*Abstract:* The Unlawful Internet Gambling Enforcement Act requires the Treasury and the Federal Reserve Board (the "Agencies") to prescribe regulations requiring designated payment systems and all participants to identify and block unlawful Internet gambling transactions through the establishment of reasonably designated policies and procedures. The Agencies have published a regulation that requires designated payment systems and all participants to establish and implement written policies and procedures.

*Affected Public:* Private Sector: Businesses or other for-profits, Not-for-profit institutions.

*Estimated Burden Hours:* 440,400.

Dated: September 25, 2015.

**Dawn D. Wolfgang,**

Treasury PRA Clearance Officer.

[FR Doc. 2015-24744 Filed 9-29-15; 8:45 am]

**BILLING CODE 4810-25-P**

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Treasury.  
**ACTION:** Notice.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before October 30, 2015 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by email at [PRA@treasury.gov](mailto:PRA@treasury.gov) or the entire information collection request may be found at [www.reginfo.gov](http://www.reginfo.gov).

### SUPPLEMENTARY INFORMATION:

#### Internal Revenue Service (IRS)

*OMB Number:* 1545-0047.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Return of Organization Exempt From Income Tax Under Section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation).

*Form:* Form 990 and schedules.

*Abstract:* Form 990 is needed to determine that IRC section 501(a) tax-exempt organizations fulfill the operating conditions within the limitations of their tax exemption. Form 990 is used by tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations to provide the IRS with the information required by section 6033.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Annual Burden Hours:* 24,951,529.

*OMB Number:* 1545-0957.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Request for Waiver From Filing Information Returns Electronically/Magnetically (Forms W-2, W-2G, 1042-S, 1098 Series, 1099 Series, 5498 Series, and 8027).

*Form:* 8508.

*Abstract:* Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.

*Affected Public:* Private Sector: Businesses or other for-profits.  
*Estimated Annual Burden Hours:* 750.  
*OMB Number:* 1545–1086.  
*Type of Review:* Extension without change of a previously approved collection.

*Title:* Excise Tax on Greenmail.  
*Form:* 8725.

*Abstract:* Form 8725 is used to report and pay the 50% excise tax imposed under section 5881 on the gain or other income realized on the receipt of greenmail. Greenmail is considered received when the gain or other income is realized under any method of accounting regardless of whether the gain or other income is recognized. IRS uses the information to verify that the correct amount of tax has been reported.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 92.  
*OMB Number:* 1545–1225.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.

*Form:* 5310–A.

*Abstract:* Plan administrators are required to notify IRS of any plan mergers, consolidations, spinoffs, or transfers of plan assets or liabilities to another plan. Employers are required to notify IRS of separate lines of business for their deferred compensation plans. Form 5310–A is used to make these notifications.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 158,800.

*OMB Number:* 1545–1227.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Final Tax Treatment of Salvage and Reinsurance.

*Abstract:* The regulation provides a disclosure requirement for an insurance company that increases losses shown on its annual statement by the amount of estimated salvage recoverable taken into account.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 5,000.

*OMB Number:* 1545–1380.

*Type of Review:* Revision of a previously approved collection.

*Title:* Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

*Form:* 1098.

*Abstract:* To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of points paid on residential mortgage. Only businesses that receive mortgage interest in the course of a trade or business are affected by this reporting requirement.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 8,321,755.

*OMB Number:* 1545–1434.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* CO–26–96 (Final) Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

*Abstract:* Section 382 limits the amount of income that can be offset by loss carryovers after an ownership change. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 875.

*OMB Number:* 1545–1528.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Revenue Procedure 97–15, Section 103—Remedial Payment Closing Agreement Program.

*Abstract:* This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145, and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer of certain state or local bonds and to establish the closing agreement amount.

*Affected Public:* State, Local, and Tribal Governments.

*Estimated Annual Burden Hours:* 75.

*OMB Number:* 1545–1536.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* REG–209823–96 (TD 8791)—Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfer of Interests in Trusts.

*Abstract:* A charitable remainder trust provides for a specified periodic distribution to one or more beneficiaries for life or for a term of years with an

irrevocable remainder interest held for the benefit of charity. A contribution to a charitable remainder trust generally qualifies for a charitable deduction. Regulation REG–209823–96 provides an alternative method and guidance, allowing a taxpayer to use a current qualified appraisal (as defined in § 1.170A–13(c)(3)) from a qualified appraiser (as defined in § 1.170A–13(c)(5)) for valuing a trust's difficult-to-value assets, which may reduce cost to taxpayer and offer be less burdensome.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 75.

*OMB Number:* 1545–1685.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Tax Shelter Disclosure Regulations (T.D. 9046).

*Abstract:* These regulations finalize the rules relating to the filing by certain taxpayers of a disclosure statement with their Federal tax returns under section 6011(a), the rules relating to the registration of confidential corporate tax shelters under section 6111(d), and the rules relating to the list maintenance requirements under section 6112. These regulations affect taxpayers participating in reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers and sellers of potentially abusive tax shelters.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 1.

*OMB Number:* 1545–1965.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* TD 9360 (REG–133446–03) (Final) Guidance on Passive Foreign Company (PFIC) Purging Elections.

*Abstract:* The IRS needs the information to substantiate the taxpayer's computation of the taxpayer's share of the PFIC's post-1986 earning and profits.

*Affected Public:* Individuals and Households.

*Estimated Annual Burden Hours:* 250.

*OMB Number:* 1545–2126.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Credit for Employer Differential Wage Payments.

*Form:* 8932.

*Abstract:* Qualified employers will file Form 8932 to claim the credit for qualified differential wage payments paid to qualified employees after June 17, 2008, and before January 1, 2010. Authorized under I.R.C. section 45P.



*Affected Public:* Private Sector: Businesses or other for-profits.  
*Estimated Annual Burden Hours:* 62,456.

*OMB Number:* 1545–2226.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans.

*Form:* 5884–C.

*Abstract:* Form 5884–C was developed as a result of VOW to Hire Heroes Act of 2011, Public Law 112–56. Section 261 of Public Law 112–56 expanded the Work Opportunity Credit to tax-exempt organizations that hire unemployed veterans. The tax credit is a reduction in payroll taxes paid by the tax-exempt organization. Form 5884–C allows a tax-exempt organization a way to claim the credit and provides the IRS the information to process the tax credit.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Annual Burden Hours:* 397,683.

Dated: September 24, 2015.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2015–24678 Filed 9–29–15; 8:45 am]

**BILLING CODE 4830–01P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before October 30, 2015 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

### FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov) or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

### SUPPLEMENTARY INFORMATION:

#### Bureau of the Fiscal Service (FS)

*OMB Number:* 1530–0002.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Trace Request for EFT Payments.

*Form:* FS Form 150–1, 150–2.

*Abstract:* The form is used to notify the financial institutions that a beneficiary has claimed non-receipt of credit for a payment. The form is designed to help the financial institution locate any problem and to keep the beneficiary informed of any action taken.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 27,162.

*OMB Number:* 1530–0012.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Voucher for Payment of Awards.

*Form:* FS Form 5135.

*Abstract:* Awards certified to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to award holders showing payments due. Award holders sign vouchers certifying that he/she is entitled to payment.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden Hours:* 700.

*OMB Number:* 1530–0027.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Creditor's Request for Payment of Treasury Securities Belonging to a Decedent's Estate Being Settled Without Administration.

*Form:* FS Form 1050.

*Abstract:* Used to obtain creditors consent to dispose of securities of a deceased owner's estate without administration.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 150.

*OMB Number:* 1530–0052.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

*Form:* FS Form 3871.

*Abstract:* Submitted by companies engaged in the business of writing

mortgage guaranty insurance for purpose of purchasing "Tax and Loss" bonds.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Annual Burden Hours:* 8.

*OMB Number:* 1530–0055.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Disposition of Securities Belonging to a Decedent's Estate Being Settled Without Administration.

*Form:* FS Form 5336.

*Abstract:* Used by person(s) entitled to a decedent's estate not being administered to request disposition of securities and/or related payments.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden Hours:* 12,675.

Dated: September 25, 2015.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2015–24749 Filed 9–29–15; 8:45 am]

**BILLING CODE 4810–AS–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Treasury.

**ACTION:** Notice.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before October 30, 2015 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

### FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

### SUPPLEMENTARY INFORMATION:

**Bureau of Engraving and Printing (BEP)**

OMB Number: 1520-0009.

Type of Review: Extension without change of a currently approved collection.

Title: Generic Clearance for Meaningful Access Information Collections (Conferences).

Abstract: A court order was issued in *American Council of the Blind v. Paulson*, 591 F. Supp. 2d 1 (D.D.C. 2008) (“*ACB v. Paulson*”) requiring the Department of the Treasury and BEP to “provide meaningful access to United States currency for blind and other visually impaired persons, which steps shall be completed, in connection with each denomination of currency, not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury \* \* \*.” In compliance with the court’s order, BEP intends to meet individually with blind and visually impaired persons and request their feedback about tactile features that BEP is considering for possible incorporation into the next U.S. paper currency redesign. BEP employees will attend national conventions and conferences for disabled persons. At those gatherings, BEP employees will invite blind and visually impaired persons to provide feedback about certain tactile features being considered for inclusion in future United States currency paper designs.

Affected Public: Individuals and Households.

Estimated Burden Hours: 501.

Dated: September 25, 2015.

**Dawn D. Wolfgang,**

Treasury PRA Clearance Officer.

[FR Doc. 2015-24756 Filed 9-29-15; 8:45 am]

BILLING CODE 4810-31-P

**DEPARTMENT OF THE TREASURY****United States Mint****Citizens Coinage Advisory Committee Meeting**

**ACTION:** Notification of Citizens Coinage Advisory Committee public meeting.

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for October 7-8, 2015.

Date: October 7-8, 2015.

Time: October 7 10:30 a.m. to 4:15 p.m.

October 8 9:00 a.m. to 12:30 p.m.  
Location: Conference Room A, United States Mint, 801 9th Street NW., Washington, DC 20220.

*Subject:* Review and discussion of candidate designs for the 2017 and 2018 Native American \$1 Coin Program; the Code Talker Congressional Medals for the Laguna Tribe and the Mohawk; the 2017 America the Beautiful Quarters® Program Coins honoring Effigy Mounds National Monument, Frederick Douglass National Historic Site, Ozark National Scenic Riverways, Ellis Island National Monument, and George Rogers Clark National Historic Park; and the 2017 Lions Club International Century of Service Commemorative Coin; review and discussion of themes for the 2017 Boys Town Centennial Commemorative Coin Program and the 2018 America the Beautiful Quarters® Program Coins honoring Pictured Rocks National Lakeshore, Apostle Island National Lakeshore, Voyageurs National Park, Cumberland Island National Seashore, and Block Island National Wildlife Refuge; and the election of jurors for the upcoming World War I American Veterans Centennial Commemorative Coin competition.

*Interested persons should call the CCAC HOTLINE at (202) 354-7502 for the latest update on meeting time and room location.*

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202-354-7200.

Any member of the public interested in submitting matters for the CCAC’s consideration is invited to submit them by fax to the following number: 202-756-6525.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: September 21, 2015.

**Richard A. Peterson,**

Deputy Director for Manufacturing and Quality, United States Mint.

[FR Doc. 2015-24769 Filed 9-29-15; 8:45 am]

BILLING CODE P

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-NEW]

**Proposed Information Collection (Application for Adaptive Sports Grant) Activity: Comment Request**

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Office of Public and Intergovernmental Affairs (OPIA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed for the Grants for Adaptive Sports Programs for disabled Veterans and Members of the Armed Forces (ASG Program) to provide grant funding to organizations to expand the quantity and quality of adaptive sport activities for disabled Veterans and members of the Armed Forces to participate in physical activity within home communities, and advanced Paralympic and adaptive sport programs at the regional and national levels.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before November 30, 2015.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov); or Joshua McCoy, Office of Public and Intergovernmental Affairs (002C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: [Joshua.McCoy2@va.gov](mailto:Joshua.McCoy2@va.gov). Please refer to “Application for Adaptive Sports Grant, OMB Control No. 2900-NEW” in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Joshua McCoy at (202) 461-0456.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OPIA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OPIA's functions, including whether the information will have practical utility; (2) the accuracy of OPIA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:* Application for Adaptive Sports Grant.

*OMB Control Number:* 2900—NEW.

*Type of Review:* New Collection Request.

*Abstract:* Legal authority for this data collection is found under 38 U.S.C. 521A that authorizes and mandates the collection of data during the grant application, implementation to include quarterly and annual reporting, and closeout phases of the adaptive sports grant. Mandated collection of data allows measurement and evaluation of the adaptive sports grant program, the goal of which is providing adaptive sport opportunities for disabled veterans and members of the Armed Forces.

The information will be used by VA to evaluate multiple criteria to confirm grantee eligibility, to score grantee proposals according to application criteria, and to ensure program efficacy and appropriate use of grant funds. The application information will indicate whether and to what extent a grant program is likely to be successful in meeting the program's intent for providing adaptive sports opportunities for disabled veterans and members of the Armed Forces.

*Affected Public:* Private Sector.

*Estimated Annual Burden:* 2,133 burden hours.

*Estimated Average Burden per Respondent:* 38 CFR 77 Template: 120 minutes; VA Form 10096: 20 minutes.

*Frequency of Response:* Quarterly.

*Estimated Number of Respondents:* 250.

By direction of the Secretary.

**Kathleen M. Manwell,**

*VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2015-24743 Filed 9-29-15; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of Amendment to System of Records.

**SUMMARY:** As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled "Blood Donor Information—VA" (04VA115) as set forth in the **Federal Register** 73 FR 74574. VA is amending the system by revising the System Number, System Location, Categories of Individuals Covered by the System, Category of Records in the System, Authority for Maintenance of the System, Storage, Retrievability, Retention and Disposal, and System Manager and Address. VA is republishing the system notice in its entirety.

**DATES:** Comments on this new system of records must be received no later than October 30, 2015. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the new system will become effective October 30, 2015.

**ADDRESSES:** Written comments concerning the proposed amended system of records may be submitted by: Mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or email to <http://www.Regulations.gov>. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; telephone (704) 245-2492.

**SUPPLEMENTARY INFORMATION:** The system number is changed from 04VA115 to 04VA10P4D to reflect the current organizational alignment.

The System Location has been amended to add that records are located at each of the health care facilities that

currently or previously collected donor blood.

Categories of Individuals Covered by the System has been amended to remove government or private agencies.

The Category of Records in the System is being amended to add other unique identifiers. The sentence VA maintains a record of the individual to whom the blood or blood component was transfused and the medical facility where the product was transfused and/or stored is being removed. Final disposition is being defined as transferred, transfused, or discarded.

The Authority for Maintenance of the System is being amended to replace Title 42, Code of Federal Regulations, section 493.1107 with Title 42, Code of Federal Regulations, section 493.1105.

The Storage section is being amended to add electronic media. This section is also being amended to remove magnetic tape and disk. The Retrievability section is being amended to add other unique identifiers.

The Retention and Disposal section is being amended to remove that paper records and information are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. The new language will state that these records are disposed of in accordance with Section VIII-Laboratory Services of the VHA Records Control Schedule 10-1, Item number 113-31/36.

The System Manager and Address is being amended to remove Strategic Healthcare Group (SHG) (115), and add (10P4D).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, approved this document on September 18, 2015, for publication.

Dated: September 21, 2015.

**Kathleen M. Manwell,**

*Program Analyst, Office of Privacy and Records Management, Department of Veterans Affairs.*

**04VA10P4D**

**SYSTEM NAME:**

Blood Donor Information—VA

**SYSTEM LOCATION:**

Blood Donor records are maintained at each of the Department of Veterans Affairs (VA) health care facilities that currently or previously collected donor blood. Addresses are listed in VA Appendix I of the biennial publication of Privacy Act Issuances.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who donate or have donated blood at a Veterans Health Administration (VHA) health care facility or blood bank for patient care under routine or emergency conditions.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Blood donor records contain sufficient information (*i.e.*, donor name, social security number, or other unique identifier, date of donation, and type of donation, type of components produced by the donation, mandated tests results, and disposition of the blood or blood component) to provide a mechanism to track a donated blood product from the time of donor registration through the final disposition of each component prepared from that donation. For this system of record, final disposition is defined as transferred, transfused, or discarded.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

1. Title 38, United States Code, sections 501(a) and 501(b).
2. Title 21, Code of Federal Regulations, parts 200–299 and parts 600–680.
3. Title 42, Code of Federal Regulations, section 493.1105.

**PURPOSE(S):**

The information and records are used to track the donor medical history, donation interval(s), results of donor testing, report positive or abnormal test results, and blood and/or blood components produced from the donation.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR parts 160 and 164.

1. Disclosure may be made to answer requests for information from Federal, State, local, and tribal medical facilities regarding the source from which blood was received. Such requests may be initiated by a qualified medical practitioner in the event that a donor's or patient's medical condition warrants it.

2. Disclosure may be made of blood availability, location, quantity on hand, and blood type for use by the area donor collection coordinators to answer and fill requests from health care facilities in need of type-specific blood.

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of Title 44 United States Code.

6. A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of title 44 United States Code.

7. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or

subcontractor to perform the services of the contract or agreement.

8. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

10. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any data breach analysis, as the terms are defined in 38 U.S.C. 5727 or provision of credit protection services as provided in 38 U.S.C. 5724.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper documents, electronic media.

**RETRIEVABILITY:**

1. All VA blood donor manual records are indexed by name and social security number or other unique identifier of donor, cross-indexed by blood type.

2. Automated records are indexed by name, unique identifier, social security number, blood type, antibodies and date of last donation.

**SAFEGUARDS:**

1. Access to VA working space and medical record storage areas is restricted to VA employees on a "need to know" basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service. Employees file records and file records of public figures or otherwise sensitive medical record files are stored in separate locked files. Strict control measures are enforced to ensure that disclosure is limited to a "need to know" basis.

2. Strict control measures are enforced to ensure that access to and disclosure

from all records including electronic files are limited to VA employees whose official duties warrant access to those files. The system recognizes authorized employees by a series of individually unique passwords/codes, and the employees are limited to only that information in the file, which is needed in the performance of their official duties.

**RETENTION AND DISPOSAL:**

The records are disposed of in accordance with Section VIII-Laboratory Services of the VHA Records Control Schedule 10-1, Item number 113-31/36, National Archives and Records Administration under the National Archives Job No. N1-15-02-04.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief Consultant, Diagnostic Services, (10P4D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

Individuals seeking information concerning the existence and/or content of a blood donor information record pertaining to themselves must submit a written request or apply in person to the VA health care facility where the

donation occurred. All inquiries must reasonably identify the portion of the blood donor information record desired and the approximate date(s) that service was provided.

Additionally, inquiries should include the individual's full name, social security number, and home address at the time of medical service, if known.

**RECORD ACCESS PROCEDURE:**

Blood donors, patients of VA medical care facilities or duly authorized representatives seeking information regarding access to or who are contesting VA health facility records may write, call or visit the VHA facility where medical service was provided or volunteered.

**CONTESTING RECORD PROCEDURES: (SEE RECORD ACCESS PROCEDURES ABOVE.)****RECORD SOURCE CATEGORIES:**

1. Blood donor.
2. Private hospitals and local blood banks.
3. Private physicians.
4. Non-VA Laboratories.

[FR Doc. 2015-24730 Filed 9-29-15; 8:45 am]

**BILLING CODE P**



# FEDERAL REGISTER

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Part II

## Department of the Interior

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for 49 Species From the Hawaiian Islands; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**[Docket No. FWS-R1-ES-2015-0125;  
4500030113]

RIN 1018-BB07

**Endangered and Threatened Wildlife and Plants; Endangered Status for 49 Species From the Hawaiian Islands****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list 10 animal species, including the band-rumped storm-petrel (*Oceanodroma castro*), the orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*), the anchialine pool shrimp (*Procaris hawaiiiana*), and seven yellow-faced bees (*Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*), and 39 plant species from the Hawaiian Islands as endangered species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to these species.

**DATES:** We will accept comments received or postmarked on or before November 30, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 16, 2015.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R1-ES-2015-0125, 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 Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R1-ES-2015-0125, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

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 *Public Comments*, below, for more information).

*www.regulations.gov*. This generally means that we will post any personal information you provide us (see *Public Comments*, below, for more information).

**FOR FURTHER INFORMATION CONTACT:**

Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Honolulu, HI 96850; by telephone at 808-792-9400; or by facsimile at 808-792-9581. 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**

*Why we need to publish a rule.* Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

*This rulemaking* proposes to list of the 49 species from the Hawaiian Islands as endangered species. These species are candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a proposed listing rule had been precluded by other higher priority listing activities. This proposed rule reassesses all available information regarding status of and threats to the 49 species.

*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. These 49 species are experiencing population-level impacts as the result of the following current and ongoing threats:

- Habitat loss and degradation due to urbanization; nonnative, feral ungulates (hoofed mammals, e.g., pigs, goats, deer, black-tailed deer, mouflon, cattle); nonnative plants; wildfire; and water extraction.
- Predation or herbivory by nonnative, feral ungulates; rats; slugs; ants; and wasps.

- Inadequate existing regulatory mechanisms to prevent the introduction and spread of nonnative plants and animals.

- Stochastic events such as landslides, flooding, drought, and hurricanes.

- Human activities such as recreational use of anchialine pools, dumping of nonnative fish and trash into anchialine pools, and manmade structures and artificial lighting.

- Vulnerability to extinction due to small numbers of individuals and occurrences and lack of regeneration.

- Competition with nonnative plants and nonnative invertebrates.

The effects of climate change are likely to exacerbate the impacts of these threats, and may become a threat in the future.

*We will seek peer review.* We will seek comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

**Information Requested***Public Comments*

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, including land owners and land managers, other concerned governmental agencies, the scientific community, industry, or any other interested parties, concerning this proposed rule. We particularly seek comments concerning:

(1) The biology, range, and population trends of these species, including:

(a) Biological or ecological requirements, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for these species, their habitats, or both.

(2) Factors that may affect the continued existence of these species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing

regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and existing regulations that may be addressing those threats.

(4) Empirical data or other scientific information describing the specific impacts of climate change on the habitat, life history, and/or ecology of these species, for example, the species' biological response, or likely response, to changes in habitat resulting from climate-change related changes in ambient temperature, precipitation, drought, storm severity, or sea level.

(5) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) 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 this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and

Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES**, above). Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

#### Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), during the public comment period we will seek the expert opinions of appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determinations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in one or more of the 49 species' biology, habitat, life-history needs, vulnerability to threats, and other physical or biological factors.

#### Previous Federal Action

All 49 species proposed for listing as endangered species are candidate species (79 FR 72450, December 5, 2014). Candidate species are those taxa for which the U.S. Fish and Wildlife Service (we or Service) has sufficient information on their biological status and threats to propose them for listing under the Act, but for which the development of a listing regulation has been precluded to date by other higher priority listing activities. The current candidate species addressed in this proposed rule include the following 10 animal species: The band-rumped storm-petrel (*Oceanodroma castro*), the orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*), the anchialine pool shrimp (*Procaris hawaiiiana*), and seven yellow-faced bees, *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*; and the following 39 plant species: *Asplenium diellaciniatum* (no common name (NCN)), *Calamagrostis expansa* (Maui reedgrass), *Cyanea kauaulaensis* (NCN), *Cyclosorus* (previously *Christella*) *boydiae* (kupukupu makalii),

*Cyperus neokunthianus* (NCN), *Cyrtandra hematos* (haiwale), *Deparia kaalaana* (NCN), *Dryopteris glabra* var. *pusilla* (hohiu), *Exocarpos menziesii* (heau), *Festuca hawaiiensis* (NCN), *Gardenia remyi* (nanu), *Huperzia stemmermanniae* (NCN), *Hypolepis hawaiiensis* var. *mauiensis* (olua), *Joinvillea ascendens* ssp. *ascendens* (ohe), *Kadua* (previously *Hedyotis*) *fluviatilis* (kamapuaa, pilo), *Kadua haupuensis* (NCN), *Labordia lorenciana* (NCN), *Lepidium orbiculare* (anaunau), *Microlepia strigosa* var. *mauiensis* (NCN), *Myrsine fosbergii* (kolea), *Nothocestrum latifolium* (aiea), *Ochrosia haleakalae* (holei), *Phyllostegia brevidens* (NCN), *Phyllostegia helleri* (NCN), *Phyllostegia stachyoides* (NCN), *Portulaca villosa* (ihi), *Pritchardia bakeri* (Baker's loulu), *Pseudonaphalum sandwicense* var. *molokaiense* (enaena), *Ranunculus hawaiiensis* (makou), *Ranunculus mauiensis* (makou), *Sanicula sandwicensis* (NCN), *Santalum involutum* (iliahi), *Schiedea diffusa* ssp. *diffusa* (NCN), *Schiedea pubescens* (maolioli), *Sicyos lanceoloideus* (anunu), *Sicyos macrophyllus* (anunu), *Solanum nelsonii* (popolo), *Stenogyne kaalae* ssp. *sherffii* (NCN), and *Wikstroemia skottsbergiana* (akia). The candidate status of these species was most recently reaffirmed in the December 5, 2014, Review of Native Species That Are Candidates for Listing as Endangered or Threatened (CNOR) (79 FR 72450).

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals, including 27 of the 49 candidate species listed above, as endangered or threatened under the provisions of the Act. Since then, we have published our annual findings on the May 4, 2004, petition in the CNORs dated May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69034), December 10, 2008 (73 FR 75176), November 9, 2009 (74 FR 57804), November 10, 2010 (75 FR 69222), October 26, 2011 (76 FR 66370), November 21, 2012 (77 FR 69994), November 22, 2013 (78 FR 70104), and December 5, 2014 (79 FR 72450).

#### Background

*Hawaiian Islands Species Addressed in this Proposed Rule*

Table 1A (plants) and Table 1B (animals), below, provide the common name, scientific name, and range (by Hawaiian Island) for the 49 species addressed in this proposed rule.



TABLE 1A—CANDIDATE PLANT SPECIES PROPOSED FOR LISTING AS ENDANGERED SPECIES

Scientific name	Common name	Hawaiian Island
<i>Asplenium diellaciniatum</i>	No common name (NCN)	Kauai.
<i>Calamagrostis expansa</i>	Maui reedgrass	Hawaii, Maui.
<i>Cyanea kauaulaensis</i>	NCN	Maui.
<i>Cyclosorus boydiae</i>	kupukupu makalii	Hawaii (H), Maui, Oahu.
<i>Cyperus neokunthianus</i>	NCN	Maui (H).
<i>Cyrtandra hematos</i>	haiwale	Molokai.
<i>Deparia kaalaana</i>	NCN	Hawaii (H), Maui, Kauai (H).
<i>Dryopteris glabra</i> var. <i>pusilla</i>	hohiu	Kauai.
<i>Exocarpos menziesii</i>	heau	Hawaii, Lanai (H).
<i>Festuca hawaiiensis</i>	NCN	Hawaii, Maui (H).
<i>Gardenia remyi</i>	nanu	Hawaii, Maui, Molokai, Kauai.
<i>Huperzia stemmermanniae</i>	NCN	Hawaii, Maui (H).
<i>Hypolepis hawaiiensis</i> var. <i>mauiensis</i>	olua	Maui.
<i>Joinvillea ascendens</i> ssp. <i>ascendens</i>	ohe	Hawaii, Maui, Molokai, Oahu, Kauai.
<i>Kadua fluviatilis</i>	kamapuaa, pilo	Oahu, Kauai.
<i>Kadua haupuensis</i>	NCN	Kauai (H).
<i>Labordia lorenciana</i>	NCN	Kauai.
<i>Lepidium orbiculare</i>	anaunau	Kauai.
<i>Microlepia strigosa</i> var. <i>mauiensis</i>	NCN	Hawaii, Maui, Oahu.
<i>Myrsine fosbergii</i>	kolea	Oahu, Kauai.
<i>Nothocestrum latifolium</i>	aiea	Maui, Lanai (H), Molokai, Oahu, Kauai (H).
<i>Ochrosia haleakalae</i>	holei	Hawaii, Maui.
<i>Phyllostegia brevidens</i>	NCN	Hawaii (H), Maui.
<i>Phyllostegia helleri</i>	NCN	Kauai.
<i>Phyllostegia stachyoides</i>	NCN	Hawaii (H), Maui, Molokai.
<i>Portulaca villosa</i>	ihi	Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu (H), Kaula (H), Lehua (H), Nihoa (H).
<i>Pritchardia bakeri</i>	Baker's loulu	Oahu.
<i>Pseudognaphalium sandwicense</i> var. <i>molokaiense</i>	enaena	Maui, Lanai (H), Molokai, Oahu (H).
<i>Ranunculus hawaiiensis</i>	makou	Hawaii, Maui (H).
<i>Ranunculus mauiensis</i>	makou	Hawaii (H), Maui, Molokai, Oahu (H), Kauai.
<i>Sanicula sandwicensis</i>	NCN	Hawaii (H), Maui.
<i>Santalum involutum</i>	iliahii	Kauai.
<i>Schiedea diffusa</i> ssp. <i>diffusa</i>	NCN	Maui, Molokai.
<i>Schiedea pubescens</i>	maolioli	Maui, Lanai (H), Molokai.
<i>Sicyos lanceoloideus</i>	anunu	Oahu, Kauai.
<i>Sicyos macrophyllus</i>	anunu	Hawaii, Maui (H).
<i>Solanum nelsonii</i>	popolo	Hawaii, Maui (H), Molokai, Niihau (H), Pearl & Hermes, Kure, Midway, Laysan, Nihoa.
<i>Stenogyne kaalae</i> ssp. <i>sherffii</i>	NCN	Oahu (H).
<i>Wikstroemia skottsbergiana</i>	akia	Kauai.

(H) = historically known from island, but not observed in the past 20 years.

TABLE 1B—CANDIDATE ANIMAL SPECIES PROPOSED FOR LISTING AS ENDANGERED SPECIES

Common name	Scientific name	Hawaiian Island
Band-rumped storm-petrel	<i>Oceanodroma castro</i>	Hawaii, Maui, Kahoolawe (H), Molokai (H), Oahu (H), Kauai, Lehua.
Yellow-faced bee	<i>Hylaeus anthracinus</i>	Hawaii, Maui, Kahoolawe, Lanai (H), Molokai, Oahu.
Yellow-faced bee	<i>Hylaeus assimulans</i>	Maui, Kahoolawe, Lanai, Oahu (H).
Yellow-faced bee	<i>Hylaeus facilis</i>	Maui (H), Lanai (H), Molokai, Oahu.
Yellow-faced bee	<i>Hylaeus hilaris</i>	Maui (H), Lanai (H), Molokai.
Yellow-faced bee	<i>Hylaeus kuakea</i>	Oahu.
Yellow-faced bee	<i>Hylaeus longiceps</i>	Maui, Lanai, Molokai, Oahu.
Yellow-faced bee	<i>Hylaeus mana</i>	Oahu.
Orangeblack Hawaiian damselfly	<i>Megalagrion xanthomelas</i>	Hawaii, Maui, Lanai, Molokai, Oahu, Kauai (H).
Anchialine pool shrimp	<i>Procaris hawaiana</i>	Hawaii, Maui.

(H) = Historically known from the island, but not observed in the last 20 years

The Hawaiian Islands

The State of Hawaii consists of eight “main” larger Hawaiian Islands, and a long chain of older, eroded islands and atolls referred to as the Northwestern Hawaiian Islands (NWHI). These islands are formed as the Pacific plate passes

over a volcanic “hot spot,” an ongoing process over the last 40 million years (Clague *in* Juvik and Juvik 1998, p. 37). The Pacific plate is currently moving northwestward at about 4 inches (in) (9 centimeters (cm)) per year (Clague *in* Juvik and Juvik 1998, p. 38). Each island was formed from eruptions of one or

more volcanoes, over several hundred thousand years, with several million years passing before activity ended and the volcano became extinct (Clague *in* Juvik and Juvik 1998; pp. 38–39). Haleakala volcano, forming east Maui, last erupted in 1790, and is considered dormant. Kilauea volcano, on the island

of Hawaii, has been erupting continuously since 1983. Loihi Seamount, at 3,200 feet (ft) (975 meters (m)) below sea level, and 19 miles (mi)

(29 kilometers (km)) off Hawaii Islands' southeast coast, has infrequent eruptions, earthquake swarms nearly every year, and is destined to emerge as

an island within the next 200,000 years (Clague *in* Juvik and Juvik 1998, pp. 45–46).

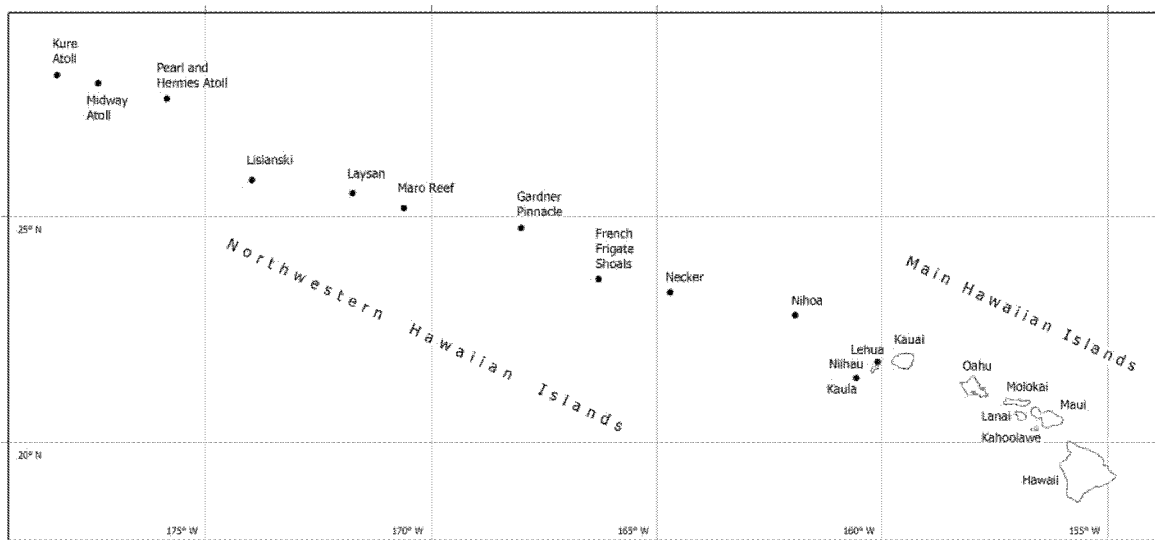


Figure 1. The Hawaiian Islands.

The Northwestern Hawaiian Islands extend more than 1,000 mi (1,600 km) beyond Kauai and include (from southeast to northwest) Nihoa Island (171 acres (ac) (69 hectares (ha))), Necker Island (46 ac (19 ha)), French Frigate Shoals (an atoll with multiple islets totalling 0.1 square (sq) mi (0.2 sq km)), Gardner Pinnacles (2 islets, 6 ac (2.5 ha) with 940 sq mi (2,435 sq km) of surrounding reef), Maro Reef (mostly submerged), Laysan Island (1,016 ac (411 ha)), Lisianski Island (364 ac (147 ha)), Pearl and Hermes Atoll (submerged reef with 7 sandy islets totaling 89 ac (36 ha)), Midway Atoll (2.5 sq mi (6 sq km), consisting of three islands: Sand, Eastern, and Spit), and Kure Atoll (4 sq mi (10 sq km), with two islands: Green and Sand, totaling 213 ac (86 ha)) (Juvik and Juvik 1998, p. 304). All of the NWHI except Kure Atoll are within the U.S. Fish and Wildlife Service's Hawaiian Islands National Wildlife Refuge or Midway Atoll National Wildlife Refuge. In 2006, all of the NWHI were designated as the Papahānaumokuākea Marine National Monument (Monument); in 2010, the Monument was inscribed as a World Heritage Site. The Monument is managed in partnership by the Department of Commerce's National Oceanic and Atmospheric Administration, the Department of the Interior, and the State of Hawaii.

The island of Kauai, the northernmost of the eight main Hawaiian Islands, is 552 sq mi (1,430 sq km) in area (Foote *et al.* 1972, p. 3). Kauai's highest elevations are over 5,000 ft (1,500 m), and the island's summit is one of the wettest areas on earth, receiving over 400 in (11,278 millimeters (mm)) of annual rainfall. The island is over 5 million years old, and erosion has created dramatic canyons (Waimea Canyon) and cliffs on the Na Pali Coast. Kauai has been severely affected by hurricanes, most recently by Hurricane Iniki in 1992. The privately-owned island of Niihau (43 mi (69 km) southwest of Kauai) was formed from a single volcanic shield, is slightly younger than Kauai, and has unique geographic features such as intermittent lakes. Niihau is relatively arid (20 to 40 in annual rainfall) because it lies in the rain shadow of Kauai and lacks the elevation needed to intercept moist air carried by the prevailing northeast trade winds, which would generate rain if forced to sufficiently high altitude by mountains (orographic rainfall) (Stearns and McDonald 1947, p. 31). However, Kona storms (storms from a southerly direction) provide some rainfall. Although only 1,280 ft (390 m) high, there are precipitous sea cliffs on the northern coast. Lehua Island (geologically part of Niihau), a crescent-shaped tuff cone (284 ac (115 ha)), is a

Hawaii State Seabird Sanctuary (Juvik and Juvik 1998, pp. 3–6). Kaula Island (158 ac (64 ha)), also known as Kaula Rock, is small, crescent-shaped, 550 ft (167 m) high, and lies southwest of Niihau. Currently, Kaula is used for gunnery and inert ordnance target practice by the U.S. Navy (Harrison 1990, p. 193; Hawaii Range Complex FEIS 2008, p. 3–124).

The island of Oahu (600 sq mi (1,557 sq km)), the third oldest and third largest of the eight main Hawaiian Islands, is located southeast of Kauai and northwest of Molokai (Foote *et al.* 1972, p. 19; Juvik and Juvik 1998, p. 7). Two shield volcanoes ceased erupting about 1 to 2 million years ago, forming two mountain ranges, the western Waianae range and the eastern Koolau range, with a central plateau connecting them. These mountain ranges are oriented perpendicular to the trade winds, so that distinctive leeward and windward climates result, with the arid Waianae range in the rain shadow of the Koolau range, which receives most of the orographic rainfall (Juvik and Juvik 1998, p. 7; Wagner *et al.* 1999, p. 39). The maximum elevation on Oahu is at the summit of the Waianae Mountains (4,025 ft (1,225 m)) (Wagner *et al.* 1999, pp. 39–41). Rainfall on the island ranges from less than 20 in (500 mm) to more than 250 in (6,350 mm) per year. This island supports the largest population in

the State, nearly one million people (World Population Review 2015, in litt.). The flora and fauna of Oahu have undergone extreme alterations because of past and present land use and other activities.

The island of Molokai (260 sq mi (673 sq km)), the fifth largest of the eight main Hawaiian Islands, lies southeast of Oahu. The island is formed from three shield volcanoes, resulting in the east and west Molokai Mountains and the Kalaupapa Peninsula (Juvik and Juvik 1998, pp. 11, 13). The taller and larger east Molokai Mountain rises 4,970 ft (1,514 m) above sea level and comprises roughly 50 percent of the island's area (Juvik and Juvik 1998, pp. 11). Precipitous cliffs line the windward coast and deep valleys dissect the coastal area. Annual rainfall on the windward side of the island is 75 to more than 150 in (200 to more than 375 cm) (Giambelluca and Schroeder 1998, p. 50).

The island of Lanai (140 sq mi (364 sq km)), the sixth largest of the eight main Hawaiian Islands, is located southeast of Molokai and southwest of west Maui. Lanai was formed from a single shield volcano and is located in the rain shadow of the west Maui Mountains (Clague *in* Juvik and Juvik 1998, p. 42). Lanaihale is the highest point at 3,366 ft (1,027 m), with annual rainfall on the summit of 30 to 40 in (76 to 100 cm). Annual rainfall is much less, 10 to 20 in (25 to 50 cm), over the rest of the island (Giambelluca and Schroeder 1998, p. 56).

The island of Maui (729 sq mi (1,888 sq km)), the second largest of the eight main Hawaiian Islands, is located southeast of Molokai and northwest of Hawaii Island (Juvik and Juvik 1998, p. 14). It arose from two shield volcanoes resulting in formation of the west Maui Mountains, which are about 1.3 million years old, and the east Maui Mountains (Haleakala volcano), about 750,000 years old (Juvik and Juvik 1998, p. 14), which are connected by the central Maui isthmus. The highest point on west Maui is Puu Kukui at 5,788 ft (1,764 m), which receives 400 in (1,020 cm) rainfall per year (Juvik and Juvik 1998, p. 14; Wagner *et al.* 1999, p. 41). East Maui's Haleakala volcano last erupted only 200 years ago and is considered dormant (Juvik and Juvik 1998, p. 14). Haleakala is higher in elevation (10,023 ft (3,055 m)) than Puu Kukui, and since it is geologically younger, lacks the diverse vegetation of the older west Maui Mountains. Annual rainfall is about 35 in (89 cm) at the highest elevations, above the trade wind inversion, resulting in a dry cinder desert (Giambelluca and Schroeder

1998, p. 55). Lower elevations on windward east Maui receive as much as 404 in (1,026 cm) annual rainfall (Giambelluca *et al.* 2013, p. 1).

The island of Kahoolawe (45 sq mi (116 sq km)), the smallest of the eight main Hawaiian Islands, is located south of east Maui, and was formed from a single shield volcano (Clague *in* Juvik and Juvik 1998, p. 42; Juvik and Juvik 1998, pp. 7, 16). The maximum elevation on Kahoolawe is 1,476 ft (450 m) at the summit of Puu O Moaula Nui (Juvik and Juvik 1998, pp. 15–16). Kahoolawe is in the rain shadow of Haleakala and is arid, receiving no more than 25 in (65 cm) of rainfall annually (Juvik and Juvik 1998, p. 16; Mitchell *et al.* 2005, p. 6–66). The island was inhabited as early as 400 A.D., with small fishing villages established along the coast. It was used briefly as a penal colony, for grazing by sheep and goats, and for cattle ranching, until 1941, when the United States declared martial law throughout Hawaii, leading to the use of the island as a training ground and bombing range (Kahoolawe Island Reserve Commission (KIRC) 2015, in litt.). In 1990, the island was placed under the administration of the Kahoolawe Island Reserve Commission. The grazing, ranching, and bombing activities had a serious impact on the environment, resulting in substantial loss of soil through accelerated erosion (KIRC 2015, in litt.). After an extensive 10-year cleanup by the U.S. Navy, unexploded ordnance remains on one-third of the island, including surrounding waters (KIRC 2015, in litt.).

The island of Hawaii, the largest, highest, and youngest of the eight main Hawaiian Islands, is also the easternmost and southernmost island in the chain. At 4,038 sq mi (10,458 sq km), it comprises approximately two-thirds of the land area of the State of Hawaii, giving rise to its common name, the "Big Island." Five large shield volcanoes make up the island: Mauna Kea at 13,796 ft (4,205 m) and Kohala at 5,480 ft (1,670 m), both extinct volcanoes; Hualalai at 8,270 ft (2,520 m), a dormant volcano; and Mauna Loa (13,677 ft (4,169 m)) and Kilauea (4,093 ft (1,248 m)), both active volcanoes (McDonald *et al.* 1990, pp. 345–379; 59 FR 10305, March 4, 1994; U.S. Geological Survey (USGS) 2012, pp. 1–2). Hawaii Island has a greater range of climatic zones than any other island in the State, with the highest and lowest temperatures, and coastal to alpine ecosystems (Juvik and Juvik 1998, p. 22; Wagner *et al.* 1999, p. 38; The Nature Conservancy of Hawaii (TNCH) 2007). The windward slopes receive the most rainfall, but orographic effects cause

drier conditions to prevail in the leeward saddle area and in high-elevation areas. The west, or leeward, side of the island (Kona) is in the rain shadow of the mountains, but does receive convection-driven rainfall in the afternoons, resulting in greater than expected annual rainfall (50 to more than 100 in (127 to 254 cm)), which supports mesic forest (Mitchell *et al.* 2005, pp. 6–71–6–91).

### **An Ecosystem-Based Approach To Assessing the Conservation Status of the 49 Species in the Hawaiian Islands**

In this document, we have analyzed the threats to each of the 49 species individually to determine the appropriate status of each species on its own merits under the Act. However, because many of these species, and particularly those that share the same habitat types (ecosystems), share a similar suite of threats, we have organized the 49 species addressed in this proposed rule by common ecosystem for efficiency, to reduce repetition for the reader, and to reduce publication costs.

In addition, as an ancillary benefit of assessing the threats to the 49 species using shared ecosystems as an organizational tool, we have laid the groundwork for better addressing threats to these species, should they be listed. In the Hawaiian Islands, native species occurring in the same habitat types depend on many of the same physical and biological features and the successful functioning of specific ecosystems to survive. Because species that share ecosystems face a suite of shared threats, managing or eliminating these threats holistically at an ecosystem level is more cost effective and should lead to better resource protection for all native species. This approach is in accord with the primary stated purpose of the Act (see section 2(b)): "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved."

On all the main Hawaiian Islands, vegetation on land with rich soils was cultivated and altered by the early Hawaiians and, more recently, converted to commercial agricultural and urban use (Gagne and Cuddihy 1999, p. 45). Intentional and inadvertent introduction of alien plant and animal species has also contributed to the reduction in range of native vegetation. Throughout this proposed rule, the terms "alien," "feral," "nonnative," and "introduced" all refer to species that are not native to the Hawaiian Islands. Most of the candidate species included in this proposed rule persist on steep slopes,

precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented urbanization and agricultural development, or where inaccessibility has limited

encroachment by nonnative plant and animal species.

Each of the 49 Hawaiian Islands species is found in one or more of the 11 ecosystems types described in this

proposed rule: anchialine pool, coastal, lowland dry, lowland mesic, lowland wet, montane wet, montane mesic, montane dry, subalpine, dry cliff, and wet cliff (see Table 2).

TABLE 2—THE 49 HAWAIIAN ISLANDS SPECIES AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Species	Island										
	Hawaii	Maui	Kahoolawe	Lanai	Molokai	Oahu	Kauai	Niihau	Lehua	Kaula	NWHI
<b>Plants:</b>											
<i>Asplenium diellaciniatum</i>							MM				
<i>Calamagrostis expansa</i>	MW	MW									
<i>Cyanea kauaulaensis</i>		LW									
<i>Cyclosorus boydiae</i>	LW	LW, MW				MW					
<i>Cyperus neokunthianus</i>		LW									
<i>Cyrtandra hematos</i>					MW						
<i>Deparia kaalaana</i>	LM, LW	LM, LW					LM, LW				
<i>Dryopteris glabra</i> var. <i>pusilla</i>							MW				
<i>Exocarpos menziesii</i>	LM			LM							
	MM										
	MD										
<i>Festuca hawaiiensis</i>	MD	MD									
<i>Gardenia remyi</i>	LM, LW	LW			LM, LW		LM, LW				
<i>Huperzia stemmermanniae</i>	MW	MW									
<i>Hypolepis hawaiiensis</i> var. <i>mauiensis</i>		MW									
<i>Joinvillea ascendens</i> ssp. <i>ascendens</i>	LW, MW	LW MW			LW, MW	LW, MW	LM, MW, MM				
<i>Kadua fluviatilis</i>						LW	LM				
<i>Kadua haupuensis</i>							LM				
<i>Labordia lorenciana</i>							MM				
<i>Lepidium orbiculare</i>							LM				
<i>Microlepia strigosa</i> var. <i>mauiensis</i>	MW, MM	MW					LM				
<i>Myrsine fosbergii</i>							LM, LW	LM, LW, MW			
<i>Nothoecstrum latifolium</i>		LD, LM, DC		LD, LM, DC	LM	LD, LM, DC	DC				
<i>Ochrosia haleakalae</i>	LM, LW	LM, MM, DC									
<i>Phyllostegia brevidens</i>	MW	LW, WC									
<i>Phyllostegia helleri</i>							LW, MW, WC				
<i>Phyllostegia stachyoides</i>	MW, MM	MW, MM			MW						
<i>Portulaca villosa</i>	C, LD, MD	C, LD	C, LD	LD	LD	C, LD			C	C	C
<i>Pritchardia bakeri</i>						LM					
<i>Pseudognaphalium sandwicensium</i> var. <i>molokaiense</i>		C	C	C	C	C					
<i>Ranunculus hawaiiensis</i>	MM, MD, SA	SA									
<i>Ranunculus mauiensis</i>	MM, MD	MW, MM, WC			MW, MM, WC	MW	MW, MM				
<i>Sanicula sandwicensis</i>	MM, MD, SA	MM, SA									
<i>Santalum involutum</i>							LM, LW				
<i>Schiedea diffusa</i> ssp. <i>diffusa</i>		LW, MW			MW						
<i>Schiedea pubescens</i>		LW, MM, WC		WC	LW, MW, WC						
<i>Sicyos lanceoloideus</i>						LM, DC	LM, MM				
<i>Sicyos macrophyllus</i>	MM, MD	MW									
<i>Solanum nelsonii</i>	C	C			C			C			C
<i>Stenogyne kaalae</i> ssp. <i>sherffii</i>						LW					
<i>Wikstroemia skottsbergiana</i>							LW				
<b>Animals:</b>											
Band-rumped storm-petrel ( <i>Oceanodroma castro</i> )	DC	DC, WC	C		C	C	DC, WC		C		
Yellow-faced bee ( <i>Hylaeus anthracinus</i> )	C, LD	C, LD	LD	LD	C	C					
Yellow-faced bee ( <i>Hylaeus assimulans</i> )		C, LD	C	LD		C, LD					
Yellow-faced bee ( <i>Hylaeus facilis</i> )		C, LM	LD	LD, LM	C	C, LD, LM					
Yellow-faced bee ( <i>Hylaeus hilaris</i> )		C, LD		C	C						
Yellow-faced bee ( <i>Hylaeus kuakea</i> )						LM					
Yellow-faced bee ( <i>Hylaeus longiceps</i> )		C, LD		C, LD	C, LD	C					
Yellow-faced bee ( <i>Hylaeus mana</i> )						LM					
Orangeblack Hawaiian damselfly ( <i>Megalagrion xanthomelas</i> )	AP, C*	AP, LD*		C,* LM*	C,* LD*	LM*	C* LD,* LM*				
Anchialine pool shrimp ( <i>Procaris hawaiana</i> )	AP	AP									

C = Coastal ecosystem; MW = Montane Wet ecosystem; DC = Dry Cliff ecosystem; LD = Lowland Dry ecosystem; MM = Montane Mesic ecosystem; WC = Wet Cliff ecosystem; LM = Lowland Mesic ecosystem; MD = Montane Dry ecosystem; AP = Anchialine Pool ecosystem; LW = Lowland Wet ecosystem; SA = Subalpine ecosystem; \* = with species-specific water pool or pond.

**Hawaiian Islands Ecosystems**

Eleven distinct ecosystems (anchialine pool, coastal, lowland dry, lowland mesic, lowland wet, montane mesic, montane wet, montane dry, subalpine, dry cliff, and wet cliff) on the main eight Hawaiian Islands and NWHI currently harbor or historically harbored one or more of the 49 species under consideration for listing as endangered

in this proposed rule. These ecosystems are described below.

**Anchialine Pool**

The anchialine pool ecosystem is found on Oahu, Molokai, Maui, Kahoolawe, and Hawaii Island. Anchialine pools are land-locked bodies of water that have indirect underground connections to the sea and show tidal fluctuations in water level. These pools

are mixohaline (brackish), with salinities typically ranging from 2 parts per thousand (ppt) to concentrations just below that of sea water (32 ppt), although some pools are recorded as having salinities as high as 41 ppt (Maciolek 1983, pp. 607–612; Brock et al. 1987, p. 200). Because all anchialine pools occur within coastal areas, they are technically part of the coastal ecosystem (see below) with the same

climate conditions and many of the same applicable and overlapping habitat threats. However, we are addressing this ecosystem separately because of the uniqueness of the anchialine pools and the biota that occurs within them.

Over 80 percent of the State's anchialine pools are found on the island of Hawaii, with a total of approximately 600 to 650 pools distributed over 130 sites along all but the island's northernmost and steeper northeastern shorelines. On east Maui, eight locations along the north and south coasts have anchialine pools (some containing more than one pool, e.g., the anchialine pool system at Ahihi-Kinau Natural Area Reserve (NAR) consists of dozens of pools) (The Nature Conservancy (TNC) 2009, pp. 2–3). Characteristic animal species within the anchialine pool ecosystem include crustaceans (e.g., shrimps, prawns, amphipods, and isopods), molluscs (e.g., snails, sea slugs, and bivalves), and other invertebrates adapted to the pools' surface and subterranean habitats (TNC 2009, pp. 1–3). Generally, vegetation within the pools consists of various types of algal forms (blue-green, green, red, and golden-brown). The majority of Hawaii's anchialine pools occur in bare or sparsely vegetated lava fields, although some pools occur in areas with various ground cover, shrub, and tree species (Chai *et al.* 1989, pp. 2–24; Brock 2004, p. 35). The anchialine pool shrimp, *Procaris hawaiiana*, and the orangeblack Hawaiian damselfly, *Megalagrion xanthomelas*, which are proposed for listing as endangered species in this rule, are reported currently or historically from this ecosystem on Maui and Hawaii Island (Kensley and Williams 1986, pp. 417–437; Hawaii Biodiversity and Mapping Program (HBMP) 2010).

#### Coastal

The coastal ecosystem is found on all of the main Hawaiian Islands and the NWHI, with the highest native species diversity in the least populated areas and associated islets. The coastal ecosystem includes mixed herblands, shrublands, and grasslands, from sea level to 980 ft (300 m) elevation, generally within a narrow zone above the influence of waves to within 330 ft (100 m) inland, sometimes extending farther inland if strong prevailing onshore winds drive sea spray and sand dunes into the lowland zone (TNCH 2006). The coastal ecosystem is typically dry, with annual rainfall of less than 20 in (50 cm); however, windward rainfall may be high enough (up to 40 in (100 cm)) to support mesic-associated and sometimes wet-

associated vegetation (Gagne and Cuddihy 1999, pp. 54–66). Biological diversity is low to moderate in this ecosystem, but may include some specialized plants and animals such as nesting seabirds, the endangered plant *Sesbania tomentosa* (ohai) (TNCH 2006), and endangered birds in the NWHI (e.g., the Nihoa finch (*Telespyza ultima*) on Nihoa Island). The following plants proposed as endangered in this rule are reported currently or historically from this ecosystem:

*Portulaca villosa* (Hawaii Island, Maui, Kahoolawe, Oahu, Lehua, and Kaula), *Pseudognaphalium sandwicense* var. *molokaiense* (Maui, Lanai, Molokai, and Oahu), and *Solanum nelsonii* (Hawaii Island, Maui, Molokai, Niihau, and the NWHI) (TNCH 2007; HBMP 2010). The following animals proposed as endangered in this rule are reported currently or historically from this ecosystem: the band-rumped storm-petrel (Kahoolawe, Molokai, Oahu, and Lehua); orangeblack Hawaiian damselfly (Hawaii Island, Lanai, and Molokai); the yellow-faced bees *Hylaeus anthracinus* (Hawaii Island, Maui, Molokai, and Oahu), *H. assimulans* (Maui, Kahoolawe, and Oahu), *H. facilis* (Maui, Molokai, and Oahu), *H. hilaris* (Maui, Lanai, and Molokai), and *H. longiceps* (Maui, Lanai, Molokai, and Oahu).

#### Lowland Dry

The lowland dry ecosystem is found on all the main Hawaiian Islands and includes shrublands and forests generally below 3,300 ft (1,000 m) elevation that receive less than 50 in (130 cm) annual rainfall, or are in otherwise prevailing dry substrate conditions that range from weathered reddish silty loams to stony clay soils, rocky ledges with very shallow soil, or relatively recent little-weathered lava (Gagne and Cuddihy 1999, p. 67). Areas consisting of predominantly native species in the lowland dry ecosystem are now rare and are best represented on the leeward sides of the islands (Gagne and Cuddihy 1999, p. 67; TNCH 2006). Native biological diversity is low to moderate in this ecosystem, and includes specialized animals and plants such as the Hawaiian owl (pueo) and *Santalum ellipticum* (iliahialoe, coastal sandalwood) (Wagner *et al.* 1999, pp. 1220–1221; TNCH 2006). The following plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Nothocestrum latifolium* (Maui, Lanai, and Oahu) and *Portulaca villosa* (Hawaii Island, Maui, Kahoolawe, Lanai, Molokai, and Oahu). The following animals proposed for listing as endangered in this rule

reported currently or historically from this ecosystem are: the orangeblack Hawaiian damselfly (Maui, Molokai), the yellow-faced bees *Hylaeus anthracinus* (Hawaii Island, Maui, Kahoolawe, and Lanai), *H. assimulans* (Maui, Lanai, and Oahu), *H. facilis* (Lanai and Oahu), *H. hilaris* (Maui), and *H. longiceps* (Maui, Lanai, and Molokai) (TNCH 2007; HBMP 2010).

#### Lowland Mesic

The lowland mesic ecosystem is found on all the main Hawaiian Islands except Kahoolawe and Niihau, and includes a variety of grasslands, shrublands, and forests, generally below 3,300 ft (1,000 m) elevation, that receive between 50 and 75 in (130 and 190 cm) annual rainfall (Gagne and Cuddihy 1999, p. 75; TNCH 2006). Native biological diversity is high in this system (TNCH 2006). The following plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Deparia kaalaana* (Hawaii Island, Maui, and Kauai), *Exocarpos menziesii* (Hawaii Island and Lanai), *Gardenia remyi* (Hawaii Island, Molokai, and Kauai), *Joinvillea ascendens* ssp. *ascendens* (Kauai), *Kadua fluviatilis* (Kauai), *K. haupuensis* (Kauai), *Lepidium orbiculare* (Kauai), *Microlepia strigosa* var. *mauiensis* (Oahu), *Myrsine fosbergii* (Oahu and Kauai), *Nothocestrum latifolium* (Maui, Lanai, Molokai, and Oahu), *Ochrosia haleakalae* (Hawaii Island and Maui), *Pritchardia bakeri* (Oahu), *Santalum involutum* (Kauai), and *Sicyos lanceoloideus* (Oahu and Kauai) (TNCH 2007; HBMP 2010). The following animals proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: the orangeblack Hawaiian damselfly (Lanai, Oahu), and the yellow-faced bees *Hylaeus facilis* (Maui, Lanai, and Oahu), *H. kuakea* (Oahu), and *H. mana* (Oahu).

#### Lowland Wet

The lowland wet ecosystem is generally found below 3,300 ft (1,000 m) elevation on the windward sides of the main Hawaiian Islands, except for Kahoolawe and Niihau (Gagne and Cuddihy 1999, p. 85; TNCH 2006). These areas include a variety of wet grasslands, shrublands, and forests that receive greater than 75 in (190 cm) annual rainfall, or are in otherwise wet substrate conditions (TNCH 2006). This system is best developed in wet valleys and slopes on Kauai, Oahu, Molokai, Maui, and Hawaii Island (TNCH 2006). Native biological diversity is high in this system (TNCH 2006). The following

plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Cyanea kauaulaensis* (Maui), *Cyclosorus boydiae* (Hawaii Island and Maui), *Cyperus neokunthianus* (Maui), *Deparia kaalaana* (Hawaii Island, Maui, and Kauai), *Gardenia remyi* (Hawaii Island, Maui, Molokai, and Kauai), *Joinvillea ascendens* ssp. *ascendens* (Hawaii Island, Maui, Molokai, and Oahu), *Kadua fluviatilis* (Oahu), *Myrsine fosbergii* (Oahu and Kauai), *Ochrosia haleakalae* (Hawaii Island), *Phyllostegia brevidens* (Maui), *P. helleri* (Kauai), *Santalum involutum* (Kauai), *Schiedea diffusa* ssp. *diffusa* (Maui), *S. pubescens* (Maui and Molokai), *Stenogyne kaalae* ssp. *sherffii* (Oahu), and *Wikstroemia skottsbergiana* (Kauai) (TNCH 2007; HBMP 2010).

#### Montane Wet

The montane wet ecosystem is composed of natural communities (grasslands, shrublands, forests, and bogs) at elevations between 3,300 and 6,500 ft (1,000 and 2,000 m), in areas where annual rainfall is greater than 75 in (190 cm) (TNCH 2006). This system is found on all of the main Hawaiian Islands except Niihau and Kahoolawe (TNCH 2006). Native biological diversity is moderate to high (TNCH 2006). The following plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Calamagrostis expansa* (Hawaii Island and Maui), *Cyclosorus boydiae* (Maui and Oahu), *Cyrtandra hematos* (Molokai), *Dryopteris glabra* var. *pusilla* (Kauai), *Huperzia stemmermanniae* (Hawaii Island and Maui), *Hypolepis hawaiiensis* var. *mauiensis* (Maui), *Joinvillea ascendens* ssp. *ascendens* (Hawaii Island, Maui, Molokai, Oahu, and Kauai), *Microlepia strigosa* var. *mauiensis* (Hawaii Island and Maui), *Myrsine fosbergii* (Kauai), *Phyllostegia brevidens* (Hawaii Island), *P. helleri* (Kauai), *P. stachyoides* (Hawaii Island, Maui, and Molokai), *Ranunculus mauiensis* (Maui, Molokai, Oahu, and Kauai), *Schiedea diffusa* ssp. *diffusa* (Maui and Molokai), *S. pubescens* (Molokai), and *Sicyos macrophyllus* (Maui) (TNCH 2007; HBMP 2010).

#### Montane Mesic

The montane mesic ecosystem is composed of natural communities (forest and shrublands) found at elevations between 3,300 and 6,500 ft (1,000 to 2,000 m), in areas where annual rainfall is between 50 and 75 in (130 and 190 cm), or are in otherwise mesic substrate conditions (TNCH

2006). This system is found on Kauai, Molokai, Maui, and Hawaii Island (Gagne and Cuddihy 1999, pp. 97–99; TNCH 2007). Native biological diversity is moderate, and this habitat is important for Hawaiian forest birds (Gagne and Cuddihy 1999, pp. 98–99; TNCH 2006). The following plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Asplenium diellaciniatum* (Kauai), *Exocarpos menziesii* (Hawaii Island), *Joinvillea ascendens* ssp. *ascendens* (Kauai), *Labordia lorenciana* (Kauai), *Microlepia strigosa* var. *mauiensis* (Hawaii Island), *Ochrosia haleakalae* (Maui), *Phyllostegia stachyoides* (Hawaii Island and Maui), *Ranunculus hawaiiensis* (Hawaii Island), *R. mauiensis* (Hawaii Island, Maui, Molokai, Kauai), *Sanicula sandwicensis* (Hawaii Island and Maui), *Schiedea pubescens* (Maui), *Sicyos lanceoloideus* (Kauai), and *S. macrophyllus* (Hawaii Island) (TNCH 2007; HBMP 2010).

#### Montane Dry

The montane dry ecosystem is composed of natural communities (one grassland type, shrublands, forests) found at elevations between 3,300 and 6,500 ft (1,000 and 2,000 m), in areas where annual rainfall is less than 50 in (130 cm), or are in otherwise dry substrate conditions (TNCH 2006). This system is found on Maui and Hawaii Island, and is best developed in the saddle region between mountains on Hawaii Island, with rich native plant communities (Gagne and Cuddihy 1999, pp. 93–97; TNCH 2007). The following plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Exocarpos menziesii* (Hawaii Island), *Festuca hawaiiensis* (Hawaii Island and Maui), *Portulaca villosa* (Hawaii Island), *Ranunculus hawaiiensis* (Hawaii Island), *R. mauiensis* (Hawaii Island), *Sanicula sandwicensis* (Hawaii Island), and *Sicyos macrophyllus* (Hawaii Island) (TNCH 2007; HBMP 2010).

#### Subalpine

The subalpine ecosystem is composed of natural communities (grasslands, shrublands, forests) at elevations between 6,500 and 9,800 ft (2,000 and 3,000 m), in areas where annual rainfall is seasonal, between 15 and 40 in (38 and 100 cm), or are in otherwise dry substrate conditions (TNCH 2006). Native biodiversity is not high in this system, but contains specialized invertebrates and plants adapted to dry, exposed conditions (Gagne and Cuddihy 1999, p. 107). Because rainfall is low in

this area, fog drip is an important moisture source (Gagne and Cuddihy 1999, p. 110). The following plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Ranunculus hawaiiensis* (Hawaii Island and Maui) and *Sanicula sandwicensis* (Hawaii Island and Maui) (TNCH 2007; HBMP 2010).

#### Dry Cliff

The dry cliff ecosystem is composed of vegetation communities occupying steep slopes (greater than 65 degrees) in areas that receive less than 75 in (190 cm) of annual rainfall, or are in otherwise dry substrate conditions (TNCH 2006). This ecosystem is found on all the main Hawaiian Islands except Niihau, and is best represented along the leeward slopes of Lanai, Maui, the Waianae Mountains of Oahu, and Kauai (TNCH 2006). A variety of shrublands occur within this ecosystem (TNCH 2006). Native biological diversity is low to moderate (TNCH 2006). The following plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Nothoctrum latifolium* (Maui, Lanai, Oahu, and Kauai), *Ochrosia haleakalae* (Maui), and *Sicyos lanceoloideus* (Oahu) (TNCH 2007; HBMP 2010). The band-rumped storm-petrel is reported currently or historically from the dry cliff ecosystem on Hawaii Island, Maui, and Kauai (TNCH 2007).

#### Wet Cliff

The wet cliff ecosystem is generally composed of shrublands on near-vertical slopes (greater than 65 degrees) in areas that receive more than 75 in (190 cm) annual rainfall, or are in otherwise wet substrate conditions (TNCH 2006). This system is found on all the main islands except for Niihau and Kahoolawe (TNCH 2006). Native biological diversity is low to moderate (TNCH 2006). The following plants proposed for listing as endangered in this rule reported currently or historically from this ecosystem are: *Phyllostegia brevidens* (Maui), *P. helleri* (Kauai), *Ranunculus mauiensis* (Maui and Molokai), and *Schiedea pubescens* (Maui, Lanai, and Molokai) (TNCH 2007; HBMP 2010). The band-rumped storm-petrel is reported currently or historically from the wet cliff ecosystem on Maui and Kauai (TNCH 2007).

#### Description of the 49 Hawaiian Islands Species

The Act directs us to determine whether any species is an endangered species or a threatened species because

of any factors affecting its continued existence. We summarize, below, the biological condition of, and factors affecting, each of the 49 species to assess whether each species should be listed as endangered or threatened.

The summaries below include only brief lists of factors affecting each species. Each of these factors is fully considered, in detail, in the section “Summary of Factors Affecting the 49 Species Proposed for Listing,” below.

#### *Climate Change Vulnerability Assessment for Hawaiian Plants*

Twenty-eight of the plant species proposed for listing and described below were evaluated for their vulnerability to climate change as part of a comprehensive vulnerability analysis of native Hawaiian plants, as indicated in Table 3 (Fortini *et al.* 2013, 134 pp.). This analysis used “climate envelopes” (geographic ranges encompassing suitable climate for each species, as defined by temperature and moisture (Fortini *et al.* 2013, p. 17)) developed from field records by Price *et al.* (2012) to project each species’ potential range in the year 2100. The location and spatial extent of these future ranges, and their overlap with current ranges, allows calculation of a vulnerability score. Estimates of vulnerability based on climate-envelope modeling are conservative in that they do not take into account potential changes in interspecific interactions such as predation, disease, pollination, or competition. This study provides a landscape- or island-scale picture of potential climate-change vulnerability of Hawaiian plants; the results are less clear at finer spatial scales (Fortini *et al.* p. 42). However, all 28 of these plant species scored moderately or highly vulnerable in the analysis because of their relative inability to exhibit the possible responses necessary for persistence under projected climate change (Fortini *et al.* 2013, 134 pp.). These responses include the migration response (dispersal and establishment in new areas beyond their current distribution), the microrefugia response (persistence in topographically complex areas that are less exposed), evolutionary adaptation response (morphological changes in response to the changing environment), and toleration response (adaptation to environmental changes through phenotypic plasticity). Therefore, if the species is moderately to highly vulnerable, then the likelihood of its persistence with the impacts of climate change is low, and the environmental changes associated with climate change are likely to become a threat to these

species’ continued existence in the future.

#### *Plants*

*Asplenium diellaciniatum* (no common name (NCN)), a terrestrial or epipetric (growing on rocks) fern in the spleenwort family (Aspleniaceae), is endemic to Kauai (Palmer 2003, p. 117). This fern has extremely variable frond morphology, depending on age, development, and possibly microhabitat (Wood and Agurauja, pers. obs. in Lorence *et al.* 2013, p. 167). Stipes (stalks joining the stem to the blade) and rachis (blade midribs) are black or purple-black to maroon and shiny. Blade divisions are entire to shallowly or deeply cut into lobes or twice-divided, with free veins that seldom join to form a vein network (Lorence *et al.* 2013, p. 170). Hillebrand (1888, pp. 621–622) recognized this species as *Lindsaya laciniata* (Botanischer Garten und Botanisches Museum (BGBM) 2014, in litt.). Brackenridge also interpreted *Diellia* as lindsaeoid (ferns having morphological characteristics of those in the genus *Lindsaea*) (1854, pp. 218–220), followed by other Hawaiian authors, and this fern was described as *Diellia laciniata* in Rock (1913, p. 59) and in Wagner (1952, pp. 11, 57–63). Palmer did not recognize *D. laciniata* as separate from *D. erecta* (2003, p. 117). Molecular phylogenetic studies by Schneider *et al.* (2005, pp. 455–460) placed *Diella* within *Asplenium*, and with further taxonomic reassessment (Lorence *et al.* 2013, pp. 167, 170–171), this species is recognized as *Asplenium diellaciniatum*. Little is known of the historical distribution of this species. It was described from a collection from “Halemanu,” the Knudsen homestead area on western Kauai. This fern is found in the montane mesic ecosystem at Kawaiiki, approximately 4.5 mi (7 km) southeast of the original collection site (Palmer 2003, p. 117; HBMP 2010; Lorence *et al.* 2013, p. 167) in 2 occurrences, once totaling approximately 100 individuals (TNCH 2007; HBMP 2010; Lorence *et al.* 2013, p. 167; however, currently, there are only 31 mature and 9 juvenile individuals (Wood 2013, in litt.; PEPP 2014, p. 33).

Feral pigs, goats, and black-tailed deer (*Odocoileus hemionus columbianus*) modify and destroy the habitat of *Asplenium diellaciniatum* on Kauai, with evidence of the activities of these animals reported in the areas where *A. diellaciniatum* occurs (HBMP 2010; Wood 2013, in litt.). Feral pigs, goats, and black-tailed deer may also forage on *A. diellaciniatum* (HBMP 2010). Ungulates are managed in Hawaii as

game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; Hawaii Administrative Rule—Hawaii Department of Land and Natural Resources (HAR—DLNR) 2010, in litt.). Nonnative plants in the Kawaiiki area, such as *Buddleja asiatica* (dog tail), *Lantana camara* (lantana), and *Sphaeropteris cooperi* (Australian tree fern), compete with *A. diellaciniatum* and modify and destroy its native habitat, and displace it and other native Hawaiian plant species by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; Wood 2013, in litt.). Additionally, the small number of individuals of *A. diellaciniatum* may limit this species’ ability to adapt to environmental change.

The remaining occurrences of *Asplenium diellaciniatum* and its habitat for its reintroduction are at risk; *A. diellaciniatum* numbers are observed to be decreasing on Kauai, and both the species and its habitat continue to be negatively affected by modification and destruction by ungulates and by direct competition by nonnative plants, combined with predation by nonnative ungulates. We find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Calamagrostis expansa* (Maui reedgrass), a perennial in the grass family (Poaceae), is known from the islands of Maui and Hawaii (O’Connor 1999, p. 1509; Wagner and Herbst 2003, p. 59). This species was described by Hitchcock (1922, p. 148) and is recognized as a distinct taxon in O’Connor (1999, p. 1509) and in Wagner and Herbst (2003, p. 59), the most recently accepted taxonomic treatments for this species. Historically, *Calamagrostis expansa* was known from wet forest, open bogs, and bog margins at 17 locations on East Maui, and in a large occurrence covering nearly the entire summit on West Maui, and was discovered in 7 occurrences totaling approximately 750 individuals on the island of Hawaii in 1995 (O’Connor 1999, p. 1509; HBMP 2010; Smithsonian National Museum of Natural History (NMNH) Botany Collections 2014, in litt.). Currently, this species is known from 13 occurrences totaling fewer than 750 individuals from both islands. On

the island of Maui, there are 2 occurrences in the west Maui Mountains (approximately 100 individuals) and 7 occurrences in the east Maui Mountains (totaling about 200 individuals), in the montane wet ecosystem (Wood 2005, in litt.; TNCH 2007; Welton 2008 and 2010, in litt.; Fay 2010, in litt.; HBMP 2010; Oppenheimer 2010 in litt.; Agorastos 2011, in litt.). On the island of Hawaii, there are 3 occurrences in the Kohala Mountains (totaling approximately 400 individuals) and 1 occurrence of a few individuals in Hawaii Volcanoes National Park, in the montane wet ecosystem (Perry 2006, in litt.; TNCH 2007; HBMP 2010).

Feral pigs modify and destroy the habitat of *Calamagrostis expansa* on Maui and Hawaii, with evidence of the activities of feral pigs reported in the areas where *C. expansa* occurs on east Maui, and on Hawaii Island in the Kohala Mountains and in the Waiakea Forest Reserve of Hawaii Volcanoes National Park (Hobdy 1996, in litt.; Medeiros 1996, in litt.; Perlman 1996, in litt.; Wood 1996, in litt.; Perry 2006, in litt.; HBMP 2010). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR-DLNR 2010, in litt.). Rats have been noted by biologists to affect *C. expansa* at Laupahoehoe Natural Area Reserve (NAR) on Hawaii Island, by consuming seeds (HBMP 2010). Nonnative plants compete with this species, and modify and destroy native habitat, negatively affecting *C. expansa* on east and west Maui and Hawaii Island. Additionally, the small number of individuals may limit this species' ability to adapt to environmental change. Climate change may result in alteration of the environmental conditions and ecosystem that support this species. The species, which already is affected by multiple stressors, may be unable to tolerate or adapt to projected changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 68).

The remaining occurrences of *Calamagrostis expansa* and habitat for its reintroduction are at risk; *C. expansa* populations are decreasing on Maui and Hawaii Island, and this species continues to be negatively affected by habitat modification and destruction, and by direct competition from nonnative plants, combined with herbivory by nonnative ungulates and rats. The effects of climate change are

likely to further exacerbate these threats. We find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Cyanea kauaulaensis* (NCN), a shrub in the bellflower family (Campanulaceae), is endemic to Maui (Oppenheimer and Lorence 2012, p. 15). This species is 6.5 to 13 ft (2 to 4 m) tall, and is distinguished from other *Cyanea* species by its many-branched habit, with branches often rooting when coming in contact with the soil. Leaves are glabrous and narrow (2 to 3 in (5 to 7 cm) wide), clustered near the end of the branches, flowers are white and tubular, and fruit are bright orange (Oppenheimer and Lorence 2012, pp. 15–23). *Cyanea kauaulaensis* is recognized as a distinct taxon by Oppenheimer and Lorence (2012, pp. 15–23).

*Cyanea kauaulaensis* occurs on leeward west Maui, on talus or basalt boulder-strewn slopes along perennial streams at 2,400 to 3,000 ft (730 to 900 m), in the lowland wet ecosystem (TNCH 2007; HBMP 2010; Oppenheimer and Lorence 2010, pp. 17–18). Associated native species include those within *Metrosideros* (ohia) lowland wet forest, with herbaceous plants, ferns, and some riparian plants (Oppenheimer and Lorence 2010, pp. 17–18). This species was first collected during a botanical survey in 1989. Further surveys (in 2008, 2009, and 2011) revealed more individuals, and study of the collections indicated that it was a new species of *Cyanea*. Currently, *C. kauaulaensis* is known from Kauaula Valley (approximately 50 individuals) and Waikapu Valley (12 individuals) (Oppenheimer and Lorence 2012, pp. 15–16, 20).

The greatest threats to this species currently are the low numbers of occurrences and individuals, its limited range, poor seedling recruitment, and loss of pollinators and dispersal agents (Oppenheimer and Lorence 2012, p. 20). Rats and slugs are noted as a threat to *Cyanea kauaulaensis* by herbivory and seed predation (Oppenheimer and Lorence 2012, p. 20). Additionally, nonnative plants modify and destroy native habitat and outcompete native species, negatively affecting *C. kauaulaensis* and its habitat (Oppenheimer and Lorence 2012, p. 20). Although feral ungulates are present on west Maui, the known occurrences of *C. kauaulaensis* are likely not at risk from ungulates because of their location in extremely steep and rugged terrain; however, because of the terrain,

landslides and flooding may impact this species (Oppenheimer and Lorence 2012, pp. 20–21). Because of the threats described above, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Cyclosorus boydiae* (previously *Christella boydiae*) (kukupu makalii) is a small to medium-sized member of the thelypteroid fern family (Thelypteridaceae), with reclining or erect stems and a large, tangled mass of roots that form a holdfast (Pukui and Elbert 1986, p. 186; Palmer 2003, pp. 87–88). In 1879, Eaton (pp. 361–362) named it for the original collector, Miss E.S. Boyd, calling it *Aspidium* (*Cyrtomium*) *boydiae*, for those plants occurring on Oahu. In 1888, Hillebrand (p. 572) described two varieties, *A. cyatheoides* var. *depauperatum*, occurring on the islands of Hawaii and Oahu, and *A. cyatheoides* var. *exaltatum* occurring on Kauai. Iwatsuki moved the two species to the genus *Thelypteris* in 1964 (Iwatsuki 1964, p. 28 in Medeiros *et al.* 1993, pp. 87–88; Palmer 2003, pp. 87–88). In 1999, Wagner (W.H., *et al.*) moved the genus *Aspidium* to *Cyclosorus* and recognized two varieties: *Cyclosorus* variety *boydiae* on Oahu and *Cyclosorus* variety *kipahuluensis* on Maui (Wagner *et al.* 1999, pp. 153, 156–157). In 2003, Palmer returned the species to *Christella* and did not recognize any varieties (2003, pp. 87–88). Following Smith (*et al.* 2006, p. 716), *Christella* was merged into *Cyclosorus*. *Cyclosorus boydiae* is the most recently accepted scientific name for this fern. Typical habitat for *Cyclosorus boydiae* is exposed, rocky, or moss-covered banks of stream courses in dense-wet *Metrosideros-Acacia* (ohia-koa) forest, at 4,300 to 4,400 ft (1,300 to 1,350 m), with other native ferns, grasses, and dwarfed woody species, in the lowland wet and montane wet ecosystems (Hillebrand 1888, p. 572; Medeiros *et al.* 1993, p. 87; Wagner (W.H.) *et al.* 1999, p. 156; TNCH 2007; HBMP 2010).

Historically, this fern was known from near sea level to 4,400 ft (1,350 m) on Oahu, Maui, and Hawaii Island (Hillebrand 1888, p. 572; Medeiros *et al.* 1993, pp. 86–87; Palmer 2003, pp. 87–88). Currently, *Cyclosorus boydiae* is found only at higher elevations on Oahu and east Maui, in 7 occurrences totaling approximately 400 individuals (Palmer 2003, pp. 87–88; Oppenheimer 2008, in litt.; Fay 2010, in litt.; HBMP 2010; Welton 2010, in litt.). On east Maui, there are 5 occurrences (approximately 360 individuals) in the lowland wet and



montane wet ecosystems, and on Oahu, there are 2 occurrences in the Koolau Mountains in the montane wet ecosystem, totaling 40 individuals (Palmer 2003, pp. 87–88; Wood 2007, in litt.; Kam 2008, in litt.; Oppenheimer 2008 and 2010, in litt.; HBMP 2010; Welton 2010, in litt.; Ching 2011, in litt.). The historical occurrence of *C. boydiae* on the island of Hawaii was found in the lowland wet ecosystem (HBMP 2010).

Feral pigs modify and destroy the habitat of *Cyclosorus boydiae* on Maui and Oahu, with evidence of the activities of feral pigs reported at three occurrences of *C. boydiae* on east Maui and at two occurrences on Oahu. However, on east Maui, two of the five occurrences are provided protection in Haleakala National Park (Wood 2007, in litt.; Wood 2013, in litt.; HBMP 2010; Kawelo 2011, in litt.). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Historical occurrences of *C. boydiae* on Oahu have dramatically declined in numbers or disappeared as a result of habitat alteration, landslides and flooding, nonnative plant species invading lower elevation stream courses, and man-made stream diversions (Medeiros *et al.* 1993, p. 88; Palmer 2003, p. 88). Nonnative plants such as *Tibouchina herbaceae* (glorybush) modify and destroy native habitat of *C. boydiae*, and outcompete this and other native species for water, nutrients, light, and space, or a nonnative plant may produce chemicals that inhibit growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; Wood 2013, in litt.). Herbivory by feral pigs negatively impacts this species (HBMP 2010). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Cyclosorus boydiae*, which already is affected by multiple stressors, may be unable to tolerate or adapt to projected changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 72).

The remaining occurrences of *Cyclosorus boydiae* and habitat for its reintroduction are at risk; *C. boydiae* populations are decreasing on Oahu, Maui, and Hawaii Island, and the species continues to be negatively affected by habitat loss and destruction by ungulates, direct competition with

nonnative plants, and herbivory by ungulates. The effects of climate change are likely to further exacerbate these threats. We find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Cyperus neokunthianus* (NCN) is a perennial plant in the sedge family (Cyperaceae). Culms are three-sided, 16 to 47 in (40 to 120 cm) tall, with short and slightly thickened rhizomes. Leaves are shorter than to as long as the culm, with flat or curved margins and reddish brown to dark brown sheaths. Inflorescences are umbelliform (with a short axis), open to moderately dense, bearing numerous spikelets (flower clusters). Achenes (fruit) are oblong, 3-sided, and about 1 in (2 mm) long (Koyama 1999, p. 1420).

*Cyperus neokunthianus* was previously recognized as *Mariscus kunthianus*, following the taxonomic treatment of Koyama (1990, p. 1420). In 1997, Strong and Wagner (p. 39) following Tucker (1994, p. 9), and more recently Wagner and Herbst (2003, pp. 52–53; 2012, p. 81), moved all Hawaiian species of *Mariscus* to *Cyperus*, and provides the most currently accepted taxonomic treatment of this species. *Cyperus neokunthianus* occurs in riparian areas of the lowland wet ecosystem on west Maui (Wagner *et al.* 1999, p. 1420; TNCH 2007; HBMP 2010). Historically, this species is known from Honokohau Falls at 2,800 ft (854 m) and Waihee Valley (HBMP 2010; Global Biodiversity Information Facility (GBIF) database 2014). This species was last observed in 1996. Currently, there are no known individuals in the wild; however, Waihee Valley and Maui County lands have been suggested as potential habitat for further surveys (PEPP 2013, p. 32; PEPP 2014, p. 59).

Feral pigs modify and destroy the habitat of *Cyperus neokunthianus* on west Maui, with evidence of the activities of feral pigs reported in the area where this species was last observed (HBMP 2010). Habitat modifications resulting from activities of feral pigs that affect *C. neokunthianus* include direct destruction of this species and other native plants, disruption of topsoil leading to erosion, and establishment and spread of nonnative plants. Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in

litt.; HAR–DLNR 2010, in litt.). Additionally, nonnative plants degrade and destroy native habitat and outcompete native species, also negatively affecting habitat of *C. neokunthianus* on west Maui. Currently, there are no known extant individuals; however, if it is extant, low numbers make this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes.

Habitat for any remaining individuals of *Cyperus neokunthianus*, and for its reintroduction, is at risk; the species continues to be negatively affected by habitat modification and destruction by nonnative animals and plants. We find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Cyrtandra hematos* (haiwale), a shrub in the African violet family (Gesneriaceae), is endemic to Molokai (Wagner *et al.* 1999, pp. 760, 762). This species is 1 to 6.5 ft (0.3 to 2 m) tall, with minimally branched stems. The leaves are in whorls of 3 to 4 per node, often closely spaced and borne on the upper 5 to 8 nodes. Flowers are solitary, white with a greenish calyx, and narrowly tubular. Flower stalks are 0.3 to 0.4 in (8 to 10 mm) long, and tubes are about 0.7 in (18 mm) long (Wagner *et al.* 1999, pp. 760, 762). *Cyrtandra hematos* is recognized as a distinct taxon by Wagner *et al.* (1999, pp. 760, 762), who provide the most recently accepted taxonomic treatment of this species. *Cyrtandra hematos* occurs in wet forest at 3,400 to 3,800 ft (1,030 to 1,150 m) on eastern Molokai, in the montane wet ecosystem (Wagner *et al.* 1999, pp. 760, 762; HBMP 2010; TNCH 2007). Historically, this species was known from the Olokui Plateau, Kawela, and Kahuoahu Valley on Molokai (Wagner *et al.* 1999, pp. 760, 762). Currently, approximately 30 individuals are known from Kapulei, but this occurrence has not been monitored since 1999 (USFWS Rare Taxon Database, in litt.).

Feral pigs and goats modify and destroy the habitat of *Cyrtandra hematos* on Molokai, with evidence of the activities of these animals reported in the areas where this species occurs (USFWS Rare Taxon Database, in litt.). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals

(Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Additionally, nonnative plants modify and destroy native habitat of *C. hematos* and outcompete this and other native species for water, nutrients, light, and space, or a nonnative plant may produce chemicals that inhibit growth of other plants (USFWS Rare Taxon Database, in litt.). This species may experience reduced reproductive vigor due to low numbers and lack of regeneration, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). The reasons for this species' lack of regeneration in the wild are unknown at this time. Climate change may result in alteration of the environmental conditions and ecosystem that support this species. *Cyrtandra hematos*, which already is affected by multiple stressors, may be unable to tolerate or adapt to projected changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 72).

The remaining occurrences of *Cyrtandra hematos* and habitat for its reintroduction are at risk. The known individuals are restricted to a small area on Molokai and continue to be negatively affected by habitat modification and destruction by ungulates, and by direct competition with nonnative plants combined with predation by nonnative ungulates. The low number of remaining individuals may limit this species' ability to adapt to environmental changes. The effects of climate change are likely to further exacerbate these threats. We find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Deparia kaalaana* (NCN), a small, terrestrial fern in the ladyfern family (Athyraceae), is recognized as a distinct taxon by Palmer (2003, pp. 109–111) and Christenhusz *et al.* (2012, p. 16). Fronds (fern leaves) are 6 to 12 in (15 to 30 cm) long, sometimes bearing plantlets at the end of the rachis (the midrib of the fern blade, which is the expanded part of the frond above the stipe). Stipes (the stalk of the frond joining the stem to the blade) are straw-colored and sparsely scaly. Blades are oblong-lanceolate, with 9 to 11 pairs of pinnae. This species is distinguished from *D. marginalis* by its smaller, short-stalked and obliquely arranged pinnae, ultimate segments, and veins (Palmer 2003, pp. 109–111).

This fern is historically known from the islands of Kauai, Maui, and Hawaii, on rocky stream banks and in wet forest, in the lowland mesic and lowland wet ecosystems (Oppenheimer and Bustamente 2014, p. 103; Palmer 2003, pp. 109–111; PEPP 2014, p. 95; HBMP 2010; TNCH 2007). *Deparia kaalaana* was presumed extinct on all three islands where it previously occurred until one individual was discovered on east Maui, growing along a perennial stream on the western side of a small pool with other native ferns and herbaceous plants (Oppenheimer and Bustamente 2014, pp. 103–107; PEPP 2014, p. 95).

Feral pigs modify and destroy habitat of *Deparia kaalaana* by facilitating the spread of nonnative plants, which converts vegetation communities from native to nonnative (Oppenheimer and Bustamente 2014, p. 106; Cuddihy and Stone 1990, p. 63). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants such as *Blechnum appendiculatum* (NCN), *Clidemia hirta* (Koster's curse), *Hedychium gardnerianum* (kahili ginger), *Prunella vulgaris* (selfheal), and *Rubus argutus* (prickly Florida blackberry) are capable of displacing all of the riparian habitat elements, such as native plants, in the area where *D. kaalaana* occurs. Nonnative slugs such as *Deroceras laevis* and *Limax maximus* are common in the area and can consume young plants (Joe and Daehler 2008, pp. 252–253). Climate change may induce frequent and severe drought or cause extreme flooding events, and may impact the habitat and *D. kaalaana* directly (Chu *et al.* 2010, pp. 4887, 4891, 4898). A single catastrophic event may result in extirpation of the remaining individual.

The remaining occurrence of *Deparia kaalaana* and habitat for its reintroduction are at risk, and both the species and its habitat on Hawaii, Maui, and Kauai continues to be negatively affected by modification and destruction by nonnative ungulates, and by direct competition with nonnative plants, combined with herbivory by nonnative ungulates and slugs. We find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Dryopteris glabra* var. *pusilla* (hohiui) is a small, terrestrial fern in the wood

fern family (Dryopteridaceae). Fronds are 1.5 to 12 in (4 to 30 cm) long and densely clustered, with very thin stipes, and fertile when small. Blades are 2- to 3-pinnate, with winged rachises, and marginal to submarginal sori (clusters of sporangia, the spore-bearing (reproductive) structures of ferns, along the blade edge). This species is recognized as a distinct taxon by Palmer (2003, p. 144). Habitat for *Dryopteris glabra* var. *pusilla* is deep shade on rocky, mossy streambanks in wet forest at about 4,000 ft (1,200 m), in the montane wet ecosystem on Kauai (Palmer 2003, p. 144; TNCH 2007; HBMP 2010). Historically, *D. glabra* var. *pusilla* was known from the Kawaiikoi stream area (HBMP 2010). Currently, this species is known from fewer than 250 individuals in the Alakai Wilderness Preserve (including the Kawaiiko stream area) on Kauai (National Tropical Botanical Garden (NTBG) Herbarium Database 1995, in litt.; HBMP 2010).

*Dryopteris glabra* var. *pusilla* is at risk from habitat degradation by nonnative plants and feral ungulates, loss of reproductive vigor, and the species' vulnerability to climate change. Habitat modification and destruction by nonnative plants and feral ungulates is an ongoing threat to *Dryopteris glabra* var. *pusilla*. Although most individuals occur in the Alakai Wilderness Preserve, only portions of the Preserve are fenced to prevent ungulate incursion. Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). In addition, the limited number of occurrences and few individuals lead to a diminished capacity to adapt to environmental changes, thereby lessening the probability of long-term persistence, and a single catastrophic event may result in extirpation of remaining occurrences. Climate change may result in alteration of the environmental conditions and ecosystem that support this species. *Dryopteris glabra* var. *pusilla* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 74). Because of these threats, we find that this species plant should be listed as endangered throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or

threatened in a significant portion of its range.

*Exocarpos menziesii* (heau) is shrub in the sandalwood family (Santalaceae). Individuals are from 2 to 6.5 ft (0.5 to 2 m) tall. Stems are densely branched toward the ends, with conspicuously maroon-tinged tips. The leaves are usually scale-like, with occasional oblanceolate, foliaceous leaves 0.4 to 0.6 in (10 to 14 mm) long. Flowers are red and drupes are reddish brown to red at maturity, ovoid, 0.3 to 0.4 in (7 to 10 mm) long, with a small terminal beak partially embedded in a yellow, fleshy, receptacle (Wagner *et al.* 1999, p. 1218). *Exocarpos menziesii* is recognized as a distinct taxon by Wagner *et al.* (1999, p. 1218), who provide the most recently accepted taxonomic treatment of this species. This species occurs in *Metrosideros* shrubland or drier forest areas, and on lava flows with sparse vegetation, from 4,600 to 6,900 ft (1,400 to 2,100 m), in the montane dry ecosystem on the island of Hawaii (Wagner *et al.* 1999, p. 1218; TNCH 2007; HBMP 2010). Historically, this species was also found in the lowland mesic (Lanai and Hawaii Island) and montane mesic ecosystems (Hawaii Island) (TNCH 2007; HBMP 2010).

*Exocarpos menziesii* is historically known from the island of Lanai (Kaiholena Gulch) and was formerly more wide-spread on the island of Hawaii (from Kahuku Ranch in the south to Hualalai and Puukapele on the leeward slopes) (Wagner *et al.* 1999, p. 1218; TNCH 2007; HBMP 2010). Currently, there is 1 scattered occurrence of fewer than 20 individuals on the slopes of Hualalai and approximately 1,800 individuals in the U.S. Army's Pohakuloa Training Area (PTA) on the island of Hawaii (PEPP 2013, pp. 10, 33; Thomas 2014, in litt.; Evans 2015, in litt.). There are no known occurrences of this species on Lanai today.

Feral goats, mouflon, and sheep modify and destroy the habitat of *Exocarpos menziesii* on Hawaii Island, with evidence of the activities of these animals reported in the areas where this species occurs (USFWS Rare Taxon Database 2015, in litt.). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Feral ungulate management is incorporated into the U.S. Army's PTA management plan. These plants are provided some protection within fenced management units in the training area; however, feral

goats are still being removed from within the fenced area (Evans 2015, in litt.; Nadig 2015, in litt.). Any individuals of *E. menziesii* outside of fenced enclosures or outside of the managed area are at risk. Occurrences and numbers of individuals have declined on the island of Hawaii (HBMP 2010; Thomas 2014, in litt.), once widely distributed from the south to the west sides of the island, and are now restricted to two locations; consequently *E. menziesii* may experience reduced reproductive vigor due to reduced levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby reducing the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361; HBMP 2010). Fire is a potential threat to this species; although the U.S. Army has constructed firebreaks and has standard operating procedures in place for prevention and suppression of wildfires at PTA, wildfires may encroach from other areas (U.S. Army Garrison 2013, in litt.). The small number of individuals outside the occurrence at PTA may limit this species' ability to adapt to environmental change. Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Exocarpos menziesii* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 76).

The remaining occurrences of *Exocarpos menziesii* and suitable locations for reintroductions are at risk from habitat modification and destruction; from herbivory, by feral goats, mouflon, and sheep; and from the small number of remaining occurrences. Fire is a potential threat to this species. The effects of climate change are likely to exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Festuca hawaiiensis* (NCN) is a caespitose (growing in tufts or clumps) annual in the grass family (Poaceae) (O'Connor 1999, p. 1547). This species has numerous erect culms (stems or stalks) 2 to 5 ft (0.5 to 1.5 m) tall, branching above the base, which are glabrous to slightly hairy. Sheaths are open and blades are flat and smooth, 10 to 16 in (25 to 40 cm) long, and 0.1 to 0.5 in (0.3 to 1 cm) wide. Branched inflorescences are composed of 6 to 8

alternate racemes (many flowers on one branch), with a flattened rachis (main axis) with flat hairs. The fruits are ellipsoid, dorsally compressed, and approximately 0.2 in (5 mm) long (O'Connor 1999, p. 1547). *Festuca hawaiiensis* was treated by Hillebrand (1888, pp. 534–535) as an introduced species, *F. drymeia*; however, *F. hawaiiensis* is currently recognized as a distinct taxon in O'Connor (1999, p. 1547), the most recently accepted Hawaiian plant taxonomy.

Typical habitat for this species is dry forest at 6,500 ft (2,000 m), in the montane dry ecosystem (O'Connor 1999, p. 1547). Historically, *F. hawaiiensis* occurred at Hualalai and Puu Huluhulu on the island of Hawaii, and possibly at Ulupalakua on Maui; however, it is no longer found at these sites (O'Connor 1999, p. 1547). Currently, *F. hawaiiensis* is only known from PTA on the island of Hawaii (HBMP 2010). These remaining four occurrences are within an area of less than 10 square miles (26 square kilometers) and total approximately 1,500 individuals (U.S. Army Garrison 2013, in litt.; Evans 2015, in litt.).

Habitat destruction by feral goats, sheep, and mouflon is a threat to the habitat of *Festuca hawaiiensis*. These ungulates browse on native plants such as grasses, and likely browse on *F. hawaiiensis*. Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Feral ungulate management is incorporated into the U.S. Army's PTA management plan. These plants are provided some protection within fenced management units in the training area; however, goats were recently removed from within fenced areas (Evans 2015, in litt.; Nadig 2015, in litt.). Any individuals of *F. hawaiiensis* outside of fenced enclosures or outside of the managed area are at risk. Nonnative plants, such as *Cenchrus setaceus* (*Pennisetum setaceum*, fountain grass), are naturalized in the area, and outcompete *F. hawaiiensis* and other native plants. Occurrences and numbers of individuals are declining on the island of Hawaii, and *F. hawaiiensis* likely experiences reduced reproductive vigor due to reduced levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby reducing the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361; HBMP 2010).

Fire is a potential threat to this species, especially because of the ingress of nonnative grass species. Although the U.S. Army has constructed firebreaks and has standard operating procedures in place for prevention and suppression of wildfires at PTA, fires may encroach from other areas, exacerbated by fuel loads provided by nonnative grasses (U.S. Army Garrison 2013, in litt.). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Festuca hawaiiensis* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 76).

The remaining occurrence of *Festuca hawaiiensis* and habitat for its reintroduction are at risk; *F. hawaiiensis* occurrences have decreased on Hawaii Island, as it no longer occurs at Hualalai and Puu Huluhulu, and the species may be extirpated from Maui. This species continues to be negatively affected by habitat modification and destruction by ungulates and by direct competition with nonnative plants, combined with herbivory by ungulates, especially on Maui. Fire is a potential threat to the species and its habitat. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Gardenia remyi* (nanu) is a tree in the coffee family (Rubiaceae). This species is 10 to 43 ft (3 to 13 m) tall with branches that are quadrangular and covered with fine, short, sticky hairs. Leaves are clustered towards the tips of the branches, broadly elliptic to ovate, 4 to 10 in (9 to 24 cm) long, 2 to 4 in (5 to 10 cm) wide, with a glabrous upper surface and dull lower surface. Flowers are fragrant, solitary, with a 6- to 8-lobed white corolla. Fruit are orange, round to ellipsoid, 1 in (3 cm) in diameter, with small seeds (Wagner *et al.* 1999, p. 1133). *Gardenia remyi* was described by Mann (1867, p. 171). This species is recognized as a distinct taxon in Wagner *et al.* (1999, p. 1133), which provides the most recently accepted taxonomic treatment of this species. Typical habitat for *G. remyi* is mesic to wet forest at 190 to 2,500 ft (60 to 760 m), in the lowland mesic (Kauai, Molokai, and Hawaii Island) and lowland wet ecosystems (Kauai, Molokai, Maui, and Hawaii Island) (Wagner *et al.* 1999, p. 1133; TNCH 2007; HBMP 2010).

Historically, this species was found on the island of Hawaii at Wao Kele O Puna NAR, Waiakea Forest Reserve (FR), Pahoa, and Hakalau Nui. On Maui, this species was known from Wailuaiki and Waikamoi in the Koolau FR, and from Papaea and Kipahulu. On Molokai, this species was known from Keopukaloa, Pukoo, Honomuni, Halawa, and Kaluaaha (HBMP 2010). On Kauai, this species ranged across the island, and was known from Halelea, Kealia, Moloaa, and Lihue-Koloa FRs, including Hanakapiai Valley, Mahaulepu, and east Wahiawa Bog. Currently, *Gardenia remyi* is known from 19 occurrences totaling approximately 90 individuals on the islands of Hawaii, Maui, Molokai, and Kauai (Wood 2005, in litt.; Oppenheimer 2006, pers. comm.; Perry 2006, in litt.; Welton 2008, in litt.; Agorastos 2010, in litt.; HBMP 2010; Perlman 2010, in litt.). On Hawaii, individuals occur in Puu O Umi NAR (12), Wao Kele O Puna (3), Waiakea FR (1), and in Kohala NAR (1 individual in poor health and threatened by habitat modification and destruction and competition with *Melastoma* sp.). On east Maui, there is 1 individual at Kipahulu, and on west Maui, there are 2 individuals at Honokohau drainage, an occurrence of 21 individuals at Honolua peak, and 9 individuals at Honokohau-Hononana ridge (Oppenheimer 2006, pers. comm.; Welton 2009, in litt.). The number of individuals in the Molokai FR declined from 20 to 4 over a period of 5 years (Oppenheimer 2006, pers. comm.). Currently, on Molokai, there are 2 individuals within the Molokai FR, 1 individual at Manuahi ridge, and possibly 1 remaining individual at Mapulehu. On Kauai there are 6 individuals at Limahuli, 14 at Kalalau, 1 at Puuauuka, 2 at Puu Kolo, 1 at Waioli Valley, 1 at Kahili, and 6 at Waipa (NTBG 2008, in litt.; Perlman 2010, in litt.).

Habitat modification and destruction by feral pigs, goats, and deer negatively affects *Gardenia remyi* and areas for its reintroduction (Perry, in litt. 2006; PEPP 2008, p. 102; HBMP 2010). Feral pigs and signs of their activities have been reported at occurrences of *G. remyi* in the Kohala Mountains and at Wao Kele O Puna on the island of Hawaii; the Halelea and Lihue-Koloa FRs on Kauai; the West Maui FR and West Maui NAR, and the Puu Kukui Preserve on Maui; and the Molokai FR. Goats and signs of their activities are reported at the occurrences of *G. remyi* on the island of Kauai at the Kalalau Valley, and on the island of Molokai in Pelekunu Preserve and the Molokai FR. Axis deer and signs

of their activities are reported at the occurrences of *G. remyi* in the Molokai FR (HBMP 2010). Herbivory by these ungulates is a likely threat to *G. remyi*, as they browse on leaves and other parts of almost any woody or fleshy plant species. Nonnative plants modify and destroy native habitat of *G. remyi* and outcompete this and other native plant for water, nutrients, light, and space, in areas where *G. remyi* occurs on Hawaii Island, Kauai, Maui, and Molokai (Oppenheimer 2006, pers. comm.; Perry 2006, in litt.; Welton 2008, in litt.; HBMP 2010). Landslides are a threat to the occurrences and habitat of *G. remyi* ranging from Honopue to Waipio in the Kohala Mountains on Hawaii Island (Perry 2006, in litt.). Lack of pollination was suggested as the cause for abortion of immature fruits that were seen among plants at Wao Kele O Puna FR on the island of Hawaii (PEPP 2010, p. 73). Similarly, Agorastos (2011, in litt.) reported no viable seed production in the wild or within *ex situ* collections at Volcano Rare Plant Facility and no recruitment in the wild among the 14 individuals observed on the island of Hawaii, for unknown reasons. Predation of seeds by rats is reported as a threat to individuals on Kauai (NTBG 2008, in litt.). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Gardenia remyi* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 76).

The remaining occurrences of *Gardenia remyi* and habitat for its reintroduction are at risk. *Gardenia remyi* continues to be negatively affected by habitat modification and destruction by ungulates, and by direct competition from nonnative plants, combined with herbivory by ungulates and seed predation by rats. Natural events such as landslides are a threat to occurrences on the island of Hawaii. Pollination and seed production are observed to be limited. Low numbers of individuals (90 total individuals distributed across 4 islands) makes this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes. The effects of climate change are likely to exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Huperzia stemmermanniae* (NCN) is an epiphytic, hanging fir-moss (a fern ally) in the club moss family (Lycopodiaceae). Sterile stem bases are unforked or once-forked, short, usually less than 6 in (15 cm) long, green to pale yellow, with fertile terminal strobili (fertile leaves). The strobili fork at an acute angle and the branches are usually straight (Palmer 2003, pp. 257–259). *Huperzia stemmermanniae* was first described as *Phlegmariurus stemmermanniae* by Medeiros and Wagner (Medeiros *et al.* 1996, pp. 90–96). Kartesz (1999, in NatureServe Explorer 2014, in litt.) moved the species to the genus *Huperzia*. Currently this species is recognized as a distinct taxon in the latest treatment (Palmer 2003, pp. 257–259). This species is epiphytic on rough bark of living trees or fallen logs in *Metrosideros polymorpha*-*Acacia koa* forest on east Maui and the island of Hawaii, at 3,200 to 3,800 ft (975 to 1,160 m), in the montane wet ecosystem (Medeiros *et al.* 1996, p. 93; Palmer 2003, pp. 257, 259; TNCH2007; HBMP 2010). There is little information available on the historical range of this species. *Huperzia stemmermanniae* was first collected in 1981, from two occurrences totaling 10 individuals in Laupahoehoe NAR on the island of Hawaii, and was mistakenly identified as *H. mannii* (Medeiros *et al.* 1996, p. 93; HBMP 2010). Currently, approximately 30 individuals occur in the Laupahoehoe area on the island of Hawaii. One individual occurred in Kaapahu Valley on east Maui, but this individual has not been relocated since 1995 (Perry 2006, in litt.; Welton 2008, in litt.; HBMP 2010; Conry 2012, in litt.).

Feral pigs, goats, axis deer, and cattle modify and destroy the habitat of *Huperzia stemmermanniae* on Maui, and feral pigs modify and destroy the habitat of this species on Hawaii Island (Medeiros *et al.* 1996, p. 96; Wood 2003, in litt.; HBMP 2010). Herbivory by feral pigs, goats, cattle, and axis deer is a potential threat to *H. stemmermanniae*. Nonnative plants modify and destroy the forest habitat that supports the native species upon which this epiphytic plant grows, and drought may also negatively affect this species and its habitat (Medeiros *et al.* 1996, p. 96; Perry 2006, in litt.; HBMP 2010). *Huperzia stemmermanniae* may experience reduced reproductive vigor due to reduced levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman

and Pilson 1997, p. 361; HBMP 2010). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Huperzia stemmermanniae* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 77).

The remaining occurrences of *Huperzia stemmermanniae* and habitat for its reintroduction are at risk. The known individuals are restricted to a small area on Hawaii Island, and this species continues to be negatively affected by habitat modification and destruction by ungulates. The low numbers of individuals *H. stemmermanniae* may reduce the probability of its long-term persistence. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Hypolepis hawaiiensis* var. *mauiensis* (olua) is a small terrestrial member of the bracken fern family (Dennstaedtiaceae), and is recognized as a distinct taxon by Palmer (2003, pp. 168–169). This variety is a miniature form of *H. hawaiiensis*. Fronds are 2.5 to 10 in (6 to 25 cm) long; rhizomes are slender, 0.04 to 0.1 in (1 to 3 mm) in diameter; and parts are covered with chainlike, acute-tipped, tan hairs. Fronds are fully fertile at their smallest size (Palmer 2003, pp. 168–169). *Hypolepis hawaiiensis* var. *mauiensis* occurs in mesic and wet forest, but predominately in the montane wet ecosystem (Palmer 2003, pp. 168–170). This species is historically known from Eke Crater, Kapunakea, and Puu Kukui, on west Maui (Palmer 2003, pp. 168–170). Currently, 5 to 10 individuals are known from openings between bogs above 5,000 ft on west Maui, and a few individuals occur at Hanawi on east Maui (Maui Nui Task Force (MNTF) 2010, in litt.).

Nonnative plants modify and destroy the habitat of *Hypolepis hawaiiensis* var. *mauiensis* on east and west Maui (HBMP 2010; MNTF 2010, in litt.). Nonnative plants also displace this and other native Hawaiian plant species by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stones 1990, p. 74; MNTF 2010). This fern may experience reduced reproductive vigor due to low numbers

of individuals, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Hypolepis hawaiiensis* var. *mauiensis* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 78).

The remaining occurrences of *Hypolepis hawaiiensis* var. *mauiensis* and habitat for its reintroduction are at risk. Nonnative plants modify and destroy native habitat, and also outcompete native Hawaiian plants. This variety is moderately vulnerable to the impacts of climate change, and the small number of remaining individuals may limit this variety's ability to adapt to environmental change. Because of these threats, we find that this plant should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Joinvillea ascendens* ssp. *ascendens* (ohe) is an erect, perennial herb in the Joinvillea family (Joinvilleaceae) (Wagner *et al.* 1999, p. 1450). This subspecies is 5 to 16 ft (2 to 5 m) tall. Leaf blades are narrowly elliptic, up to 32 in (80 cm) long and 6 in (16 cm) wide. Both leaf surfaces have scattered bristles, with the lower surface also sparsely to moderately pubescent. Fruit are 0.2 in (6 mm) in diameter (Wagner *et al.* 1999, p. 1450). *Joinvillea ascendens* ssp. *ascendens* was described by Brongniart and Gris (Brongniart 1861, pp. 264–269), and is recognized as a distinct taxon by Wagner *et al.* (1999, pp. 1450–1451), who provide the most recently accepted taxonomic treatment of this subspecies. *Joinvillea ascendens* ssp. *ascendens* occurs in wet to mesic *Metrosideros polymorpha*-*Acacia koa* lowland and montane forest, and along intermittent streams, at 1,000 to 4,300 ft (305 to 1,300 m); in the lowland mesic (Kauai), lowland wet (Oahu, Molokai, Maui, and Hawaii Island), montane wet (Kauai, Oahu, Molokai, Maui, and Hawaii Island), and montane mesic ecosystems (Kauai) (TNCH 2007; HBMP 2010).

Historically, this subspecies was found in widely distributed occurrences on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii Island (HBMP 2010). On Kauai, this subspecies was wide-ranging across the mountains and into coastal areas (HBMP 2010). On Oahu,

this subspecies was known from the summit area of the Waianae Mountains, and ranged along the entire length of the Koolau Mountain range. On Molokai, this subspecies was known from the eastern half of the island ranging from Pelekunu Preserve and east to Halawa Valley. On west Maui, it occurred in the summit area, and on east Maui, it ranged on the northeastern side from the Koolau FR south to Kipahulu Valley. On Hawaii Island, it occurred almost island-wide. Currently, *Joinvillea ascendens* ssp. *ascendens* is still found on the same islands, in 56 occurrences totaling approximately 200 individuals (HBMP 2010; Conry 2012, in litt.). On Kauai, this subspecies is no longer known from the east and south side of the island (since the 1930s), but there are approximately 10 known occurrences on the north side of the island. On Oahu, this subspecies no longer occurs in the southern Koolau Mountains (range reduction since the 1930s), about 12 of the 20 known occurrences remain, with the range and numbers of occurrences remaining about the same (6) in the Waianae Mountains. On east Maui, the known occurrences have decreased from 12 to 4 (since the 1980s); on west Maui, 1 formerly large occurrence has decreased to approximately 40 individuals (since 1980), with 1 other occurrence approximately 2 mi to the east. On Molokai, the number of occurrences has increased to 20, but these are restricted to a much smaller central area of the island (range reduction since the 1930s). On Hawaii Island, the known occurrences have decreased from 17 locations to 2 since the 1950s (HBMP 2010; Oahu Task Force Meeting (OTFM) 2014, in litt.).

Nonnative ungulates modify and destroy habitat on all of the islands where *Joinvillea ascendens* ssp. *ascendens* occurs (Oppenheimer 2006, pers. comm.; Moses 2006, in litt.; Welton and Haus 2008, p. 16; HBMP 2010; Perlman 2010, in litt.). Herbivory by feral pigs, goats, deer, and rats is a likely threat to this species. Many nonnative plant species modify and destroy habitat, and outcompete this subspecies (HBMP 2010). Randomly occurring natural events, such as landslides, are a likely threat to the occurrences of *J. ascendens* ssp. *ascendens* on Kauai and Molokai (HBMP 2010). Fire is a potential threat to this species in the drier areas of the Waianae Mountains of Oahu (HBMP 2010). This subspecies is usually found as widely separated individuals. Seedlings have rarely been observed in the wild, and, although mature seeds

germinate in cultivation, the seedlings rarely survive to maturity, with a loss of individuals through attrition. It is uncertain if this rarity of reproduction is typical, or if it is related to habitat disturbance (Wagner *et al.* 1999, p. 1451). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Joinvillea ascendens* ssp. *ascendens* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 76).

The remaining occurrences of *Joinvillea ascendens* ssp. *ascendens* and habitat for its reintroduction are at risk. The known individuals continue to be negatively affected by habitat modification and destruction by ungulates, compounded with possible herbivory by ungulates and rats. The small number of remaining individuals, smaller distribution, and poor recruitment in the wild may limit this subspecies' ability to adapt to environmental changes. Because of these threats, we find that this subspecies should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Kadua fluviatilis* (previously *Hedyotis fluviatilis*) (kamapuaa, pilo) is a climbing shrub in the coffee family (Rubiaceae) family. Plants are foetid when bruised. Stems are cylindrical and slightly flattened, 1 to 8 ft (0.3 to 3 m) long, with short lateral branches. Leaves are widely spaced, papery, elliptic-oblong to elliptic-lanceolate, 3 to 7 in (8 to 17 cm) long, and 1 to 2 in (3 to 5 cm) wide. White flowers are fleshy and waxy, with several small, sac-like glands between corolla lobes. Capsules are woody, strongly quadrangular or winged, 0.5 in (1 cm) long, and 0.5 in (1 cm) in diameter. Seeds are translucent reddish brown, wedge-shaped, and minutely reticulate (netted) (Wagner *et al.* 1999, pp. 1142–1144). First described as *Kadua fluviatilis* by Forbes (1912, p. 6), this species was moved to the genus *Hedyotis* by Fosberg (1943, p. 90), and was recognized as a distinct taxon in Wagner *et al.* (1999, pp. 1142–1144). Terrell *et al.* (2005, pp. 832–833) placed *Hedyotis fluviatilis* in synonymy with *Kadua fluviatilis*, the earlier, validly published name, and this is the currently accepted scientific name. Typical habitat for this species on Kauai is mixed native shrubland and *Metrosideros* forest at 750 to 2,200 ft (230 to 680 m), in the lowland mesic ecosystem (TNCH 2007; HBMP 2010),

and in open shrubland with sparse tree cover in the lowland mesic ecosystem (Wood 1998, in litt.; TNCH 2007). On Oahu, *K. fluviatilis* occurs along rocky streambanks in wet *Metrosideros* forest from 820 to 1,990 ft (250 to 607 m) in the lowland wet ecosystem (HBMP 2010; TNCH 2007).

Historically, *Kadua fluviatilis* was known from the island of Kauai in at least 5 occurrences ranging from the north coast across the central plateau to the south coast, and from the island of Oahu in at least 11 occurrences in the northern Koolau Mountains, ranging from Koloa Gulch to Waipio (HBMP 2010). Currently, this species is known from only 11 occurrences totaling between 400 and 900 individuals on the islands of Kauai and Oahu (Wood 2005, p. 7; NTBG 2009, in litt.; HBMP 2010). On Kauai, *K. fluviatilis* is known from two locations: Hanakapiai on the north coast and Haupu Mountain on the south coast. On Oahu, *K. fluviatilis* is no longer found in the most northern and southern historical locations in the Koolau Mountains, and currently ranges in the north from Kaipapau to Helemano (HBMP 2010; U.S. Army database 2014).

Feral pigs and goats modify and destroy habitat of *Kadua fluviatilis* (HBMP 2010). Evidence of the activities of feral pigs has been reported at the Hanakapiai and Haupu occurrences on Kauai, and at all of the Oahu occurrences (Wood 1998, in litt.; HBMP 2010). Feral goats and evidence of their activities have been observed at Hanakapiai on Kauai (HBMP 2010). Herbivory by feral pigs and goats is a likely threat to *K. fluviatilis*. Nonnative plants modify and destroy native habitat of *K. fluviatilis* and outcompete this and other native species for water, nutrients, light, and space, or a nonnative plant may produce chemicals that inhibit growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; Wood 1998, in litt.; HBMP 2010). *Kadua fluviatilis* is negatively affected by landslides on Kauai (HBMP 2010). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Kadua fluviatilis* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 78).

The remaining occurrences of *Kadua fluviatilis* and habitat for its reintroduction are at risk. Numbers of occurrences and individuals are decreasing on Oahu and Kauai, from 16 occurrences to 11, and from over 1,000 individuals to between 400 and 900

individuals (HBMP 2010; Oahu Task Force Meeting 2014, in litt.). This species continues to be negatively affected by habitat modification and destruction by feral pigs and goats, stochastic events such as landslides, and direct competition from nonnative plants, combined with herbivory by nonnative ungulates. Climate change is likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Kadua haupuensis* (NCN) is a shrub in the coffee family (Rubiaceae). This species is subdioecious (male and female flowers on separate plants, with sporadic hermaphroditic flowers), 3 to 5 ft (1 to 1.5 m) tall, with erect, brittle stems and glabrous branchlets with minutely hairy nodes. Older branches are brown with longitudinally fissured bark. Leaves are oblong to lanceolate or lanceolate-ovate and glabrous or sparsely hairy, 1 to 5 in (3 to 12 cm) long and 0.4 to 1 in (1 to 3 cm) wide, with conspicuous reticulate veins. Petioles are narrowly winged. Flowers are white or greenish-white with a purple tint. Fruit capsules produce numerous brown or blackish seeds (Lorence *et al.* 2010, pp. 137–144). *Kadua haupuensis* is recognized as a distinct taxon by Lorence *et al.* (2010, pp. 137–144). There is no historical information for this species as it was recently discovered and described (Lorence *et al.* 2010, pp. 137–144). *Kadua haupuensis* was discovered in 2007, just below and along cliffs in an isolated area on the north face of Mt. Haupu, on southern Kauai, from 980 to 1,640 ft (300 to 500 m), in the lowland mesic ecosystem (TNCH 2007; Lorence *et al.* 2010, pp. 137–144). Currently, there are no known extant individuals of *K. haupuensis* in the wild; however, there are 11 individuals of this species propagated from collections from the wild plants.

Feral pigs modify and destroy the habitat of *Kadua haupuensis* on Kauai (Lorence *et al.* 2010, p. 140). Predation of fruits and seeds by rats is a potential threat. Landslides are an additional threat to this species at its last known occurrence. Nonnative plants such as *Caesalpinia decapetala* (wait-a-bit) and *Passiflora laurifolia* (yellow granadilla), and various grasses that modify and destroy native habitat and outcompete native plants are found at the last known location of *K. haupuensis*. The small number of remaining individuals in propagation, and no known remaining wild individuals, may limit

this species' ability to adapt to environmental change. Because of these threats, we find that *K. haupuensis* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Labordia lorenciana* (NCN) is a small tree in the Logania family (Loganiaceae). Individuals are 10 to 13 ft (3 to 4 m) tall. The bark is grayish brown and mottled white or dark brown. Leaves are opposite, chartaceous (papery), and hairy. Flowers, functionally unisexual, are green, forming unbranched cymes. Fruit mature to brown capsules 1 to 1.5 in (25 to 37 mm) with ellipsoid 0.08 to 0.12 in (2 to 3 mm) seeds (Wood *et al.* 2007, pp. 195–197). *Labordia lorenciana* was discovered and validated by Wood *et al.* (2007, pp. 195–199). This species occurs on the island of Kauai at 3,800 ft (1,160 m), in forest in the montane mesic ecosystem (Wood *et al.* 2007, pp. 197–198). Currently, there are four known individuals in Kawaiiki Valley. Additional surveys for *L. lorenciana* have not been successful; however, experts believe this species may occur in other areas (Wood *et al.* 2007, p. 198).

*Labordia lorenciana* is at risk from habitat modification and destruction and herbivory by nonnative mammals, displacement of individuals through competition with nonnative plants, stochastic events, and potential problems associated with small populations. Feral pigs and goats modify and destroy the habitat of *Labordia lorenciana* (Wood *et al.* 2007, p. 198). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction by these animals. Predation of seeds by rats is a likely threat to this species (Wood *et al.* 2007, p. 198). Competition with nonnative plant species, including *Lantana camara*, *Passiflora tarminiana* (banana poka), *Psidium cattleianum* (strawberry guava), and *Rubus argutus*, is a threat to *L. lorenciana*, as these nonnative plants have the ability to spread rapidly and cover large areas in the forest understory, and can outcompete native plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; Wood *et al.* 2007, p. 198). Randomly occurring natural events, such as landslides, flash floods, fallen tree limbs, and fire, are a likely threat to *L. lorenciana* where it occurs on Kauai (Wood *et al.* 2007, p. 198). This species may experience reduced reproductive vigor as there is no *in situ* seedling recruitment and a very small number of individuals

remain (Wood *et al.* 2007, p. 198). Because of these threats, we find that *L. lorenciana* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Lepidium orbiculare* (anaunau) is a small, many-branched shrub in the mustard family (Brassicaceae). Individuals are 2 to 4 ft (0.6 to 1 m) tall (St. John 1981, pp. 371–373; Wagner *et al.* 1999, p. 409). Glabrous leaves are thin and crowded at the stem apex, not very fleshy and usually elliptical, occasionally lanceolate or oblanceolate, 3 to 7 in (6 to 17 cm) long, with rounded serrate margins. White flowers are in indeterminate racemes with branches subtended by linear, leaf-like bracts (1 in (2 cm)) long, with fine, short hairs. Seeds are reddish brown, orbicular (the name *L. orbiculare* is in reference to the seed shape) with pale, membranous-winged margins (Wagner *et al.* 1999, p. 409; St. John 1981, pp. 371–373). *Lepidium orbiculare* was resurrected from synonymy with *L. serra* and is recognized as a distinct taxon by Wagner and Herbst (2003, p. 13). This species occurs in mesic forest on Mt. Haupu, on the island of Kauai, in the lowland mesic ecosystem (Wagner *et al.* 1999, p. 409; HBMP 2010; PEPP 2014, p. 34; TNCH 2007). Historically, *Lepidium orbiculare* species was known from widely scattered occurrences on Kauai (Wagner *et al.* 1999, p. 409). Currently, there is one occurrence of fewer than 50 individuals at Mt. Haupu (Wagner *et al.* 2012, p. 19; PEPP 2014, p. 34; Smithsonian Institution 2015, in litt.).

Feral pigs have been documented to modify and destroy habitat of other rare and endangered native plant species at the same location on Mt. Haupu, Kauai (Lorence *et al.* 2010, p. 140); therefore, we consider that activities of feral pigs also pose a threat to *Lepidium orbiculare*. Nonnative plants degrade native habitat and outcompete native plants, are found at the last known location of *L. orbiculare*. Landslides are an additional threat to this species. *Lepidium orbiculare* may experience reduced reproductive vigor due to reduced levels of genetic variability, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361; PEPP 2014, p. 34).

The remaining occurrence of *Lepidium orbiculare* and habitat for its reintroduction are at risk; the species continues to be negatively affected by habitat modification and destruction by

feral pigs, and by direct competition from nonnative plants. Natural events such as landslides are a threat to the only known occurrence of the species (HBMP 2010). The small number of individuals may limit this species' ability to adapt to environmental change. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Microlepia strigosa* var. *mauiensis* (NCN) is a terrestrial, medium-sized fern in the bracken fern family (Dennstaedtiaceae), with fronds to 40 in (100 cm) long. This variety is extremely hairy, with the stipes, rachises (midribs), costae (frond rib), and entire fronds covered with uniform, jointed hairs with pointed tips. The rachises are often zigzag (Palmer 2003, p. 186). This fern was originally described as *Microlepia mauiensis* by Wagner (1993, pp. 73–75) from a collection made at Hanaula, west Maui. In the most recent treatment of all Hawaiian ferns, Palmer (2003, p. 186) recognizes this entity as an endemic variety of the indigenous *Microlepia strigosa*. Typical habitat for *Microlepia strigosa* var. *mauiensis* is mesic to wet forest at 1,400 to 6,000 ft (425 to 1,830 m), in the lowland mesic (Oahu), montane mesic (Hawaii Island), and montane wet (Maui and Hawaii Island) ecosystems (Palmer 2003, p. 186; TNCH 2007; HBMP 2010). Little is known of the historical locations of *Microlepia strigosa* var. *mauiensis*; however, it had a wide range on the islands of Hawaii, Maui, and Oahu (HBMP 2010). Currently, *Microlepia strigosa* var. *mauiensis* is known most recently from nine occurrences totaling fewer than 100 individuals on the islands of Oahu (15 to 20 individuals), Maui (fewer than 20 individuals last observed in 2007), and Hawaii (35 individuals last observed in 2004) (Palmer 2003, p. 186; Lau 2007, pers. comm.; Oppenheimer 2007 and 2008, in litt.; Welton 2008, in litt.; Ching 2011, in litt.).

*Microlepia strigosa* var. *mauiensis* is highly threatened by habitat modification and destruction by feral pigs and goats (Oppenheimer 2007, in litt.; Bily 2009, in litt.; HBMP 2010). Herbivory by feral pigs is a likely threat to *M. strigosa* var. *mauiensis* (Oppenheimer 2007, in litt.; Bily 2009, in litt.; HBMP 2010). Nonnative plants degrade habitat and outcompete *M. strigosa* var. *mauiensis* on Maui (Oppenheimer, in litt. 2007). Hybridization with other varieties of *Microlepia* is a threat to this species on

Oahu that is compounded by the low number of individuals (Kawelo 2010, in litt.). Climate change may result in alteration of the environmental conditions and ecosystems that support *M. strigosa* var. *mauiensis*. This variety may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 82), and the effects of climate change are likely to exacerbate the threats listed above. Because of those threats, we find that this plant should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Myrsine fosbergii* (kolea) is a branched shrub or small tree in the myrsine family (Myrsinaceae). This species is 7 to 13 ft (2 to 4 m) tall, with dark reddish brown, glabrous branches and glabrous, narrowly elliptic leaves clustered at the tips of the branches (dark green with dark purple bases). Flowers are perfect or possibly unisexual (dioecious), arising on short woody knobs among the leaves. Drupes are purplish black, globose, 0.2 to 0.4 in (6 to 9 mm) in diameter (Wagner *et al.* 1999, p. 940). *Myrsine fosbergii* was described by Hosaka (1940, pp. 46–47). This species is recognized as a distinct taxon in Wagner *et al.* (1999, p. 40), Wagner and Herbst (2003, p. 35), and Wagner *et al.* (2012, p. 53), the most recently accepted taxonomic treatment of this species. There is some question whether individuals found on Kauai are in fact *M. fosbergii*; if they are not, this species would be endemic to Oahu, with fewer than 50 known individuals (Lau 2012, pers. comm. in Conry 2012, in litt.). Typical habitat for *Myrsine fosbergii* on Oahu is *Metrosideros*-mixed native shrubland, at 2,200 to 2,800 ft (670 to 850 m) (Wagner *et al.* 1999, p. 940; HBMP 2010; TNCH 2007). Typical habitat on Kauai is *Metrosideros-Diospyros* (ohia-lama) lowland mesic forest and *Metrosideros-Cheirodendron* (ohia-olapa) montane wet forest, often on watercourses or stream banks, at 900 to 4,300 ft (270 to 1,300 m), in the lowland mesic, lowland wet, and montane wet ecosystems (TNCH 2007; HBMP 2010; Wagner *et al.* 2012, p. 53).

*Myrsine fosbergii* was historically known from the Koolau Mountains of Oahu at the Puu Lanihuli and Kuliouou summit ridges (HBMP 2010). This species was never observed or collected on Kauai before 1987, but is assumed to have been there historically. Currently, *M. fosbergii* is known from 14 occurrences, totaling a little more than 100 individuals. On Oahu, there are

widely scattered occurrences along the Koolau Mountains summit ridge (48 individuals) (lowland mesic and lowland wet ecosystems) (HBMP 2010). On Kauai, this species was once widely scattered in the northwest and central areas, but is currently known from only 55 remaining individuals in those same areas (Wood 2005 and 2007, in litt.; HBMP 2010).

*Myrsine fosbergii* is at risk from habitat modification and destruction by nonnative plants and animals; herbivory by feral pigs and goats; the displacement of individuals through competition with nonnative plants for space, nutrients, water, air, and light; and the low number of individuals. On Oahu, evidence of the activities of feral pigs has been reported at all summit populations (HBMP 2010). On Kauai, evidence of the activities of feral pigs has been reported at the centrally located occurrences (Wood 2005 and 2007, in litt.; HBMP 2010), and evidence of the activities of feral goats has been reported at the north-central occurrences (HBMP 2010). Herbivory by feral pigs and goats is a likely threat to *M. fosbergii* (Wood 2005 and 2007, in litt.; HBMP 2010). Nonnative plants compete with *M. fosbergii*, and modify and destroy its native habitat on Oahu and Kauai (HBMP 2010). The small number of remaining individuals may limit this species' ability to adapt to environmental change. Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Myrsine fosbergii* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 82). The effects of climate change are likely to further exacerbate the threats listed above. Because of these threats, we find that *M. fosbergii* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Nothocestrum latifolium* (aiea) is a small tree in the nightshade family (Solanaceae). Individuals are 33 ft (10 m) tall, with a gnarled trunk, rigid ascending branches, and young parts with yellowish-brown pubescence. The thick, pubescent leaves, usually clustered toward the ends of the branches, are seasonally deciduous. Flowers occur in clusters on short spurs and have a greenish-yellow corolla with the corolla tube about twice as long as the calyx. Berries are yellowish-orange, succulent, and depressed-globose (Symon 1999, p. 1263). *Nothocestrum*



*latifolium* was described by Gray (1862). This species is recognized as a distinct taxon in Symon (1999, p. 1263), the most recently accepted taxonomic treatment of this species.

Typical habitat for this species is dry to mesic forest in the dry cliff (Kauai, Oahu, Lanai, and Maui), lowland dry (Oahu, Lanai, and Maui), and lowland mesic (Oahu, Molokai, Lanai, and Maui) ecosystems (TNCH 2007; HBMP 2010). Historically, *Nothoecstrum latifolium* was known from Waieli, Kaumokuni, and Kupehau gulches, and Makua Valley, in the Waianae Mountains of Oahu; the Kawela and Kapaakea gulches on Molokai; from Koele, Kaohai, and Maunalei Valleys on Lanai; and from the southwest rift zone of Haleakala on Maui (HBMP 2010). This species was never observed or collected on Kauai before 1986, but is assumed to have been there historically, and the current status of this individual is unknown. On the island of Oahu, there is one individual in Manuwai Gulch, one individual at Kaluaa could not be relocated, and the three individuals located at west Makaleha were found to have died (Moses 2006, in litt.; Starr 2006, in litt.; Oppenheimer 2006, pers. comm.; HBMP 2010; Kawakami 2010, in litt.; Kawelo 2010, in litt.; Welton 2010, in litt.; Ching 2011, in litt.; Oppenheimer 2011, in litt.). On Molokai, at least four individuals were observed in 2009, above Makolelau; however, their current status is unknown (Moses 2006, in litt.). There are 18 occurrences totaling approximately 1,600 individuals on east and west Maui (Ching 2011, in litt.). One occurrence on east Maui is the largest, consisting of as many as 1,500 individuals (HBMP 2010). On Lanai, none of the individuals in the occurrence near the State Cooperative Game Management Area at Kanepuu could be relocated in 2011 (Duvall 2011, in litt.; Oppenheimer 2011, in litt.). Also on Lanai, no individuals within the Kanepuu Preserve (Kahue Unit) were found during surveys in 2012, although there are plans to continue surveying the area and other suitable habitat (PEPP 2012, p. 129). The species' range on each island has decreased dramatically since 2001 (Kawelo 2005 and 2010, in litt.; Oppenheimer 2011, in litt.; HBMP 2010).

Feral pigs (Oahu, Maui, Kauai), goats (Maui, Kauai), mouflon and sheep (Lanai), axis deer (Lanai, Maui), and black-tailed deer (Kauai) modify and destroy habitat of *Nothoecstrum latifolium* (HBMP 2010). Herbivory by these animals also poses a threat to this species. Nonnative plants outcompete *N. latifolium*, and modify and destroy

habitat at all known occurrences. Fire is a potential threat to this species. Low numbers of individuals may limit this species' ability to adapt to environmental change. Climate change may result in alteration of the environmental conditions and ecosystems that support this species (Fortini *et al.* 2013, p. 83), and the effects of climate change are likely to further exacerbate the threats listed above. Additionally, for unknown reasons, there is an observed lack of regeneration in *N. latifolium* in the wild (HBMP 2010). Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Ochrosia haleakalae* (holei), a tree in the dogbane family (Apocynaceae), is 7 to 27 ft (2 to 8 m) tall. The elliptic leaves are clustered three or four per node. Tubular white flowers occur in relatively open inflorescences. Robust, ovoid drupes are yellow or plum-colored, streaked with brown, and often have irregular ridges at maturity due to differential thickening of the exocarp (outermost layer of the fruit) (Wagner *et al.* 1999, p. 218). *Ochrosia haleakalae* was described by St. John (1978, pp. 199–220). This species is recognized as a distinct taxon in Wagner *et al.* (1999, p. 218), the most recently accepted taxonomic treatment of this species. Typical habitat for this species is dry to mesic forest, sometimes wet forest, and often lava, at 2,300 to 4,000 ft (700 to 1,200 m), in the dry cliff (Maui), lowland mesic (Maui and Hawaii Island), lowland wet (Hawaii Island), and montane mesic (Maui) ecosystems (Wagner *et al.* 1999, p. 218; HBMP 2010; TNCH 2007). On east Maui, this species occurs in diverse mesic forest (Medeiros *et al.* 1986, pp. 27–28; TNCH 2007; Medeiros 2007, in litt.). On the island of Hawaii, *O. haleakalae* is known from gulches and valleys in the Hamakua district and from *Metrosideros polymorpha-Pisonia sandwicensis* (ohia-papala kepau) mesic forest in the Kohala Mountains (Perlman and Wood 1996, in litt.; Wagner *et al.* 1999, p. 218).

Historically, *Ochrosia haleakalae* was known from two islands, Maui and Hawaii. On Maui, the species was known from the Koolau FR and Makawao FR, the northern slope of Haleakala, and from Auwahi and Kanaio on the southern slopes of Haleakala (HBMP 2010). On the island of Hawaii, this species was known from valleys in the Kohala Mountains (Pololu, Honopue, and Waipio) and from Kalopa gulch on the eastern (Hamakua) slope of

Mauna Kea (HBMP 2010). Currently, *O. haleakalae* is known from 4 occurrences totaling 15 individuals at Makawao FR and Auwahi-Kanaio on the island of Maui, and from 4 occurrences (Alakahi gulch, Honopu Valley, Kalopa gulch, and Laupahoehoe) on the island of Hawaii, totaling 16 individuals (Pratt 2005, in litt.; Medeiros 2007, in litt.; Oppenheimer 2008, in litt.; HBMP 2010).

On Hawaii, the status of the individuals at Alakahi Gulch is uncertain after a strong earthquake in 2006; the individual found at Kailikaula Stream was last observed in 2011, and is vulnerable to landslides (Hadway 2013, in litt.), and the individual at Kalopa has not been confirmed since 1999 (Agorastos 2010 and 2011, in litt.; Conry 2012, in litt.; Hadway 2013, in litt.). More than 100 propagated individuals have been outplanted at Kipuka Puauulu and Kipuka Ki in Hawaii Volcanoes National Park; however, survivorship of these individuals is unknown (Pratt 2005, in litt.; Agorastos 2007, pers. comm.; Bio 2008, in litt.; HBMP 2010; Pratt 2011, in litt.; Conry 2012, in litt.). Feral pigs and goats modify and destroy the habitat of *O. haleakalae* on Maui and Hawaii Island, and goats and cattle modify and destroy the habitat of *O. haleakalae* on Maui (Medeiros 1995, in litt.; Oppenheimer 2004, in litt.; Pratt 2005, in litt.; Agorastos 2007, pers. comm.). In dry areas, the possibility of wildfires affecting the habitat of *O. haleakalae* is exacerbated by the presence of introduced plant species such as *Pennisetum clandestinum* (kikuyu grass) (HBMP 2010). In addition, nonnative plant species modify and destroy habitat and outcompete native plants, including *O. haleakalae* (HBMP 2010). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Ochrosia haleakalae* may be unable to tolerate or respond to changes in temperature or moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 83). This species may experience reduced reproductive vigor due to reduced levels of genetic variability resulting from low numbers of individuals, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361).

*Ochrosia haleakalae* is at risk from habitat degradation and loss by feral pigs, goats, cattle and nonnative plants; the displacement of individuals due to competition with nonnative plants for

space, nutrients, water, air, and light; herbivory by feral pigs, goats, and cattle; and the small number of remaining individuals; and moderate vulnerability to the effects of climate change. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Phyllostegia brevidens* (NCN) is a scandent (climbing) subshrub in the mint family (Lamiaceae). Stems are glabrous, and ovate leaves are 3 to 5 in (7 to 13 cm) long, also glabrous or sparsely minute-haired. Leaf margins are dentate to serrate. There are 14 to 20 white, tubular (with a longer lower lip) flowers per unbranched inflorescence, with bracts 1 to 2.5 in (2 to 6 cm) long, very minutely-haired along nerves, and minutely glandular-dotted. Nutlets are about 0.2 in (6 mm) (Wagner *et al.* 1999, pp. 814–815). *Phyllostegia brevidens* is recognized as a distinct taxon by Wagner *et al.* (1999, pp. 814–815), the most recently accepted taxonomic treatment of this species. This species occurs in wet forest on the islands of Maui and Hawaii at 2,900 to 3,200 ft (880 to 975 m), in the lowland wet (Maui), montane wet (Hawaii Island), and wet cliff (Maui) ecosystems (Wagner *et al.* 1999, pp. 814–815; TNCH 2007; HBMP 2010).

*Phyllostegia brevidens* is historically known from Hilo FR, Mauna Kea, and Kulani on Hawaii Island; and from Kipahulu Valley on Maui (Haleakala National Park) (Wagner *et al.* 1999, p. 815; HBMP 2010; Smithsonian Institution 2014, in litt.). Currently, there is one known occurrence of two individuals on the island of Maui (PEPP 2009, p. 90; Wagner *et al.* 2012, p. 46; PEPP 2014, p. 136).

Feral pigs, sheep, mouflon, and cattle on Hawaii Island modify and destroy the habitat of *Phyllostegia brevidens*, and feral pigs modify and destroy habitat on Maui (PEPP 2014, p. 136). Nonnative plants outcompete *P. brevidens* on Maui. Herbivory by slugs poses a threat to the remaining individuals on Maui (PEPP 2014, p. 136). In addition, natural events such as landslides are a potential threat to the occurrence on Maui (PEPP 2014, p. 136). The small number of remaining individuals may limit this species' ability to adapt to environmental change. Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Phyllostegia brevidens* may be unable to tolerate or respond to

changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 84).

The remaining occurrences of *Phyllostegia brevidens* and habitat for its reintroduction are at risk. Only two individuals are known to persist at the occurrence on Maui; no individuals have been observed recently on Hawaii Island. The species continues to be negatively affected by habitat modification and destruction by ungulates and nonnative plants, and by direct competition from nonnative plants, combined with herbivory by ungulates and slugs. The effects of climate change are likely to further exacerbate these threats. We find that *P. brevidens* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Phyllostegia helleri* (NCN) is a weakly erect to climbing shrub in the mint family (Lamiaceae). Stems have small, curved hairs. Leaves are thin and somewhat wrinkled; ovate; 4 to 6 in (1 to 14.5 cm) long, with uneven, shiny crinkly hairs; with or without inconspicuous glandular dots, and serrate margins. Tubular flowers are white with lavender-tinged lobes, with the upper lobe shorter than the lower lobe. Nutlets are 1 in (2.5 cm) long (Wagner *et al.* 1999, pp. 816–817). *Phyllostegia helleri* is recognized as a distinct taxon in the Manual of Flowering Plants of Hawaii (Wagner *et al.* 1999, pp. 816–817), the most recently accepted taxonomic treatment of this species. Habitat for *Phyllostegia helleri* is ridges or spurs at 2,800 to 4,000 ft (860 to 1,200 m) in diverse wet forest on Kauai, in the lowland wet, montane wet, and wet cliff ecosystems (Wagner *et al.* 1999, p. 817; TNCH 2007; HBMP 2010).

Historically, *Phyllostegia helleri* was wide-ranging on the island of Kauai, extending from the north and east sides throughout the central plateau (Wagner *et al.* 1999, p. 817; HBMP 2010). Currently, this species is limited to 1 occurrence of 10 individuals in Wainiha Valley (PEPP 2014, p. 35).

Feral pigs and goats modify and destroy the habitat of *Phyllostegia helleri* on Kauai (HBMP 2010). Herbivory on fruits and seeds by rats negatively affects the remaining individuals (HBMP 2010). The only known occurrence of this species is located at the base of cliffs, and landslides are an additional threat (HBMP 2010). Nonnative plants, such as *Kalanchoe pinnata* (air plant), *Rubus rosifolius* (thimbleberry), *Erigeron*

*karvinskianus* (daisy fleabane), *Psidium guajava* (common guava), and various grasses, modify and destroy native habitat and outcompete native plants, and are found at the last known location of *P. helleri* (HBMP 2010). This species may experience reduced reproductive vigor due to reduced levels of genetic variability, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barret and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Phyllostegia helleri* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 84).

The remaining occurrence of *Phyllostegia helleri* and habitat for its reintroduction are at risk. The numbers of individuals are decreasing on Kauai, as this species was wide-ranging on the island, extending from the north and east sides throughout the central plateau, and is now known from only one occurrence of 10 individuals. These 10 individuals continue to be negatively affected by habitat modification and destruction by ungulates and nonnative plants, direct competition by nonnative plants, and by seed predation by rats. Natural events such as landslides may damage or destroy the remaining 10 individuals. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that *P. helleri* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Phyllostegia stachyoides* (NCN) is a weakly erect to climbing subshrub in the mint family (Lamiaceae). Stems have forward-facing hairs; leaves are somewhat wrinkled and lanceolate to ovate, 8 in (20 cm) long and 3 in (8 cm) wide, with both surfaces moderately to sparsely hairy. The lower leaf surface is usually moderately glandular-dotted. The upper lip of the tubular white flower is tinged pink. Nutlets are 1 in (3 cm) long (Wagner *et al.* 1999, p. 823). *Phyllostegia stachyoides* is recognized as a distinct taxon in the Manual of Flowering Plants of Hawaii (Wagner *et al.* 1999, p. 823), the most recently accepted taxonomic treatment of this species. *Phyllostegia stachyoides* occurs

in mesic to wet forest at 3,600 to 4,600 ft (1,000 to 1,400 m), in the montane wet (Hawaii Island, Maui, and Molokai) and montane mesic (Hawaii Island and Maui) ecosystems (Wagner *et al.* 1999, p. 823; TNCH 2007; HBMP 2010).

*Phyllostegia stachyoides* is historically known from the eastern and central Molokai, west Maui, and widely ranging occurrences on Hawaii Island (north and south Kona, Kohala, and Hawaii Volcanoes National Park) (Wagner *et al.* 1999, p. 823; HBMP 2010). Currently, *P. stachyoides* is known from seven occurrences, totaling 20 individuals. Occurrences on west Maui, at Honokokau, Puu Kukui, Luakoi, and Lihau, total about 15 individuals. Those on Molokai occur at Kamakou, Hanalilolilo, and Kumueli (total of 5 individuals). Several individuals resembling *P. stachyoides* were observed at Kaohe on Hawaii Island; however, their identity is not yet confirmed (PEPP 2012, p. 156.).

Feral pigs, goats, and axis deer modify and destroy the habitat of *Phyllostegia stachyoides* on Maui, with evidence of the activities of these animals reported in areas where this species occurs (HBMP 2010). Nonnative plants such as *Erigeron karvinskianus*, *Tibouchina herbacea*, and *Ageratina adenophora* (Maui pamakani) compete with *P. stachyoides*, modify and destroy its native habitat, and displace other native Hawaiian plant species (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74). Herbivory by slugs and rats on leaves and nutlets of *P. stachyoides* poses a threat to this species at known locations on Maui and Molokai (PEPP 2014, pp. 140–142). On Maui, stochastic events such as drought pose a threat to small, isolated occurrences of *P. stachyoides*, and rockfalls and landslides pose a threat to occurrences on Molokai (PEPP 2014, pp. 140–142). This species may experience reduced reproductive vigor due to reduced levels of genetic variability, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species, through flooding and drought.

*Phyllostegia stachyoides* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 84).

The remaining occurrences of *Phyllostegia stachyoides* and habitat for

its reintroduction are at risk. The known individuals are restricted to small areas on west Maui and Molokai, and continue to be negatively affected by habitat modification and destruction by ungulates and by direct competition with nonnative plants, combined with herbivory by slugs and rats. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Portulaca villosa* (ihi) is a perennial herb in the purslane family (Portulacaceae). The taproot is fleshy to woody, with stems prostrate to weakly ascending and 12 in (30 cm) long. The small leaves are linear to oblong and pale grayish green. White or pink flowers are in groups of three to six arranged in small bunches at the ends of the branches. The fruit capsules of *P. villosa* are 0.2 in (5 mm) long and contain dark reddish-brown seeds (Wagner *et al.* 1999, p. 1074). *Portulaca villosa* is recognized as a distinct taxon by Wagner *et al.* (1999, p. 1074), the most recently accepted taxonomic treatment of this species. *Portulaca villosa* occurs on dry, rocky, clay, lava, or coralline reef sites, from sea level to 1,600 ft (490 m), in the coastal (Lehua, Kaula, Oahu, Kahoolawe, Maui, and Hawaii Island) and lowland dry (Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii Island) ecosystems, and one reported occurrence in the montane dry (Hawaii Island) ecosystem (Wagner *et al.* 1999, p. 1074; TNCH 2007; HBMP 2010).

*Portulaca villosa* is historically known from all the main Hawaiian Islands except Niihau and Kauai (Wagner *et al.* 1999, p. 1074). *Portulaca villosa* has been observed on the small islets of Kaula and Lehua (west of Kauai and Niihau), and from Nihoa (NWHI); however, their current status is unknown. This species has not been observed on Oahu since the 1960s, when it was locally abundant at Kaohikaipu Island (HBMP 2010). *Portulaca villosa* is known from Molokai at Kauhako Crater (a few), from east Maui on Alau islet (2 individuals), from west Maui at Lihau (about 24 individuals), and from Kahoolawe at Puu Koaie, Aleale, and above Kamalio (fewer than 15 individuals) (MNFTF 2010, in litt.). On the island of Lanai, two individuals were observed at Kaohai in 1996 (HBMP 2010). On the

island of Hawaii, there are five occurrences in the Pohakuloa Training Area, totaling 10 individuals (Evans 2015, in litt.).

Axis deer (Maui and Lanai), mouflon, sheep, and goats (Lanai), and cattle (Hawaii Island) modify and destroy the habitat of *Portulaca villosa* (HBMP 2010). These animals may also forage directly on this species. Nonnative plants compete with and modify and destroy native habitat of *P. villosa*; displace this species and other native Hawaiian plants; and pose a threat to the known occurrences on Hawaii Island, Maui, Kahoolawe, Lanai, and Molokai (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74). *Portulaca villosa* occurs in drier coastal and lowland habitats, all of which are at risk from wildfires. Some coastal habitat includes exposed cliffs, which erode and cause rockfalls in areas where *P. villosa* occurs (Kahoolawe), posing a threat to this species (HBMP 2010). This species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Portulaca villosa* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 86).

The remaining occurrences of *Portulaca villosa* and habitat for its reintroduction are at risk; the number of occurrences have decreased on Oahu, Lanai, and Hawaii Island, and the species continues to be negatively affected by continued habitat modification and destruction, and by competition from nonnative plants. Because of its small and isolated remaining occurrences, natural events such as rockfalls, landslides, and wildfires may pose a threat to this species. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Pritchardia bakeri* (Baker's loulu) is a small to medium-sized palm in the palm

family (Arecaceae). This palm species, endemic to Oahu, is 23 to 30 ft (7 to 10 m) tall, with a smooth, grayish trunk 8 to 10 in (20 to 25 cm) in diameter. Its crown contains up to 40 ascending to stiffly spreading leaves, 2 to 3 ft (0.6 to 0.9 m) long and wide, on 1 to 2 ft (0.3 to 0.6 m) leaf stalks. The leaf blades are glossy green above and silvery grayish below. The flower and fruit stalks have up to three long primary branches that are nearly equal in length to the leaf when in flower, but greatly exceed the leaf length when in fruit. Fruit are shiny, black, and spherical, up to 2 in (5 cm) long and 2 in (4 cm) wide when mature (Hodel 2009, pp. 173–179; Hodel 2012, pp. 70–73). *Pritchardia bakeri* is recognized as a distinct taxon by Hodel (2009, pp. 173–179; 2012, pp. 70–73), the most currently accepted taxonomic treatments of this species. *Pritchardia bakeri* occurs in the lowland mesic ecosystem in the Koolau Mountains on Oahu, at 1,500 to 2,100 ft (457 to 640 m), in disturbed, windswept, and mostly exposed shrubby or grassy areas, and sometimes on steep slopes in these areas (Hodel 2012, pp. 71–73). *Pritchardia bakeri* was first described as a new species in 2009 by Hodel (pp. 173–179). This palm occurs on the northern end (Pupukea) and southern end (Kuliouou) of the Koolau Mountain range, on the island of Oahu (Bacon *et al.* 2012, pp. 1–17; Hodel 2012, pp. 71–73). Currently, occurrences total approximately 250 individuals (Hodel 2012, pp. 42, 71).

Habitat modification and destruction by feral pigs affect the range and abundance of *Pritchardia bakeri*. Rats eat the fruit before they mature (Hodel 2012, pp. 42, 73). Nonnative plants compete with and degrade and destroy native habitat of *P. bakeri* and displace this species and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74). Stochastic events such as hurricanes modify and destroy the habitat of *P. bakeri*, and can damage or kill plants. This species may experience reduced reproductive vigor due to low levels of genetic variability caused by seed predation by rats and widely separated occurrences, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361; Hodel 2012, p. 73).

Based on our evaluation of habitat degradation and loss by feral pigs and nonnative plants, fruit predation by rats,

and the small number and reduced range of remaining individuals, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Pseudognaphalium sandwicense* var. *molokaiense* (enaena) is a perennial herb in the sunflower family (Asteraceae). This species has prostrate stems 4 to 12 in (10 to 31 cm) long, with densely white woolly pubescence on the entire plant. Leaves are spatulate to narrowly obovate, 0.3 to 0.8 in (7 to 20 mm) wide. Whitish to pale yellow flower heads occur in terminal, leafless clusters (Wagner *et al.* 1999, p. 321). First described by Sherff and Degener (1948) as an infraspecific taxon in the genus *Gnaphalium*, Wagner (1997) moved the entire species to *Pseudognaphalium*. This variety is recognized as a distinct taxon in Wagner *et al.* (1999, pp. 321–322) and Wagner and Herbst (2003, p. 8), the most recently accepted taxonomic treatments of this species. In evaluating the status of botanical varieties for listing as threatened or endangered or threatened under the Act, we consider them to be equivalent to subspecies (43 FR 17910, April 26, 1978, see p. 17912). Typical habitat for *Pseudognaphalium sandwicense* var. *molokaiense* is strand vegetation in dry consolidated dunes, in the coastal ecosystem (Wagner *et al.* 1999, p. 321; TNCH 2007; HBMP 2010).

Historically, this variety was found on Molokai (Halawa Valley and Waiahawahewa Gulch), on Oahu (on the coast between Diamond Head and Koko Head, and along the Waimanalo coast), on Maui (Wailuku area), and on Lanai (along the Munro trail) (HBMP 2010; MNTF 2010, in litt.). Currently, *Pseudognaphalium sandwicense* var. *molokaiense* is known only from Molokai on the northwestern coast at Ilio Point (as many as 20,000 individuals, depending on rainfall) and Kauhako Crater (a few individuals), and from northwest coast of Maui at Waiehu dunes (scattered individuals) and Puu Kahulianapa (5 to 10 individuals) (Moses 2006, in litt.; Starr 2006, in litt.; Kallstrom 2008, in litt.). This variety was last observed on Lanai in 1960, and on Oahu at Diamond Head (5 individuals) in the 1980s (HBMP 2010).

Goats and axis deer modify and destroy the habitat of *Pseudognaphalium sandwicense* var. *molokaiense*, with evidence of the activities of these animals reported in the areas where this plant occurs (Moses 2006, in litt.; Starr 2006, in litt.;

Kallstrom 2008, in litt.; HBMP 2010). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Additionally, nonnative plants, such as *Atriplex semibaccata* (Australian saltbush), *Cenchrus ciliaris* (buffelgrass), and *Prosopis pallida* (kiawe), compete with and displace this and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; Moses 2009, in litt.). This variety may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). *Pseudognaphalium sandwicense* var. *molokaiense* occurs on a sea cliff on west Maui, and rockfalls and landslides pose a threat (HBMP 2010). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Pseudognaphalium sandwicense* var. *molokaiense molokaiense* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 86).

The remaining occurrences of *Pseudognaphalium sandwicense* var. *molokaiense* and habitat for its reintroduction are at risk; individuals no longer occur on Oahu and Lanai. Occurrences on Maui and Molokai continue to be negatively affected by habitat modification and destruction by ungulates, and by direct competition with nonnative plants. The small number of remaining occurrences may limit this species' ability to adapt to environmental changes. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Ranunculus hawaiiensis* (makou) is an erect or ascending perennial herb in the buttercup family (Ranunculaceae). This species is 2 to 6.5 ft (0.6 to 2 m) tall with fibrous roots. Stems are densely covered with golden or whitish hairs. Basal

leaves are twice compound, with leaflets lanceolate and the terminal leaf largest and irregularly toothed and lobed. The yellow, glossy flowers are numerous in branched open cymes and contain a scale-covered nectary at the base. Fruit are numerous and are margined with a narrow wing (Duncan 1999, p. 1088). *Ranunculus hawaiiensis* was described by Gray (1854) and is recognized as a distinct taxon by Duncan (1999, p. 1088), the most recently accepted taxonomic treatment of this species. Typical habitat is mesic forest on grassy slopes and scree, and in open pastures, at 6,000 to 6,700 ft (1,800 to 2,000 m), in the montane mesic (Hawaii Island), montane dry (Hawaii Island), and subalpine (Hawaii Island and Maui) ecosystems (Medeiros 2007, pers. comm.; Pratt 2007, in litt.; Duncan 1999, p. 1088; HBMP 2010; TNCH 2007).

Historically, *Ranunculus hawaiiensis* was wide-ranging on the island of Hawaii, from Kona, Hualalai, Mauna Kea, and Kau. On Maui, this species was known from Haleakala National Park (HBMP 2010). In the 1980s and 1990s, this species numbered several hundred individuals on both islands. Currently, there are six occurrences totaling 14 individuals on Hawaii Island (Hakalau NWR, Puu Kanakaleonui, Kolekole Gulch, Kahuku, Kapapala FR, and Kipahoe NAR) (Bio 2008, in litt.; PEPP 2008, p. 108; Pratt 2008, in litt.; HBMP 2010; Agorastos 2011, in litt.; Imoto 2013, in litt.). On Maui, a few individuals were observed on a cliff in the Waikamoi Preserve in 1994; however, this occurrence was not relocated in further surveys (PEPP 2013, p. 177). Additionally, no individuals were re-observed in Haleakala National Park (DLNR 2006, p. 61).

Feral pigs, mouflon, and cattle modify and destroy the habitat of *Ranunculus hawaiiensis* on Hawaii Island, with evidence of the activities of these animals reported in the areas where *R. hawaiiensis* occurs (HBMP 2010). These ungulates, and rats, may also forage on *R. hawaiiensis*. Nonnative plants, such as *Holcus lanatus* (common velvet grass), *Ehrharta stipoides* (meadow ricegrass), and various grasses that modify and destroy native habitat and outcompete native plants have been reported in areas where *R. hawaiiensis* occurs (HBMP 2010). Drought and erosion pose a threat to the last known occurrence of *R. hawaiiensis* on Maui (PEPP 2013, p. 177). This species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, and thereby lessening the probability of long-term

persistence (Barret and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Ranunculus hawaiiensis* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 86).

The remaining occurrences of *Ranunculus hawaiiensis* and habitat for its reintroduction are at risk; the known individuals are restricted to small areas on Maui and Hawaii Island and continue to be negatively affected by habitat modification and destruction by feral ungulates, and by direct competition with nonnative plants, combined with predation by ungulates. Drought and erosion pose a threat to the occurrence on Maui. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Ranunculus mauiensis* (makou) is an erect to weakly ascending perennial herb in the buttercup family (Ranunculaceae). This species is 2 to 6.5 ft (0.5 to 2 m) tall, with stems sparsely to densely pubescent with scattered whitish hairs. Basal leaves are compound with ovate leaflets with the terminal leaflet being the largest and irregularly serrate. Yellow flowers are few, in branched loose cymes. Fruit are numerous in a globose head and have smooth faces (Wagner *et al.* 1999, p. 1089). *Ranunculus mauiensis* was described by Gray (1854) and is recognized as a distinct taxon in Wagner *et al.* (1999, p. 1089), the most recently accepted taxonomic treatment of this species. Typical habitat for *R. mauiensis* is open sites in mesic to wet forest and along streams, at 3,500 to 5,600 ft (1,060 to 1,700 m), in the montane wet (Kauai, Oahu, Molokai, and Maui), montane mesic (Kauai, Molokai, Maui, and Hawaii Island), montane dry (Hawaii Island), and wet cliff (Molokai and Maui) ecosystems (Wagner *et al.* 1999, p. 1089; TNCH 2007; HBMP 2010).

Historically, *Ranunculus mauiensis* was known from five islands: Kauai (Kuia, Kokee, and Na Pali Kona), Oahu (Waianae Mountains), Molokai (Kamakou, Kalae, Waikolu, and Kaluaaha), Maui (Puu Kukui, Kapunakea, Pohakea, Olinda, Kipahulu, Waikamoi, and Puu Alaea), and Hawaii (Kealakekua) (HBMP 2010). Currently,

*R. mauiensis* is known from 14 occurrences (totaling approximately 200 individuals) on three islands: Kauai, Maui, and Molokai. On Kauai, *R. mauiensis* is found at Kalalau-Honopu (34 individuals), Nualolo (12 individuals), Kawaiiki ridge (4 individuals), Nawaimaka (1 individual), and Nawaimaka stream (2 individuals) (Perlman 2007, in litt.; Wood 2007, in litt.; HBMP 2010; PEPP 2011, p. 161; PEPP 2013, p. 177). On Molokai, there are two individuals in Kamakou Preserve; however, these plants were not relocated during recent surveys (PEPP 2010, p. 105; Bakutis 2011, in litt.). Oahu occurrences have not been observed since the 1800s (HBMP 2010). On west Maui, this species is found at Kapunakea Preserve (5 individuals), Pohakea Gulch (5 individuals), Lihau (5 individuals), Kauaula Valley (1 individual), and Puehuehunui (34 individuals); and on east Maui, this species is found at Waikamoi Preserve (20 individuals), Makawao Forest Reserve (30 individuals), Kahikinui (10 individuals), and Manawainui (10 individuals) (PEPP 2013, p. 177; Perlman 2007, in litt.; Wood 2007, in litt.; Bily 2007, pers. comm.). Hawaii Island occurrences have not been observed since 1980 (HBMP 2010).

Feral pigs, goats, axis deer, black-tailed deer, and cattle modify and destroy the habitat of *R. mauiensis* on Kauai, Molokai, and Maui, with evidence of the activities of these animals reported in the areas where this species occurs (PEPP 2014, pp. 155–156; HBMP 2010). Ungulates are managed in Hawaii as game animals (except for cattle), but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants modify and destroy the native habitat of *R. mauiensis*, and displace this species and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010; PEPP 2014, p. 155). Herbivory by slugs (Maui) and seed predation by rats (Maui, Kauai) are both reported to pose a threat to *R. mauiensis* (PEPP 2014, pp. 154–155; HBMP 2010). Stochastic events such as drought (Maui), landslides (Kauai), and fire (Maui) are also reported to pose a threat to *R. mauiensis* (HBMP 2010). Erosion is a threat to occurrences on Maui and Kauai (PEPP 2014, p. 155–

156). This species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Ranunculus mauiensis* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 86).

The remaining occurrences of *Ranunculus mauiensis* and habitat for its reintroduction are at risk, the known individuals are restricted to small areas on Kauai, Molokai, and Maui, and continue to be negatively affected by habitat modification and destruction by ungulates, direct competition with nonnative plants, and herbivory and predation by slugs and rats. Because of its small, isolated occurrences, landslides, drought, and erosion may also have negatively impact this species. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Sanicula sandwicensis* (NCN) is a stout, erect, perennial herb in the parsley family (Apiaceae). This species is 8 to 28 in (20 and 70 cm) tall, with multiple, profusely-branched stems arising from the rootstalk. The basal leaves are numerous, chartaceous, orbicular, 1 to 5 in (3 to 12 cm) wide, and palmately 3-parted or 5-parted nearly to the petiole. The yellow flowers are umbellately arranged in terminal clusters of 2 to 5 stalks, with up to 20 flowers. Fruit is ovoid, 0.2 in (4 mm) long, and covered with stout, hooked, bulbous prickles (Constance and Affolter 1999, p. 210). *Sanicula sandwicensis* is recognized as a distinct taxon by Constance and Affolter *in* Wagner *et al.* (1999, p. 210), the most recently accepted taxonomic treatment of this species. *Sanicula sandwicensis* occurs at 6,500 to 8,500 ft (2,000 to 2,600 m) in shrubland and woodland on the islands of Maui and Hawaii Island, in the montane mesic (Hawaii Island and Maui), montane dry (Hawaii Island), and subalpine (Hawaii Island and Maui) ecosystems (Constance and

Affolter 1999, p. 210; TNCH 2007; HBMP 2010).

*Sanicula sandwicensis* is historically known from the islands of Maui (Haleakala) and Hawaii (Mauna Kea, Mauna Loa, and Hualalai) (Constance and Affolter 1999, p. 210). Currently, there are fewer than 20 individuals of *S. sandwicensis* on east and west Maui (MNTF 2010, in litt.; PEPP 2011, pp. 162–164). This species has not been observed on Hawaii Island since the 1990s (HBMP 2010; MNTF 2010, in litt.).

Feral goats modify and destroy the habitat of *Sanicula sandwicensis* on Maui, with evidence of the activities of these animals reported in the areas where this species occurs (PEPP 2011, pp. 162–164). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants modify and destroy the habitat of *S. sandwicensis*, and displace this species and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 *in* Cuddihy and Stone 1990, p. 74; PEPP 2011, pp. 162–164). Those nonnative plants observed to directly affect *S. sandwicensis* and its habitat are *Ageratina adenophora*, *Anthoxanthum odoratum* (sweet vernalgrass), *Epilobium ciliatum* (willow herb), *Holcus lanatus*, *Pinus* spp., *Prunella vulgaris*, and *Rubus argutus* (PEPP 2011, pp. 162–164). Seed predation by rats is likely to adversely affect this species (HBMP 2010). Stochastic events such as drought, flooding, and fires are all reported to pose a threat to this species (PEPP 2011, pp. 162–164). Erosion is a threat to occurrences on Maui (PEPP 2011, pp. 162–163). This species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Sanicula sandwicensis* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 88).

The remaining occurrences of *Sanicula sandwicensis* and habitat for its reintroduction are at risk; the known individuals are restricted to a small area on Maui and continue to be negatively affected by habitat modification and destruction by feral goats and by direct competition with nonnative plants. Stochastic events such as drought, flooding, and fires all pose threats to this species. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Santalum involutum* (iliahi) is a shrub or small tree in the sandalwood family (Santalaceae). This species is 7 to 23 ft (2 to 7 m) tall, with yellowish-green to grayish-green leaves that are thinly chartaceous and often appearing droopy. The flowers are cream to purple, or greenish with a purple interior (Harbaugh *et al.* 2010, pp. 827–838). *Santalum involutum*, originally described by St. John in 1984 (pp. 217–226), was not recognized by Wagner *et al.* (1999, p. 1218); however, genetic analyses conducted by Harbaugh *et al.* (2010, pp. 827–838) revived this species as a valid taxon. Habitat for *Santalum involutum* is mesic and wet forest on Kauai, at 400 to 2,500 ft (120 to 750 m), in the lowland mesic and lowland wet ecosystems (TNCH 2007; Harbaugh *et al.* 2010, pp. 827–838). Historically, this species was known from northern Kauai at Kee, Hanakapiai, and Wainiha, and from southern Kauai at Wahiawa, but has not been observed in these areas for 30 years (Harbaugh *et al.* 2010, p. 835). Currently, approximately 50 to 100 individuals occur in isolated forest pockets in Pohakuao and Kalalau valleys (Harbaugh *et al.* 2010, p. 835).

Feral pigs, goats, and black-tailed deer modify and destroy the habitat of *Santalum involutum* on Kauai, with evidence of the activities of these animals reported in the areas where this species occurs (Harbaugh *et al.* 2010, pp. 835–836). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants modify and destroy the native habitat of *S. involutum*, and displace this species and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce

chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010). Nonnative plants reported to modify and destroy habitat of *S. involutum* are: *Psidium guajava*, *P. cattleianum*, *Lantana camara*, *Rubus argutus*, *Hedychium gardnerianum*, *Clidemia hirta*, *Melinis minutiflora* (molasses grass) (Harbaugh *et al.* 2010, p. 836). Herbivory and seed predation by rats is reported to pose a threat to *S. involutum* (Harbaugh *et al.* 2010, p. 836). Wildfire is a potential threat to this species in mesic areas (Harbaugh *et al.* 2010, p. 836). This species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361).

The remaining occurrences of *Santalum involutum* and habitat for its reintroduction are at risk; the known individuals are restricted to a small area on Kauai and continue to be negatively affected by habitat modification and destruction by ungulates, direct competition with nonnative plants, and by herbivory and fruit predation by rats. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Schiedea diffusa* ssp. *diffusa* (NCN) is a reclining or weakly climbing vine in the pink family (Caryophyllaceae). This species is woody at the base, and glabrous or nearly so below, with purple-tinged hairs. Lanceolate to ovate leaves are 2 to 5 in (4 to 12 cm) long. Inflorescences have 20 to 90 flowers with purple or purple-tinged stalks. Capsules are very broadly ovoid, 0.2 to 0.3 in (5 to 7 mm) long. *Schiedea diffusa* ssp. *diffusa* was described by Wawra (1825, in Wagner *et al.* 2005, pp. 103–104) as *S. diffusa* ssp. *angustifolia*, now a synonym. This subspecies is currently recognized as a distinct taxon in Wagner *et al.* (1999, pp. 511–512) and in the *Schiedea* monograph by Wagner *et al.* (2005, pp. 103–106), the most recently accepted taxonomic treatments of this subspecies. *Schiedea diffusa* ssp. *diffusa* occurs in wet forest at 3,000 to 5,300 ft (915 to 1,600 m) on Molokai, and to 6,700 ft (2,050 m) on Maui, in the lowland wet (Maui) and montane wet (Maui and Molokai) ecosystems (Wagner

*et al.* 1999, p. 512; HBMP 2010; TNCH 2007).

*Schiedea diffusa* ssp. *diffusa* was historically found on the islands of Molokai and Maui. On Molokai, this subspecies was known from Kawela to Waikolu valleys; on Maui, it was widespread on both the east and west mountains (Wagner *et al.* 2005, p. 106). Currently, *S. diffusa* ssp. *diffusa* is known from east Maui in six occurrences (fewer than 50 individuals total), in a much smaller range, from Puu o Kalae to Keanae (spanning about 5 mi (8 km)). On Molokai, there were two occurrences totaling fewer than 10 individuals, one at west Kawela Gulch, and one on the rim of Pelekunu Valley, last observed in the 1990s (HBMP 2010).

Feral pigs modify and destroy the habitat of *Schiedea diffusa* ssp. *diffusa* on Maui and Molokai, with evidence of the activities of these animals reported in the areas where this subspecies occurs (PEPP 2014, p. 159; HBMP 2010). Ungulates are managed in Hawaii as game animals (except for cattle), but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants modify and destroy the native habitat of *S. diffusa* ssp. *diffusa*, and displace this subspecies and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010; PEPP 2014, p. 159). Herbivory by slugs and seed predation by rats are both reported to pose a threat to this subspecies (HBMP 2010; PEPP 2014, p. 159). This subspecies may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361).

The remaining occurrences of *Schiedea diffusa* ssp. *diffusa* and habitat for its reintroduction are at risk. The known individuals are restricted to small areas on Maui and on Molokai (where it has not been observed for 20 years or longer), and continue to be negatively affected by habitat modification and destruction by ungulates, direct competition with nonnative plants, and herbivory and predation by slugs and rats. The small number of remaining individuals may limit this subspecies' ability to adapt to

environmental changes. Because of these threats, we find that this subspecies should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Schiedea pubescens* (maolioli) is a reclining or weakly climbing vine in the pink family (Caryophyllaceae). This species is glabrous except for the inflorescence which has dense, purple-tinged hairs. The stems are 3 to 20 ft (1 to 6 m) long with internodes usually 2.5 to 5 in (6 to 12 cm) long. Opposite, leathery, narrowly lanceolate leaves are sometimes purple-tinged, especially along the midrib. The tiny flowers are perfect and are arranged in open cymes 12 to 20 in (30 to 50 cm) long (30 to 88 flowers) with purple hairs, and green to purple bracts and sepals. Capsules are 0.1 in (3 mm) long (Wagner *et al.* 1999, p. 519; Wagner *et al.* 2005, pp. 99–102). *Schiedea pubescens* was described by Hillebrand (1888, pp. 31–32), and is recognized as a distinct taxon in Wagner *et al.* (1999, p. 519), and in the *Schiedea* monograph by Wagner *et al.* (2005, pp. 99–102), the most recently accepted taxonomic treatments. *Schiedea pubescens* occurs in diverse mesic to wet *Metrosideros* forest at 2,000 to 4,000 ft (640 to 1,220 m), in the lowland wet (Maui and Molokai), montane wet (Molokai), montane mesic (Maui), and wet cliff (Maui, Lanai, and Molokai) ecosystems (Wagner *et al.* 1999, p. 519; Wagner *et al.* 2005, p. 100; HBMP 2010; TNCH 2007).

*Schiedea pubescens* was historically found on the islands of Molokai, Lanai, and Maui. On Molokai, this species was found from Kalae to Pukoo ridge; on Lanai, it was known from the Lanaihale summit area, and on Maui, it was known from the western mountains at Olowalu, Kaanapali, and Waihee, and a possible occurrence the eastern mountains at Makawao (HBMP 2010). Currently, this species is known from one occurrence on Molokai, totaling fewer than 30 individuals; has not been observed on Lanai since 1922 and is believed extirpated; and from five occurrences on Maui (Wood 2001, in litt.; Oppenheimer 2006, in litt.; Bakutis 2010, in litt.; MNTF 2010, in litt.; Oppenheimer 2010, in litt.; Perlman 2010, in litt.; HBMP 2010; PEPP 2014, pp. 162–163). It was determined that a report of 4 to 6 individuals of *S. pubescens* in PTA on the island of Hawaii was a misidentification of the species *S. hawaiiensis* (Wagner *et al.* 2005, pp. 93, 95).

Feral pigs, goats, axis deer, and cattle modify and destroy the habitat of *Schiedea pubescens* on Maui, Lanai,

and Molokai, with evidence of the activities of these animals reported in the areas where this species occurs (HBMP 2010; PEPP 2014, p. 162). Ungulates are managed in Hawaii as game animals (except for cattle), but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants modify and destroy the native habitat of *S. pubescens*, and displace this species and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010; PEPP 2014, pp. 162–163). Herbivory by slugs and seed predation by rats are both reported to pose a threat to *S. pubescens* on Maui (HBMP 2010; PEPP 2014, p. 162). Stochastic events such as drought, erosion, and flooding are also reported to pose a threat to *S. pubescens* (HBMP 2010; PEPP 2014, pp. 162). This species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystem that support this species. *Schiedea pubescens* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 88).

The remaining occurrences of *Schiedea pubescens* and habitat for its reintroduction are at risk. The known individuals are restricted to small areas on Molokai and Maui, and continue to be negatively affected by habitat modification and destruction by ungulates, direct competition with nonnative plants, and herbivory and predation by slugs and rats. Landslides, flooding, and drought may impact this species. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Sicyos lanceoloideus* (anunu) is a perennial vine in the gourd family

(Cucurbitaceae). Stems are 49 ft (15 m) long with a woody base. Leaves are broadly ovate and palmately 3- to 5-lobed. Inflorescences are branched, 3 to 8 in (8 to 20 cm) long, with white flowers. Fruit are green, up to 1 in (25 mm) long and beaked (Telford 1999, p. 581). In 1999, Wagner and Shannon (pp. 441–447) prepared a series of papers analyzing the names published in 1987 and 1988 by St. John, in which the nomenclature was evaluated and the taxa incorporated in a current classification. This provided a new combination for *Sicyos* sp. A as *Sicyos lanceoloideus* (Telford p. 581; Wagner and Shannon 1999, p. 444). *Sicyos lanceoloideus* is recognized as a distinct taxon in Wagner *et al.* (2012, p. 31), the most recently accepted taxonomic treatment. *Sicyos lanceoloideus* occurs on ridges or spurs in mesic forest at 1,800 to 2,700 ft (550 to 800 m), in the dry cliff (Oahu), lowland mesic (Oahu and Kauai), and montane mesic (Kauai) ecosystems (Telford p. 581; HBMP 2010; TNCH 2007).

*Sicyos lanceoloideus* was historically found on the islands of Kauai (Kalalau Valley and Waimea Canyon) and Oahu (Waianae Mountains) (Telford 1999, p. 581). Currently, *S. lanceoloideus* occurs on Kauai in one occurrence in the Na Pali-Kona FR (exact number of individuals unknown), and on Oahu in four locations in the Waianae Mountains, totaling fewer than 35 individuals (HBMP 2010; U.S. Army 2014 database). There may be more individuals, but because this species is a vine, it is difficult to determine exact numbers (PEPP 2013, p. 189).

Feral pigs and goats modify and destroy the habitat of *Sicyos lanceoloideus* on Kauai and Oahu, with evidence of the activities of these animals reported in the areas where this species occurs (PEPP 2013, p. 189; PEPP 2014, p. 166; HBMP 2010). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants modify and destroy the native habitat of *S. lanceoloideus*, and displace this species and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010). Drought and fire are also reported to pose a threat to *S. lanceoloideus* (PEPP 2014, pp. 166; HBMP 2010). Owing to the small remaining number of

individuals, this species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Sicyos lanceoloideus* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 89).

The remaining occurrences of *Sicyos lanceoloideus* and habitat for its reintroduction are at risk. The known individuals are restricted to small areas on Kauai and Oahu and continue to be negatively affected by habitat modification and destruction by ungulates, direct competition with nonnative plants, and stochastic events such as drought. The small number of remaining individuals may limit this species' ability to adapt to environmental change. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Sicyos macrophyllus* (anunu) is a perennial vine in the gourd family (Cucurbitaceae). This species has sparsely pubescent stems with black spots, 49 ft (15 m) long. Leaves are broadly ovate and deeply lobed, with the upper surface glabrous and lower surface densely pubescent. Tendrils are twice branched. Flowers are either male or female, occur in pubescent panicles, and have a greenish-yellow corolla. The fruit is round and green (Telford 1999, p. 578). In 1987, a plant that occurred at Kipahulu on Maui was identified as *Sicyocarya kipahuluensis* by St. John (1987, p. 52). Since that time, Wagner and Shannon (1999, p. 444) synonymized this species under *Sicyos macrophyllus*. As a result, this species is not endemic to Hawaii Island, but occurs on both Maui and Hawaii. *Sicyos macrophyllus* is recognized as a distinct taxon in Telford (1999, p. 519) and in Wagner and Shannon (1999), the most recently accepted taxonomic treatments for this species. Typical habitat is wet *Metrosideros polymorpha* forest and *Sophora chrysophylla-Myoporum sandwicense* (mamane-naio) forest, at 4,000 to 6,600 ft (1,200 to 2,000 m) in the montane mesic (Hawaii Island),



montane wet (Maui), and montane dry (Hawaii Island) ecosystems (Telford 1999, p. 578; TNCH 2007; HBMP 2010).

Historically, *Sicyos macrophyllus* was known from Puuwaawaa, Laupahoehoe, Puna, and South Kona on the island of Hawaii, and from Kipahulu Valley on the island of Maui (HBMP 2010). Currently, *S. macrophyllus* is known from 10 occurrences, totaling between 24 and 26 individuals, on the island of Hawaii at Puu Mali, Puuwaawaa (Puu Iki), Honaunau, Hakalau NWR-Kona Unit, Koahe, Kukuioepae, Kipuka Maunaiu, Kipuka Ki, and Puu Huluhulu (Bio 2008, in litt.; Pratt 2008, pers. comm.; HBMP 2010). It is reported that wild individuals at Kipuka Ki at Hawaii Volcanoes National Park are reproducing; however, seeds have not been successfully germinated under nursery conditions (Pratt 2005, pers. comm.). The individual on Maui has not been observed since 1987 (HBMP 2010).

Feral pigs, mouflon, and cattle modify and destroy the habitat of *Sicyos macrophyllus* on the island of Hawaii, with evidence of the activities of these animals reported in the areas where this species occurs (HBMP 2010). Ungulates are managed in Hawaii as game animals (except for cattle), but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR-DLNR 2010, in litt.). Nonnative plants modify and destroy the native habitat of *S. macrophyllus*, and displace this species and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010). Seed predation by rats is reported to pose a threat to this species (HBMP 2010). Stochastic events such as fire are also reported to pose a threat to *S. macrophyllus* (HBMP 2010). This species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystem that support this species. *Sicyos macrophyllus* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 89).

The remaining occurrences of *Sicyos macrophyllus* and habitat for its reintroduction are at risk. The only known individuals are restricted to small areas on Hawaii Island and continue to be negatively affected by habitat modification and destruction by ungulates, direct competition with nonnative plants, and seed predation by rats. The small number of remaining individuals may limit this species' ability to adapt to environmental changes. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Solanum nelsonii* (popolo) is a sprawling or trailing shrub up to 3 ft (1 m) tall, in the nightshade family (Solanaceae) family. Plants form clumps up to 5 ft (2 m) in diameter. Young stems and leaves are densely pubescent and do not have spines. Broadly ovate leaves are grayish green, have entire margins, and are arranged alternately along the stems. Flowers are perfect and have a white tubular corolla that is tinged with lavender to pale purple. Round berries are usually black when mature with numerous seeds. *Solanum nelsonii* is unusual in the genus with its doubly curved, purple anthers, which possibly suggest different pollinators than bees (Symon 1999, pp. 1273–1274). *Solanum nelsonii* was described by Dunal (1852, 690 pp.) and is recognized as a distinct taxon in the Manual of Flowering Plants of Hawaii (Symon 1999, pp. 1273–1274), the most recently accepted Hawaiian plant taxonomy. Typical habitat for this species is coral rubble or sand in coastal sites up to 490 ft (150 m), in the coastal ecosystem (Symon 1999, pp. 1273–1274; TNCH 2007; HBMP 2010).

Historically, *Solanum nelsonii* was known from the island of Hawaii (Kaalualu, Kamilo, and Kaulana Bay, South Point; 5 individuals total); the island of Niihau at Kealea Bay, Kawaewaae, and Leahi; Nihoa Island; Laysan Island; Pearl and Hermes Reef (North Island, Seal-Kittery Island, and Grass Island); and at Kure Atoll (Green Island) (Lamoreaux 1963, p. 6; Clapp *et al.* 1977, p. 36; HBMP 2010). This species was last collected on Niihau in 1949 (HBMP 2010). The only known individual on Maui was reported to have disappeared in the mid-1990s, after cattle had been allowed to graze in its last known habitat (HBMP 2010). Currently, *S. nelsonii* occurs in the coastal ecosystem, on the islands of

Hawaii and Molokai (approximately 50 individuals), and on the northwestern Hawaiian Islands of Kure (an unknown number of individuals), Midway (approximately 260 individuals on Sand, Eastern, and Spit islands), Laysan (approximately 490 individuals), Pearl and Hermes (30 to 100 individuals), and Nihoa (8,000 to 15,000 individuals) (Aruch 2006, in litt.; Rehkemper 2006, in litt.; Tangalin 2006, in litt.; Bio 2008, in litt.; Vanderlip 2011, in litt.; Conry 2012, in litt.; PEPP 2013, pp. 190–191).

Axis deer and cattle modify and destroy the habitat of *Solanum nelsonii* on the main Hawaiian islands of Maui, Molokai, and Hawaii (except axis deer), with evidence of the activities of these animals reported in the areas where this species occurs (HBMP 2010). Ungulates are managed in Hawaii as game animals (except for cattle), but public hunting does not adequately control the numbers of ungulates to eliminate habitat modification and destruction, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR-DLNR 2010, in litt.). Nonnative plants modify and destroy the native habitat of *S. nelsonii*, both on the main Hawaiian Islands and on some of the Northwestern Hawaiian Islands (HBMP 2010). Nonnative plants displace this species and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010). Seed predation by rats has been reported to pose a threat to *S. nelsonii* on Molokai (PEPP 2014, p. 167). Stochastic events such as drought, erosion, fire, and flooding are also reported to pose a threat to *S. nelsonii* (PEPP 2014, p. 167; HBMP 2010). In 2011, a tidal wave swept over Midway Atoll's Eastern Island and Kure Atoll's Green Island, spreading plastic debris and destroying seabird nesting areas as far as about 500 ft (150 m) inland (DOFAW 2011, in litt.; USFWS 2011, in litt.). Tsunami, and potential sea level rise with global warming, could modify and destroy habitat for *S. nelsonii* in the low-lying Northwestern Hawaiian Islands. Occurrences of this species on the main Hawaiian Islands may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and

ecosystems that support this species. *Solanum nelsonii* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 89).

The remaining occurrences of *Solanum nelsonii* on the main Hawaiian Islands are restricted to small areas of Molokai and Hawaii Island, and continue to be negatively affected by habitat modification and destruction by ungulates, direct competition with nonnative plants, and herbivory and predation by rats. The relatively isolated occurrences of *S. nelsonii* on the Northwestern Hawaiian Islands are negatively affected (on the low-lying islands) by nonnative plants and by stochastic events such as tsunami. The small number of remaining individuals in the main Hawaiian Islands may limit this species' ability to adapt to environmental changes. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

*Stenogyne kaalae* ssp. *sherffii* (NCN) is a climbing vine in the mint family (Lamiaceae). Stems are quadrangular, 3 to 7 ft (1 to 2 m) long, either glabrous or pubescent in grooves. Leaves are glossy and 5 in (12 cm) long. Flowers are very dark maroon and narrowly bell-shaped. Nutlets are 0.2 in (4 mm) long, fleshy, and dark purple (Weller and Sakai 1999, p. 838; Wagner and Weller 1999, pp. 448–449). In 1994, after publication of the treatment of *Stenogyne* by Weller and Sakai (in Wagner *et al.* 1990, p. 838), a new occurrence of the plant described as *Stenogyne sherffii* was discovered in the Koolau Mountains of Oahu. Upon further study, the morphological distinctions, coupled with the geographic separation from the Waianae Mountain individuals, clearly indicated it was not *S. kaalae*. The new taxon was identified as a subspecies of *S. kaalae* and given the name *S. kaalae* ssp. *sherffii* (Wagner and Weller 1999, pp. 448–449). *Stenogyne kaalae* ssp. *sherffii* occurs in the Koolau Mountains of Oahu, in diverse wet forest at 1,500 to 1,600 ft (450 to 490 m), in the lowland wet ecosystem (Wagner and Weller 1999, pp. 448–449; HBMP 2010; U.S. Army 2014 database; TNCH 2007).

*Stenogyne kaalae* ssp. *sherffii* is historically known from diverse mesic forest in the Waianae Mountains of Oahu and from the lowland wet ecosystem of the Koolau Mountains (although, as described above, it was

believed to be a different species, *S. sherffii*, until the mid-1990s). This subspecies occurred within a very small range in the northern Koolau Mountains, at Opaepa and Kawailoa, but is now extinct in the wild. There are propagules from the original collections that have been outplanted in the same area (PEPP 2014, p. 169).

Feral pigs modify and destroy the habitat of *Stenogyne kaalae* ssp. *sherffii* on Oahu, with evidence of the activities of these animals reported in the areas where this subspecies occurred (HBMP 2010; PEPP 2014, p. 169). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat destruction and modification, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants destroy and modify the native habitat of *S. kaalae* ssp. *sherffii*, and displace this subspecies and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010). This subspecies may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Climate change may result in alteration of the environmental conditions and ecosystems that support this species. *Stenogyne kaalae* ssp. *sherffii* may be unable to tolerate or respond to changes in temperature and moisture, or may be unable to move to areas with more suitable climatic regimes (Fortini *et al.* 2013, p. 90).

Any remaining occurrences of *Stenogyne kaalae* ssp. *sherffii* and habitat for its reintroduction are at risk, the known individuals were restricted to a very small area on Oahu, and the area continues to be negatively affected by habitat modification and destruction by ungulates and direct competition with nonnative plants. The small number of remaining individuals (*ex situ* only) may limit this subspecies' ability to adapt to environmental changes. The effects of climate change are likely to further exacerbate these threats. Because of these threats, we find that this subspecies should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or

threatened in a significant portion of its range.

*Wikstroemia skottsbergiana* (akia) is a shrub or small tree in the akia family (Thymelaceae). Leaves are pale green, membranous, and 2 to 5 in (6 to 12 cm) long. Flowers are green, with the calyx tube 0.3 to 0.4 in (6 to 10 mm) long and outer lobes 0.1 to 0.2 in (2.5 to 5 mm) long. Fruit is red, ellipsoid, 0.3 in (8 mm) in diameter (Peterson 1999, p. 1290). *Wikstroemia skottsbergiana* is recognized as a distinct taxon in Peterson (1999, p. 1290), the most recently accepted taxonomic treatment of this species. This species occurs in wet forest on the island of Kauai, in the lowland wet ecosystem (Peterson 1999, p. 1290; TNCH 2007), and is historically known from the Wahiawa Mountains, Hanalei Valley, and Kauhao Valley on the island of Kauai (Peterson 1999, p. 1290). Currently, this species is limited to 30 individuals at one site (PEPP 2012, p. 26).

Feral pigs destroy and modify the habitat of *Wikstroemia skottsbergiana* on Kauai, with evidence of the activities of these animals reported in the areas where this species occurs (DLNR 2005, in litt.). Ungulates are managed in Hawaii as game animals, but public hunting does not adequately control the numbers of ungulates to eliminate habitat destruction and modification, or to eliminate herbivory by these animals (Anderson *et al.* 2007, in litt.; HAR–DLNR 2010, in litt.). Nonnative plants destroy and modify the native habitat of *W. skottsbergiana*, and displace this and other native Hawaiian plants by competing for water, nutrients, light, and space, or they may produce chemicals that inhibit the growth of other plants (Smith 1985, pp. 180–250; Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74; HBMP 2010). Predation of seeds by rats may pose a threat to this species (DLNR 2005, in litt.). This species may experience reduced reproductive vigor due to low levels of genetic variability, leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence (DLNR 2005, in litt.; Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361).

The remaining occurrences of *Wikstroemia skottsbergiana* and habitat for its reintroduction are at risk. The known individuals are restricted to a very small area on Kauai and continue to be negatively affected by habitat modification and destruction by ungulates, direct competition with nonnative plants, and seed predation by rats. The small number of remaining individuals may limit this species'

ability to adapt to environmental changes. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

#### Animals

##### Band-rumped storm-petrel (*Oceanodroma castro*)

The band-rumped storm-petrel (*Oceanodroma castro*) is a small seabird, about 8 in (20 cm) long, with a wingspan of about 19 in (47 cm), and about 2 ounces (50 grams) in weight. The tail is only slightly notched and may appear almost square. Plumage is an overall blackish-brown with a white band across the “rump” (above the tail). This species typically flies with a relatively shallow wing-beat, and glides on slightly bowed wings as a regular part of flight (Slotterback 2002, p. 2). Sexes are alike in size and appearance. The band-rumped storm-petrel is long-lived (15 to 20 years) and probably does not breed until its third year (Harrison *et al.* 1990, p. 48). Vocalizations at breeding colonies can be used to further distinguish this species from other seabirds (Allan 1962, p. 279; James and Robertson 1985, pp. 391–392). The band-rumped storm-petrel is a member of the family Hydrobatidae (order Procellariiformes) and a member of the Northern Hemisphere subfamily Hydrobatinae (Slotterback 2002, p. 2). Prior to 1900, this species had been described as an unnamed petrel in the genus *Thalassidroma* (Dole 1869, 1879 in Stejneger 1887, p. 78), as *Cymochorea cryptoleucura* (Ridgeway 1882, pp. 337–338), and as *Oceanodroma cryptoleucura* (Stejneger 1887, p. 78). After Henshaw’s 1902 publication, the Hawaiian population was known as *O. castro cryptoleucura*, the Hawaiian storm-petrel (Harrison *et al.* 1990, p. 47). Hawaiian names for this bird include oeo, oweowe, and akeake (Harrison *et al.* 1990, p. 47). Austin (1952, pp. 395–396) examined 11 museum skins from Hawaii and concluded that, although the various populations exhibited minor size differences, these differences were not significant and the populations in Hawaii were best considered as belonging to a single species with no subspecies. Harris (1969, pp. 95, 97–99) also supported this determination. Taxonomists have typically combined the Pacific populations of band-rumped storm-petrel into a single taxon, and currently the American Ornithologist’s Union (AOU) regards the species as

monotypic (2015, in litt.). However, molecular studies are ongoing and indicate genetic differences between populations in different oceans and archipelagos (Friesen *et al.* 2007a, pp. 18590–18592; Smith *et al.* 2007, p. 770), between sympatric populations that breed in different seasons (*e.g.*, in the Galapagos Islands; Smith and Friesen 2007, pp. 1599–1560; Smith *et al.* 2007, p. 756), and potentially between populations on individual Hawaiian islands (Bogardus 2015, in litt.).

When not at nesting sites, adult band-rumped storm-petrels spend their time foraging on the open ocean (Slotterback 2002, p. 7). Food is taken from the ocean surface and consists mostly of small fish and squid (Slotterback 2002, p. 7; Harris 1969, p. 105). Nests are placed in crevices, holes, and protected ledges along cliff faces, where a single egg is laid (Allan 1962, p. 274–275; Harris 1969, pp. 104–105; Slotterback 2002, p. 11). Adults visit the nest site after dark, where they can be detected by their distinctive calls. In Hawaii, adults establish nesting sites in April or May, and the nesting season occurs during the summer months. The incubation period averages 42 days (Harris 1969, p. 109), and the young reach fledging stage in 64 to 70 days (Allan 1962, p. 285; Harris 1969, p. 109).

The band-rumped storm-petrel is found in several areas of the subtropical Pacific and Atlantic Oceans (del Hoyo 1992 in Bird Life International 2015, in litt.). The Atlantic breeding populations are restricted to islands in the eastern portions: Cape Verde, Ascension, Madeira, and the Azores Islands (Allan 1962, p. 274; Harrison 1983, p. 274). Wintering birds may occur as far west as the mid-Atlantic; however, Atlantic breeding populations are not within the borders of the United States or areas under U.S. jurisdiction. Three widely separated breeding areas occur in the Pacific: in Japan, in Hawaii, and in the Galapagos (Richardson 1957, p. 19; Harris 1969, p. 96; Harrison 1983, p. 274). The Japanese population, which breeds on islets off the east coast of Japan (Hidejima and Sanganjima in Allan 1962, p. 274; Harris 1969, p. 96) ranges within 860 mi (1,400 km) east and south of the breeding colonies.

Populations in Japan and Galapagos total as many as 23,000 pairs (Boersma and Groom 1993, p. 114); however, a recent survey on Hidejima Island revealed only 117 burrows, some of which were occupied by Leach’s storm petrels (Biodiversity Center of Japan 2014, p. 1). Surveyors noted that the nesting area had been affected by extensive erosion caused by the 2011 earthquake and tsunami (Biodiversity

Center of Japan 2014, p. 1). When Polynesians arrived about 1,500 years ago, the band-rumped storm-petrel probably was common on all of the main Hawaiian Islands (Harrison *et al.* 1990, pp. 47–48). As evidenced by bones found in middens on Hawaii Island (Harrison *et al.* 1990, pp. 47–48) and in excavation sites on Oahu and Molokai (Olson and James 1982, pp. 30, 33), band-rumped storm-petrels were once numerous enough to be used as a source of food and possibly feathers (Harrison *et al.* 1990, p. 48). In Hawaii, band-rumped storm-petrels are known to nest in remote cliff locations on Kauai and Lehua Island, and in high-elevation lava fields on Hawaii Island (Wood *et al.* 2002, pp. 17–18; Hu 2005, pers. comm.; VanderWerf *et al.* 2007, pp. 1, 5; Joyce and Holmes 2010, p. 3). Vocalizations were heard in Haleakala Crater on Maui in 1992 (Johnston 1992, in Wood *et al.* 2002, p. 2) and more recently in 2006 (Ackerman 2006, pers. comm.). Based on the scarcity of known breeding colonies in Hawaii and their remote, inaccessible locations today compared to prehistoric population levels and distribution, the band-rumped storm-petrel appears to be significantly reduced in numbers and range following human occupation of the Hawaiian Islands, likely as a result of predation by nonnative mammals and habitat loss.

Band-rumped storm-petrels are regularly observed in coastal waters around Kauai, Niihau, and Hawaii Island (Harrison *et al.* 1990, p. 49; Holmes and Joyce 2009, 4 pp.), and in “rafts” (regular concentrations) of a few birds to as many as 100, possibly awaiting nightfall before coming ashore to breeding colonies. Kauai likely has the largest population, with an estimated 221 nesting pairs in cliffs along the north shore of the island in 2002, and additional observations on the north and south side of the island in 2010 (Harrison *et al.* 1990, p. 49; Johnston 1992, in litt.; Wood *et al.* 2002, pp. 2–3; Wood 2005, pers. comm.; Holmes and Joyce 2009, 4 pp.; Joyce and Holmes 2010, pp. 1–3). The band-rumped storm-petrel is also known from Lehua Island (VanderWerf *et al.* 2007, p. 1), from Maui (Hawaii’s Comprehensive Wildlife Conservation Strategy (CWCS) 2005, in litt.), Kahoolawe (Olson 1992, pp. 38, 112), and Hawaii Island (CWCS 2005, in litt.). Additional surveys have been conducted on several islands in recent years, including surveys confirming the presence of band-rumped storm-petrels at PTA on the island of Hawaii, but further data are not yet available (Swift 2015, in litt.).

We do not have a current estimate of total numbers in Hawaii at this time.

Predation by nonnative animals on nests and adults during the breeding season is the greatest threat to the Hawaiian population of the band-rumped storm-petrel. These predators include feral cats (*Felis catus*), barn owls (*Tyto alba*), small Indian mongoose (*Herpestes auro-punctatus*), black rats (*Rattus rattus*), Norway rats (*R. norvegicus*), and Polynesian rats (*R. exulans*) (Scott *et al.* 1986, pp. 1, 363–364; Tomich 1986, pp. 37–45; Harrison *et al.* 1990, pp. 47–48; Slotterback 2002, p. 19; Wood 2005, pers. comm.).

Attraction of fledglings to artificial lights and collisions with structures, such as communication towers and utility lines, is also a threat (Banko *et al.* 1991, p. 651; Cooper and Day 1998, p. 18; Harrison *et al.* 1990, p. 49; Holmes and Joyce 2009, p. 2; Podolsky *et al.* 1998, pp. 21, 27–30; Reed *et al.* 1985, p. 377; Telfer *et al.* 1987, pp. 412–413). Monitoring of power lines on Kauai has recorded over 1,000 strikes by seabirds annually (mostly Newell's shearwaters (*Puffinus auricularis newelli*); Travers *et al.* 2014, in litt.) that may result in injury or death. Recent studies of attraction of seabirds to artificial lights indicate that 40 percent of those downed by exhaustion (from circling the lights) are killed by collisions with cars or other objects (Anderson 2014, p. 4–13; Travers *et al.* 2014, in litt.). Since 1979, 40 band-rumped storm-petrels downed by light attraction have been retrieved on Kauai by the Save Our Shearwater program (Anderson 2014, p. 4–13). The small numbers of these birds and their nesting areas on remote cliffs make population-level impacts difficult to document. However, the band-rumped storm-petrel has similar behavior, life history traits, and habitat needs to the Newell's shearwater, a threatened species that has sustained major losses as a result of light attraction and collisions with lines or other objects. Therefore, we conclude that these are potential threats to the band-rumped storm-petrel as well. Erosion and landslides at nest sites caused by nonnative ungulates is a potential threat in some locations on the island of Kauai. Regulatory mechanisms (e.g., the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703 *et seq.*)) contribute minimally to the active recovery and management of this species. Other potential threats include commercial fisheries, ocean pollution, and the small population size and limited distribution in Hawaii (Soulé 1987, p. 8; Lande *et al.* 1988, pp. 1455, 1458–1459; Harrison *et al.* 1990, p. 50;

Furness 2003, p. 33). A single hurricane during the breeding season could cause reproductive failure and kill a significant number of adult birds. In this proposed rule, our proposed listing determination would apply only to the Hawaiian population of the band-rumped storm-petrel (see “Distinct Population Segment,” below). Because of the deleterious and cumulative effects to the band-rumped storm-petrel caused by the threats described above, we find that the Hawaii population should be listed as endangered throughout its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

#### Yellow-faced bees (*Hylaeus* spp.)

Bees in the genus *Hylaeus* (family Colletidae), which includes *H. anthracinus*, are commonly known as yellow-faced bees or masked bees for their yellow-to-white facial markings. *Hylaeus* bees are similar in structure to other hymenopterans (bees, wasps, and ants) in that adults have three main body parts—a head, thorax, and abdomen. One pair of antennae arises from the front of the head, between the eyes. Two pairs of wings and three pairs of legs are attached to the thorax, and the abdomen is composed of multiple segments (Borror *et al.* 1989, pp. 665–666). All *Hylaeus* bees roughly resemble small wasps in appearance; however, *Hylaeus* bees have plumose (branched) hairs on the body that are longest on the sides of the thorax, which readily distinguish them from wasps (Michener 2000, p. 55).

Bees in the family Colletidae are also referred to as plasterer bees because they line their nests with a self-secreted, cellophane-like material. Eggs hatch and develop into larvae (immature stage) and as larvae grow, they molt through three successive stages (instars), then change into pupae (a resting form) in which they metamorphose and emerge as adults (Michener 2000, p. 24). The diet of the larval stage is unknown, although it is presumed the larvae feed on stores of pollen and nectar collected and deposited in the nest by the adult female.

#### Yellow-faced bee (*Hylaeus anthracinus*)

*Hylaeus anthracinus* has clear to smoky wings and black legs. The male has a single large yellow spot on the face, and below the antennal sockets the face is yellow. The female is entirely black and can be distinguished by black hairs on the end of the abdomen and an unusual mandible with three teeth, a characteristic shared only with *H. flavifrons*, a closely related species on

Kauai (Daly and Magnacca 2003, p. 53). *Hylaeus anthracinus* was first described as *Prosopis anthracina* by Smith in 1873 (in Daly and Magnacca 2003, p. 55) and transferred to *Nesoprosopis* 20 years later (Perkins 1899, p. 75). *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). Although the distinctness of this species remains unquestioned, recent genetic evidence suggests *H. anthracinus* may be composed of three cryptic (not recognized) species or subspecies that represent populations on Hawaii, Maui and Kahoolawe, and Molokai and Oahu (Magnacca and Brown 2010, pp. 5–7). However, this has not been established scientifically; therefore, we treat *H. anthracinus* as a single species.

*Hylaeus anthracinus* is a solitary bee, and after mating, females seek existing cavities in coral rubble or rocky substrates for nest construction (Magnacca and King 2013, pp. 13–14). Adult bees have been observed visiting the flowers of native coastal plants (*Argemone glauca* (pua kala), *Chamaesyce celastroides* (akoko), *C. degeneri* (akoko), *Heliotropium anomalum* (hinahina), *H. foertherianum* (tree heliotrope), *Myoporum sandwicense* (naio), *Sesbania tomentosa* (ohai), *Scaevola taccada* (naupaka kahakai), and *Sida fallax* (ilima)). This species has also been collected from inside the fruit capsule of *Kadua coriacea* (kiolele) (Magnacca 2005a, p. 2).

*Hylaeus anthracinus* was historically known from numerous coastal and lowland dry forest habitats up to 2,000 ft (610 m) in elevation on the islands of Hawaii, Maui, Lanai, Molokai, and Oahu, and in some areas was “locally abundant” (Magnacca and King 2013, pp. 13–14). Between 1997 and 1998, surveys for Hawaiian *Hylaeus* were conducted at 43 sites that were either historical collecting localities or potential suitable habitat. *Hylaeus anthracinus* was observed at 13 of the 43 survey sites, but was not found at any of the 9 historically occupied sites (Daly and Magnacca 2003, p. 217; Magnacca 2007a, p. 44). Several of the historical collection sites have been urbanized or are dominated by nonnative vegetation (Liebherr and Polhemus 1997, pp. 346–347; Daly and Magnacca 2003, p. 55; Magnacca 2007b, pp. 186–188). Currently, *H. anthracinus* is known from 15 small patches of coastal and lowland dry forest habitat (Magnacca 2005a, p. 2); 5 locations on the island of Hawaii in the coastal and lowland dry ecosystems; 2 locations on Maui in the coastal and lowland dry ecosystems; 1 location on Kahoolawe in the lowland dry ecosystem; 3 locations

on Molokai in the coastal ecosystem, and 4 locations on Oahu in the coastal ecosystem (Daly and Magnacca 2003, p. 217; Magnacca 2005a, p. 2; Magnacca 2007a, p. 44; Magnacca and King 2013, pp. 13–14). These 15 locations supported small populations of *H. anthracinus*, but the number of individual bees is unknown. In 2004, a single individual was collected in montane dry forest on the island of Hawaii (possibly a vagrant); however, the presence of additional individuals has not been confirmed at this site (Magnacca 2005a, p. 2). Although this species was previously unknown from the island of Kahoolawe, it was observed at one location on the island in 2002 (Daly and Magnacca 2003, p. 55). Additionally, during surveys between 1997 and 2008, *H. anthracinus* was absent from 17 other sites on Hawaii, Maui, Lanai, Molokai, and Oahu with potentially suitable habitat from which other species of *Hylaeus* were collected (Daly and Magnacca 2003, pp. 4, 55; Magnacca 2008, pers. comm.).

Habitat destruction and modification by urbanization and land use conversion leads to the direct fragmentation of foraging and nesting areas of *Hylaeus anthracinus*. Habitat destruction and modification by nonnative plants adversely impact native Hawaiian plant species by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering the fire characteristics (increasing the fire cycle), and ultimately converting native dominated plant communities to nonnative plant communities; such habitat destruction and modification result in removal of food sources and nesting sites for the *H. anthracinus*. Habitat modification and destruction by nonnative animals such as feral pigs (*Sus scrofa*), goats (*Capra hircus*), axis deer (*Axis axis*), and cattle (*Bos taurus*), are considered one of the primary factors underlying degradation of native vegetation in the Hawaiian Islands, and these habitat changes also remove food sources and nesting sites for *H. anthracinus* (Stone 1985, pp. 262–263; Cuddihy and Stone 1990, pp. 60–66, 73). Fire is a potential threat to *H. anthracinus*, as it destroys native plant communities on which it depends, and opens habitat for increased invasion by nonnative plants. Random, naturally occurring events such as hurricanes and drought can modify and destroy habitat of *H. anthracinus* by creating disturbed areas conducive to invasion by nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671; Businger

1998, pp. 1–2). Fire is a potential threat to *H. anthracinus*, as it destroys native coastal and lowland dry plant communities on which the species depends, and opens habitat for increased invasion by nonnative plants. Because of the greater frequency, intensity, and duration of fires that have resulted from the human alteration of landscapes and the introduction of nonnative plants, especially grasses, fires are now more destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire often kills most native trees and shrubs in the area (D'Antonio and Vitousek 1992, p. 74) and could destroy food and nesting resources for *H. anthracinus*. The numbers of wildfires and the acreages involved are increasing in the main Hawaiian Islands; however, their occurrences and locations are unpredictable, and could affect habitat for yellow-faced bees at any time (Gima 1998, in litt.; County of Maui 2009, ch. 3, p. 3; Hamilton 2009, in litt.; Honolulu Advertiser 2010, in litt.; Pacific Disaster Center 2011, in litt.). Predation by nonnative ants including the big-headed ant (*Pheidole megacephala*), the yellow crazy ant (*Anoplolepis gracilipes*), *Solenopsis papuana* (NCN), and *S. geminata* (NCN) on *Hylaeus* egg, larvae, and pupal stages is a threat to *H. anthracinus*, and ants also compete with *H. anthracinus* for their nectar food source (Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155). Predation by nonnative western yellow jacket wasps is a threat to *H. anthracinus* because the wasp is an aggressive, generalist predator, and occurs in great numbers in many habitat types, from sea level to over 8,000 ft (2,450 m), including areas where *H. anthracinus* and other yellow-faced bees occur (Gambino *et al.* 1987, p. 169). Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees (honeybees, carpenter bees, Australian colletid bees) for nectar and pollen is a potential threat to *H. anthracinus* (Magnacca 2007b, p. 188). The small number of populations and individuals of *H. anthracinus* makes this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes such as hurricanes and drought (Daly and Magnacca 2003, p. 3; Magnacca 2007b, p. 173). Changes in precipitation resulting from the effects of climate change may degrade habitat

for all *Hylaeus* species; however, we are unable to determine the extent of these negative impacts at this time.

The remaining populations of *H. anthracinus* and its habitat are at risk. The known individuals are restricted to 15 locations on Hawaii, Maui, Kahoolawe, Molokai, and Oahu continue to be negatively affected by habitat destruction and modification by urbanization and land-use conversion, and by habitat destruction and removal of food and nesting sites by nonnative ungulates and nonnative plants. Habitat destruction by fire is a potential threat. Randomly occurring events such as hurricanes and drought may modify habitat and remove food and nesting sources for *H. anthracinus*. Predation by nonnative ants and wasps is a threat. Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees for food and nesting sites is a potential threat. The small number of remaining populations may limit this species' ability to adapt to environmental changes. Because of these threats, we find that *Hylaeus anthracinus* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

#### Yellow-faced bee (*Hylaeus assimulans*)

*Hylaeus assimulans* is distinguished by its large size relative to other coastal *Hylaeus* species and by its slightly smoky to smoky-colored wings and black legs. The male is black with yellow face marks, with an almost entirely yellow clypeus (lower face region) with additional marks on the sides that narrow dorsally (towards the top). The male also has brown appressed (flattened) hairs on the tip of the abdomen. The female is entirely black, large-bodied, and has distinct punctuation on the abdomen (Daly and Magnacca 2003, p. 56). *Hylaeus assimulans* was first described as *Nesoprosopis assimulans* (Perkins 1899, pp. 75, 101–102). *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). The species was most recently described as *Hylaeus assimulans* by Daly and Magnacca in 2003 (pp. 55–56).

Nests of *H. assimulans* are usually constructed opportunistically within existing burrows, or other similarly small natural cavities under bark or rocks that they suit to their own needs (Magnacca 2005b, p. 2). Adult bees have been observed visiting the flowers of its likely primary nesting native host plant,

*Sida fallax* (ilima), as well as the flowers of native *Lipochaeta lobata* (nehe) (Daly and Magnacca 2003, p. 58). *Hylaeus assimulans* appears to be closely associated with plants in the genus *Sida*, and studies thus far suggest this yellow-faced bee species may be more common where this plant is abundant (Daly and Magnacca 2003, pp. 58, 217; Magnacca 2007b, p. 183). Recent survey efforts indicate that *H. assimulans* is more common in dry forest, which may be related to the greater abundance of *Sida* in the understory (Magnacca 2005b, p. 2). It is likely that *H. assimulans* visits several other native plants, including *Acacia koa* (koa), *Metrosideros polymorpha* (ohia), *Leptecophylla tameiameia* (pukiawe), *Scaevola* sp. (naupaka), and *Chamaescybe* sp. (akoko), which are known to be frequented by other *Hylaeus* species (Magnacca 2005, pers. comm.).

Historically, *Hylaeus assimulans* was known from numerous coastal and lowland dry forest habitats up to 2,000 ft (610 m) in elevation on the islands of Maui (coastal and lowland dry ecosystems), Lanai (lowland dry ecosystem), and Oahu (coastal and lowland dry ecosystem). There are no collections from Molokai although it is likely *H. assimulans* occurred there because all other species of *Hylaeus* known from Maui, Lanai, and Oahu also occurred on Molokai (Daly and Magnacca 2003, pp. 217–229). Between 1997 and 1998, surveys for Hawaiian *Hylaeus* were conducted at 25 sites on Maui, Kahoolawe, Lanai, Molokai, and Oahu. *Hylaeus assimulans* was absent from 6 of its historical localities on Maui, Lanai, and Oahu, and was not observed at the remaining 19 sites with potentially suitable habitat (Xerces Society 2009, p. 4; Daly and Magnacca 2003, pp. 56, 217; Magnacca 2005b, p. 2; Magnacca 2007b, pp. 177, 181, 183). Currently, *H. assimulans* is known from a few small patches of coastal and lowland dry forest habitat (Magnacca 2005b, p. 2); two locations on Maui in the lowland dry ecosystem; one location on Kahoolawe in the coastal ecosystem; and two locations on Lanai in the lowland dry ecosystem (Daly and Magnacca 2003, p. 58; Magnacca 2005b, p. 2). This species has likely been extirpated from Oahu because it has not been observed since Perkin's 1899 surveys, and was not found during recent surveys of potentially suitable habitat on Oahu at Kaena Point, Makapuu, and Kalaeloa (Daly and Magnacca 2003, p. 217; Magnacca 2005b, p. 2).

Habitat destruction and modification due to urbanization and land use

conversion leads to fragmentation and eventual loss of, foraging and nesting areas for *Hylaeus assimulans*. Habitat destruction and modification by nonnative plants (*Asystasia gangetica* (Chinese violet), *Atriplex semibaccata*, *Cenchrus ciliaris*, *Chloris barbata* (swollen fingergrass), *Digitaria insularis* (sourgrass), *Leucaena leucocephala* (koa haole), *Panicum maximum* (guinea grass), *Pluchea indica* (Indian fleabane), *P. carolinensis* (sourbush), and *Verbesina encelioides* (golden crown-beard)) adversely impact native Hawaiian plant species by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering the fire characteristics, and ultimately converting native dominated plant communities to nonnative plant communities; such habitat destruction and modification result in removal of food sources and nesting sites for *H. assimulans*. Habitat modification and destruction by nonnative animals, such as feral pigs, goats, axis deer, and cattle, is also considered one of the primary factors underlying destruction of native vegetation in the Hawaiian Islands, and these habitat changes also remove food sources and nesting sites of *H. assimulans* (Stone 1985, pp. 262–263; Cuddihy and Stone 1990, pp. 60–66, 73). Fire is a potential threat to *H. assimulans*, as it destroys native coastal and lowland dry plant communities on which the species depends, and opens habitat for increased invasion by nonnative plants. Because of the greater frequency, intensity, and duration of fires that have resulted from the human alteration of landscapes and the introduction of nonnative plants, especially grasses, fires are now more destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire often kills most native trees and shrubs in the area (D'Antonio and Vitousek 1992, p. 74), and could destroy food and nesting resources for *H. assimulans*. The numbers of wildfires, and the acreages involved, are increasing in the main Hawaiian Islands; however, their occurrences and locations are unpredictable, and could affect habitat for yellow-faced bees at any time (Gima 1998, in litt.; County of Maui 2009, ch. 3, p. 3; Hamilton 2009, in litt.; Honolulu Advertiser 2010, in litt.; Pacific Disaster Center 2011, in litt.). Random, naturally occurring events such as hurricanes and drought can modify and destroy habitat of *H. assimulans* by creating disturbed areas conducive to invasion by nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671; Businger

1998, pp. 1–2). Predation by nonnative ants (the big-headed ant, the yellow crazy ant, *Solenopsis papuana*, and *S. geminata*) on *Hylaeus* egg, larvae, and pupal stages is a threat to *H. assimulans*; additionally, ants compete with *H. assimulans* for their nectar food source (Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155). Predation by nonnative western yellow jacket wasps is a potential threat to *H. assimulans* because the wasp is an aggressive, generalist predator, and occurs in great numbers in many habitat types, from sea level to over 8,000 ft (2,450 m), including areas where *H. assimulans* and other yellow-faced bees occur (Gambino *et al.* 1987, p. 169). Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees (honeybees, carpenter bees, Australian colletid bees) for nectar and pollen is a potential threat to *H. assimulans* (Magnacca 2007b, p. 188). The small number of populations and individuals of *H. assimulans* makes this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes such as hurricanes and drought (Daly and Magnacca 2003, p. 3; Magnacca 2007b, p. 173). Changes in precipitation resulting from the effects of climate change may degrade habitat for all *Hylaeus* species; however, we are unable to determine the extent of these negative impacts at this time.

The remaining populations of *H. assimulans* and its habitat are at risk. The known individuals are restricted to 5 locations on Maui, Kahoolawe, and Lanai continue to be negatively affected by habitat destruction and modification by urbanization and land-use conversion, and by habitat destruction and removal of food and nesting sites by nonnative ungulates and nonnative plants. Habitat destruction by fire is a potential threat. Randomly occurring events such as hurricanes and drought may modify habitat and remove food and nesting sources for *H. assimulans*. Predation by nonnative ants and wasps is a threat. Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees for food and nesting sites is a potential threat. The small number of remaining populations may limit this species' ability to adapt to

environmental changes. Because of these threats, we find that *H. assimulans* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

#### Yellow-faced bee (*Hylaeus facilis*)

*Hylaeus facilis* is a medium-sized bee with smoky-colored wings. The male has an oval yellow mark on the face that covers the entire clypeus, and a narrow stripe beside the eyes, but is otherwise unmarked. The large, externally visible gonoforceps (paired lateral outer parts of the male genitalia) distinguish *H. facilis* from the closely related *H. simplex* (Daly and Magnacca 2003, p. 83). The female is entirely black and indistinguishable from females of *H. difficilis* and *H. simplex* (Daly and Magnacca 2003, p. 56). *Hylaeus facilis* is a member of the *H. difficilis* species group, and is closely related to *H. chlorostictus* and *H. simplex*. *Hylaeus facilis* was first described as *Prosopis facilis* by Smith in 1879 (Daly and Magnacca 2003, p. 80), based on a specimen erroneously reported from Maui. According to Blackburn and Cameron (1886 and 1887), the species' type locality was Pauoa Valley on Oahu (Daly and Magnacca 2003, p. 80). The species was later transferred to the genus *Nesoprosopis* (Perkins 1899, pp. 75, 77). *Nesoprosopis* was subsequently reduced to a subgenus of *Hylaeus* (Meade-Waldo 1923, p. 1). The species was most recently recognized by Daly and Magnacca (2003, p. 80) as *H. facilis*.

Nests of *Hylaeus facilis* are probably constructed opportunistically within existing burrows, or other similarly small natural cavities under bark or rocks (Daly and Magnacca 2003, p. 83; Magnacca 2005c, p. 2). The native host plants of adult *H. facilis* are unknown, but it is likely this species visits several plants other *Hylaeus* species are known to frequent, including *Acacia koa*, *Metrosideros polymorpha*, *Leptecophylla tameiameia*, *Scaevola* spp., and *Chamaesyce* spp. (Daly and Magnacca 2003, p. 11). *Hylaeus facilis* has been observed visiting nonnative *Heliotropium foertherianum* for nectar and pollen (Magnacca 2007b, p. 181).

Historically, *Hylaeus facilis* was known from Maui, Lanai, Molokai, and Oahu, in dry shrubland to wet forest from sea level to 3,000 ft (1,000 m) (Gagne and Cuddihy 1999, p. 93; Daly and Magnacca 2003, pp. 81, 83). Perkins (1899, p. 77) remarked *H. facilis* was among the most common and widespread *Hylaeus* species on Oahu and all of Maui Nui (Maui, Lanai, and Molokai) (Magnacca 2007b, p. 183).

Although the species was widely collected, it likely prefers dry to mesic forest and shrubland (Magnacca 2005c, p. 2), which are increasingly rare and patchily distributed habitats (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66–67, 75; Magnacca 2005c, p. 2). Researchers believe the wet forest site on Oahu where *H. facilis* was observed likely had an open understory (mesic conditions), and represents an outlier or residual population (Liebherr and Polhemus 1997, p. 347; Perkins 1899, p. 76). *Hylaeus facilis* has almost entirely disappeared from most of its historical range (Maui, coastal and lowland mesic; Lanai, lowland dry and lowland mesic; and Oahu, coastal and lowland dry) (Daly and Magnacca 2003, p. 7; Magnacca 2007b, p. 183). Between 1998 and 2006, 39 sites on Maui, Lanai, Molokai, and Oahu were surveyed, including 13 historical sites. *Hylaeus facilis* was absent from all 13 localities (Magnacca 2007b, p. 183) and was not observed at 26 additional sites with potentially suitable habitat (Daly and Magnacca 2003, pp. 7, 81–82; Magnacca 2007b, p. 183). Likely extirpated from Lanai, *H. facilis* is currently known from only two locations, one on Molokai in the coastal ecosystem, and one on Oahu in the lowland mesic ecosystem (Daly and Magnacca 2003, pp. 81–82; Magnacca 2005c, p. 2). In addition, in 1990, a single individual was collected on Maui near Makawao at 1,500 ft (460 m); however, this site is urbanized and devoid of native plants, and it is likely this collection was a vagrant individual.

Habitat destruction and modification by urbanization and land use conversion leads to fragmentation of, and eventual loss of, foraging and nesting areas of *Hylaeus facilis*. Habitat destruction and modification by nonnative plants adversely impact native Hawaiian plant species by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering the fire characteristics, and ultimately converting native dominated plant communities to nonnative plant communities; such habitat destruction and modification results in removal of food sources and nesting sites for the *H. facilis*. In addition to the nonnative plant species noted above that modify and destroy habitat of *H. assimulans*, *Brachiaria mutica* (California grass), *Prosopis pallida*, *Psidium cattleianum* (strawberry guava), and *Rubus* spp. are noted to negatively affect the habitat of *H. facilis* (Hawaii Division of Forestry and Wildlife (DOFAW) 2007, pp. 20–22; Cuddihy and Stone 1990, p. 105).

Habitat modification and destruction by nonnative animals, such as feral pigs, goats, axis deer, and cattle, are considered one of the primary factors underlying destruction of native vegetation in the Hawaiian Islands, and these habitat changes also remove food sources and nesting sites for *H. facilis* (Stone 1985, pp. 262–263; Cuddihy and Stone 1990, pp. 60–66, 73). Fire is a potential threat to *H. facilis*, as it destroys native plant communities on which the species depends, and opens habitat for increased invasion by nonnative plants. Because of the greater frequency, intensity, and duration of fires that have resulted from the human alteration of landscapes and the introduction of nonnative plants, especially grasses, fires are now more destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire often kills most native trees and shrubs in the area (D'Antonio and Vitousek 1992, p. 74) and could destroy food and nesting resources for *H. facilis*. The numbers of wildfires, and the acreages involved, are increasing in the main Hawaiian Islands; however, their occurrences and locations are unpredictable, and could affect habitat for yellow-faced bees at any time (Gima 1998, in litt.; County of Maui 2009, ch. 3, p. 3; Hamilton 2009, in litt.; Honolulu Advertiser 2010, in litt.; Pacific Disaster Center 2011, in litt.). Random, naturally occurring events such as hurricanes and drought can modify and destroy habitat of *H. facilis* by creating disturbed areas conducive to invasion by nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671; Businger 1998, pp. 1–2). Predation by nonnative ants (the big-headed ant, the yellow crazy ant, *Solenopsis papuana*, and *S. geminata*) on *Hylaeus* egg, larvae, and pupal stages is a threat to *H. facilis*; additionally, ants compete with *H. facilis* for their nectar food source (Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155). Predation by nonnative western yellow jacket wasps is a potential threat to *H. facilis* because the wasp is an aggressive, generalist predator, and occurs in great numbers in many habitat types, from sea level to over 8,000 ft (2,450 m), including areas where *H. assimulans* and other yellow-faced bees occur (Gambino *et al.* 1987, p. 169). Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees (honeybees, carpenter bees, Australian

colletid bees) for nectar and pollen is a potential threat to *H. facilis* (Magnacca 2007b, p. 188). The small number of populations and individuals of *H. facilis* makes this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes such as hurricanes and drought (Daly and Magnacca 2003, p. 3; Magnacca 2007b, p. 173). Changes in precipitation resulting from the effects of climate change may degrade habitat for all *Hylaeus* species; however, we are unable to determine the extent of these negative impacts at this time.

The remaining populations of *Hylaeus facilis* and its habitat are at risk. The known individuals are restricted to one location on Molokai and one location on Oahu, and continue to be negatively affected by habitat destruction and modification by urbanization and land-use conversion, and by habitat destruction and removal of food and nesting sites by nonnative ungulates and nonnative plants. Habitat destruction by fire is a potential threat. Randomly occurring events such as hurricanes and drought may modify habitat and remove food and nesting sources for *H. facilis*. Predation by nonnative ants and wasps is a threat. Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees for food and nesting sites is a potential threat. The small number of remaining populations may limit this species' ability to adapt to environmental changes. Because of these threats, we find that *H. facilis* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

#### Yellow-faced bee (*Hylaeus hilaris*)

*Hylaeus hilaris* is distinguished by its large size (male wing length is 0.19 in (4.7 mm)) relative to other coastal *Hylaeus* species. The wings of this species are slightly smoky to smoky-colored, and it is the most colorful of the *Hylaeus* species. The face of the male is almost entirely yellow, with yellow markings on the legs and thorax, and the metasoma (posterior portion of the abdomen) are usually predominantly red. Females are drab colored, with various brownish markings. As with other cleptoparasitic species (those that steal food and nests of other bees for their own young; see below), *H. hilaris* lacks the specialized pollen-sweeping hairs of the front legs (Daly and Magnacca 2003, pp. 9, 106).

It is also one of only two Hawaiian *Hylaeus* species to possess apical (at the end of a structure) bands of fine white hairs on the segments of the metasoma. *Hylaeus hilaris* was first described as *Prosopis hilaris* by Smith in 1879 (in Daly and Magnacca 2003, pp. 103–104), and transferred to the genus *Nesoprosopis* 20 years later (Perkins 1899, p. 75). *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). In 2003, Daly and Magnacca (pp. 103–104) described the species as *Hylaeus hilaris*, and is the most recently accepted taxonomic treatment of this species.

Most adult *Hylaeus* species consume nectar for energy; however, *H. hilaris* has yet to be observed actually feeding from flowers. *Hylaeus hilaris* and four related species (*H. hostilis*, *H. inquilina*, *H. sphecodoides*, and *H. volatilis*) are known as cleptoparasites or cuckoo bees. The mated female does not construct a nest or collect pollen, but instead enters the nest of another species and lays an egg in a provisioned cell. Upon hatching, the larva of *H. hilaris* kills the host egg, consumes the provisions, pupates, and eventually emerges as an adult. This species is known to lay its eggs within nests of *H. anthracinus*, *H. assimulans*, and *H. longiceps* (Perkins 1913, p. lxxxii). *Hylaeus hilaris* depends on related *Hylaeus* host species to support larval life stage, its population size is observed to be much smaller than its host species, and this species is probably the most at risk of extinction because of these features (Magnacca 2007b, p. 181).

Historically, *Hylaeus hilaris* was known from coastal habitat on Maui, Lanai, and Molokai, and from lowland dry habitat on Maui. It is believed to have occurred along much of the coast of these islands because its primary hosts, *H. anthracinus*, *H. assimulans*, and *H. longiceps* likely occurred throughout this habitat. First collected on Maui in 1879, *H. hilaris* has only been collected twice in the last 100 years. *Hylaeus hilaris* was absent from three of its historical population sites revisited by researchers between 1998 and 2006 (Magnacca 2007b, p. 181). It was also not observed in 2003 at 10 additional sites with potentially suitable habitat (Daly and Magnacca 2003, pp. 103, 106). Currently, the only known population of *H. hilaris* is located on The Nature Conservancy's Moomomi Preserve on Molokai, in the coastal ecosystem (Daly and Magnacca 2003, pp. 103, 106; Magnacca 2005d, p. 2; Magnacca 2007b, p. 181).

Because *Hylaeus hilaris* is an obligate parasite on *H. anthracinus*, *H. assimulans*, and *H. longiceps*, its

occurrences are determined by the remaining populations of these three other species. Habitat destruction and modification by urbanization and land use conversion leads to fragmentation of, and eventual loss of, foraging and nesting areas of *H. hilaris*, and of those *Hylaeus* species that *H. hilaris* is dependent upon. Habitat destruction and modification by nonnative plants adversely impact native Hawaiian plant species by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering the fire characteristics, and ultimately converting native dominated plant communities to nonnative plant communities; such habitat destruction and modification result in removal of food sources and nesting sites for the *Hylaeus* species that *H. hilaris* is dependent upon. Nonnative plant species that modify and destroy habitat of *H. hilaris* are noted in the description for *H. assimulans*, above. Habitat modification and destruction by nonnative animals, such as feral pigs, goats, axis deer, and cattle, are considered one of the primary factors underlying destruction of native vegetation in the Hawaiian Islands, and these habitat changes also remove food sources and nesting sites for the host species of *H. hilaris* (Stone 1985, pp. 262–263; Cuddihy and Stone 1990, pp. 60–66, 73). Fire is a potential threat to *H. hilaris*, as it destroys native plant communities, and opens habitat for increased invasion by nonnative plants. Because of the greater frequency, intensity, and duration of fires that have resulted from the human alteration of landscapes and the introduction of nonnative plants, especially grasses, fires are now more destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire often kills most native trees and shrubs in the area (D'Antonio and Vitousek 1992, p. 74) and could destroy food and nesting resources for *Hylaeus* species which *H. hilaris* parasitizes. The numbers of wildfires, and the acreages involved, are increasing in the main Hawaiian Islands; however, their occurrences and locations are unpredictable, and could affect habitat for yellow-faced bees at any time (Gima 1998, in litt.; County of Maui 2009, ch. 3, p. 3; Hamilton 2009, in litt.; Honolulu Advertiser 2010, in litt.; Pacific Disaster Center 2011, in litt.). Random, naturally occurring events such as hurricanes and drought can modify and destroy habitat of *H. hilaris* by creating disturbed areas conducive to invasion by nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671; Businger 1998, pp. 1–2).



Predation by nonnative ants (the big-headed ant, the long-legged ant, *Solenopsis papuana*, and *S. geminata*) on *Hylaeus* egg, larvae, and pupal stages is also a threat to *H. hilaris* (Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155). Predation by nonnative western yellow jacket wasps is a potential threat to *H. hilaris* because the wasp is an aggressive, generalist predator, and occurs in great numbers in many habitat types, from sea level to over 8,000 ft (2,450 m), including areas where *H. hilaris* and other yellow-faced bees occur (Gambino *et al.* 1987, p. 169). Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees (honeybees, carpenter bees, Australian colletid bees) for nectar and pollen is a potential threat to the host yellow-faced bees of *H. hilaris* (Magnacca 2007b, p. 188). The small number of populations and individuals of *H. hilaris* makes this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes such as hurricanes and drought (Daly and Magnacca 2003, p. 3; Magnacca 2007b, p. 173). Changes in precipitation resulting from the effects of climate change may degrade habitat for all *Hylaeus* species; however, we are unable to determine the extent of these negative impacts at this time. Because of these threats, we find that *Hylaeus hilaris* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered, threatened, or in a significant portion of its range.

#### Yellow-faced bee (*Hylaeus kuakea*)

*Hylaeus kuakea* is a small, black bee with slightly smoky-colored wings. This species does not fit into any of the well-defined *Hylaeus* species groups. Its facial marks are similar to those of the *H. difficilis* group and to *H. anthracinus*, but it has an unusual ivory facial marking covering the clypeus. *Hylaeus kuakea* has a denser, more distinct arrangement of setae (sensory hairs) on the head and narrow marks next to the compound eyes (Daly and Magnacca 2003, p. 125; Magnacca 2005e, p. 2). Only four adult male specimens have been collected; females have yet to be collected or observed. *Hylaeus kuakea* was first described by Daly and Magnacca (2003, pp. 1, 125–127) from specimens collected in 1997 in the Waianae Mountains of Oahu.

*Hylaeus kuakea* is believed to be a stem-nesting species and likely constructs nests opportunistically within existing burrows inside dead twigs or plant stems (Magnacca and Danforth 2006, p. 403). The native host plants of the adult *H. kuakea* are unknown, but it is likely this species visits several plants other *Hylaeus* species are known to frequent, including *Acacia koa*, *Metrosideros polymorpha*, *Leptecophylla tameiameia*, *Scaevola* spp., and *Chamaesyce* spp. (Magnacca 2005e, p. 2).

Because the first collection of *Hylaeus kuakea* was not made until 1997, its historical range is unknown (Magnacca 2005e, p. 2; Magnacca 2007a, p. 184). Phylogenetically, *H. kuakea* belongs in a species-group primarily including species inhabiting mesic forests (Magnacca and Danforth 2006, p. 405). Only four individuals (all males) have been collected from two different sites in the Waianae Mountains of Oahu in the lowland mesic ecosystem (Magnacca 2007b, p. 184). The species has never been collected in any other habitat type or area, including some sites that have been more thoroughly surveyed (Magnacca 2011, in litt.). Not all potentially suitable habitat has been surveyed due to the remote and rugged locations, small size, rareness, and distant spacing among large areas of nonnative forest (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66–67, 75).

Habitat destruction and modification by feral pigs leads to fragmentation, and eventual loss, of foraging and nesting areas of *Hylaeus kuakea*. Habitat destruction and modification by nonnative plants adversely impact native Hawaiian plant species by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering the fire characteristics, and ultimately converting native dominated plant communities to nonnative plant communities; such habitat destruction and modification result in removal of food sources and nesting sites for *H. kuakea*. Nonnative plant species that modify and destroy habitat of *H. kuakea* are noted in the descriptions for *H. assimulans* and *H. facilis*, above. Fire is a potential threat to *H. kuakea* because it destroys native plant communities and opens habitat for increased invasion by nonnative plants. Because of the greater frequency, intensity, and duration of fires that have resulted from the human alteration of landscapes and the introduction of nonnative plants, especially grasses, fires are now more destructive to native Hawaiian

ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire often kills most native trees and shrubs in the area (D'Antonio and Vitousek 1992, p. 74) and could destroy food and nesting resources for *H. kuakea*. The numbers of wildfires, and the acreages involved, are increasing in the main Hawaiian Islands; however, their occurrences and locations are unpredictable, and could affect habitat for yellow-faced bees at any time (Gima 1998, in litt.; County of Maui 2009, ch. 3, p. 3; Hamilton 2009, in litt.; Honolulu Advertiser 2010, in litt.; Pacific Disaster Center 2011, in litt.). The only known occurrences of *H. kuakea* are close to military training areas, where the risk of fire is elevated. Several fires on Oahu have impacted rare or endangered species in lowland mesic habitat similar to that where *H. kuakea* has been found (TNC 2005, in litt.; U.S. Army Garrison 2007, p. 3; DLNR 2014, in litt.; KHON 2014, in litt.). Random, naturally occurring events such as hurricanes and drought can modify and destroy habitat of *H. kuakea* by creating disturbed areas conducive to invasion by nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671; Businger 1998, pp. 1–2). Predation by nonnative ants (the big-headed ant, the long-legged ant, *Solenopsis papuana*, and *S. geminata*) on *Hylaeus* egg, larvae, and pupal stages is a threat to *H. kuakea*; additionally, ants compete with *H. kuakea* for their nectar food source (Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155). Predation by nonnative western yellow jacket wasps is a potential threat to *H. kuakea* because the wasp is an aggressive, generalist predator, and occurs in great numbers in many habitat types, from sea level to over 8,000 ft (2,450 m), including areas where *H. kuakea* and other yellow-faced bees occur (Gambino *et al.* 1987, p. 169). Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees (honeybees, carpenter bees, Australian colletid bees) for nectar and pollen is a potential threat to *H. kuakea* (Magnacca 2007b, p. 188). The small number of populations and individuals of *H. kuakea* makes this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes such as hurricanes and drought (Daly and Magnacca 2003, p. 3; Magnacca 2007, p. 173). Changes in precipitation resulting

from the effects of climate change may degrade habitat for all *Hylaeus* species; however, we are unable to determine the extent of these negative impacts at this time. Because of these threats, we find that *Hylaeus kuakea* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

#### Yellow-faced bee (*Hylaeus longiceps*)

*Hylaeus longiceps* is a small to medium-sized black bee with clear to slightly smoky-colored wings. Its distinguishing characteristics are its long head and the facial marks of the male. The lower face of the male is marked with a yellow band that extends at the sides of the face in a broad stripe above the antennal sockets. The area above the clypeus is very long and narrow, and the scape (the first antennal segment) is noticeably twice as long as it is wide. The female is entirely black and unmarked (Daly and Magnacca 2003, p. 133). *Hylaeus longiceps* was first described in 1899 as *Nesoprosopis longiceps* (Perkins 1899, pp. 75, 98), and then *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). Daly and Magnacca (2003, pp. 133–134) most recently described the species as *H. longiceps*.

*Hylaeus longiceps* is a ground-nesting species, constructing nests opportunistically within existing burrows or small natural cavities under bark or rocks (Magnacca 2005f, p. 2). Adult bees have been observed visiting the flowers of a wide variety of native plants including *Chamaesyce degeneri* (akoko), *Myoporum sandwicense* (naio), *Santalum ellipticum* (iliahialoe), *Scaevola coriacea* (dwarf naupaka), *Sesbania tomentosa* (ohai), *Sida fallax* (ilima), and *Vitex rotundifolia* (pohinahina) (Daly and Magnacca 2003, p. 135). It is likely *H. longiceps* also visits several plant species other *Hylaeus* species are known to frequently visit, including *Heliotropium foertherianum* (tree heliotrope) and *Jacquemontia ovalifolia* (pauohiika) (Magnacca 2005f, p. 2).

*Hylaeus longiceps* is historically known from coastal and lowland dry shrubland habitat up to 2,000 ft (610 m) in numerous locations on the islands of Maui, Lanai, Molokai, and Oahu. Perkins (1899, p. 98) noted *H. longiceps* was locally abundant, and probably occurred throughout much of the leeward and lowland areas on these islands. *Hylaeus longiceps* is now restricted to small populations in patches of coastal and lowland dry habitat on Maui, Lanai, Molokai, and

Oahu (Magnacca 2005f, p. 2). Twenty-five sites that were either historical collecting localities or contained potentially suitable habitat for this species were surveyed between 1997 and 2008 (Magnacca and King 2013, p. 16). *Hylaeus longiceps* was observed at only six of the surveyed sites: three sites on Lanai (in the coastal and lowland dry ecosystems) and one site on each of the islands of Maui (in the coastal ecosystem), Molokai (in the coastal ecosystem), and Oahu (in the coastal ecosystem). Only one of the historical locations surveyed, Waieua dunes on Maui, still supports a population of *H. longiceps* (Daly and Magnacca 2003, p. 135).

Most of the coastal and lowland dry habitat of *Hylaeus longiceps* has been developed or degraded, and is no longer suitable (Liebherr and Polhemus 1997, pp. 346–347; Magnacca 2007b, pp. 186–188). Habitat destruction and modification by axis deer (Lanai) and urbanization (Maui and Molokai) leads to fragmentation, and eventual loss, of foraging and nesting areas of *H. longiceps* (Daly and Magnacca 2003, pp. 217–229). Habitat modification and destruction by human impacts in areas accessible by four-wheel drive vehicles on Lanai is a potential threat because these vehicles can destroy plants used as food sources and destroy ground nesting sites for *H. longiceps* (Daly and Magnacca 2003, p. 135). Habitat destruction and modification by nonnative plants adversely impacts native Hawaiian plant species used by *H. longiceps* as a food source by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering the fire characteristics, and ultimately converting native-dominated plant communities to nonnative plant communities. Nonnative plant species that modify and destroy habitat of *H. longiceps* are noted in the descriptions for *H. assimulans* and *H. facilis*, above. Fire is a potential threat to *H. longiceps* because it destroys native plant communities, and opens habitat for increased invasion by nonnative plants. Because of the greater frequency, intensity, and duration of fires that have resulted from the human alteration of landscapes and the introduction of nonnative plants, especially grasses, fires are now more destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire often kills most native trees and shrubs in the area (D'Antonio and Vitousek 1992, p. 74) and could destroy food and nesting resources for *H. longiceps*. The numbers of wildfires,

and the acreages involved, are increasing in the main Hawaiian Islands; however, their occurrences and locations are unpredictable, and could affect habitat for yellow-faced bees at any time (Gima 1998, in litt.; County of Maui 2009, ch. 3, p. 3; Hamilton 2009, in litt.; Honolulu Advertiser 2010, in litt.; Pacific Disaster Center 2011, in litt.). Random, naturally occurring events such as hurricanes and drought can modify and destroy habitat of *H. longiceps* by creating disturbed areas conducive to invasion by nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671; Businger 1998, pp. 1–2). Predation, and competition for food sources, by nonnative ants and the nonnative western yellow jacket wasp is a threat to *H. longiceps* (see *H. kuakea*, above) (Gambino *et al.* 1987, p. 169; Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155). Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees (honeybees, carpenter bees, Australian colletid bees) for nectar and pollen is a potential threat to *H. longiceps* (Magnacca 2007b, p. 188). The small number of populations and individuals of *H. longiceps* makes this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes such as hurricanes and drought (Daly and Magnacca 2003, p. 3; Magnacca 2007b, p. 173). Changes in precipitation resulting from the effects of climate change may degrade habitat for all *Hylaeus* species; however, we are unable to determine the extent of these negative impacts at this time. Because of these threats, we find that *Hylaeus longiceps* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

#### Yellow-faced bee (*Hylaeus mana*)

*Hylaeus mana* is an extremely small, gracile (gracefully slender) black bee with yellow markings on the face. The smallest of all Hawaiian *Hylaeus* species, *H. mana* is a member of the *Dumetorum* species group. The face of the male is mostly yellow below the antennae, extending dorsally in a narrowing stripe. The female's face has three yellow lines: one against each eye and a transverse stripe at the apex of the clypeus. The female's outer markings are the same as the male's (Daly and Magnacca 2003, p. 135). *Hylaeus mana*

can be distinguished from *H. mimicus* and *H. specularis* (species with overlapping ranges) by its extremely small size, the shape of the male's genitalia, the female's extensive facial marks, and a transverse rather than longitudinal clypeal marking (Daly and Magnacca 2003, p. 138). *Hylaeus mana* was first described by Daly and Magnacca (2003, pp. 135–136), from four specimens collected in 2002, on the leeward side of the Koolau Mountains on Oahu, and is the most currently accepted taxonomy.

The nesting habits of *H. mana* are not well known, but it is assumed the species is closely related to other wood-nesting Hawaiian *Hylaeus* species, and uses an available cavity (stems of coastal shrubs) for nest construction (Magnacca 2005g, p. 2; Magnacca and Danforth 2006, p. 403). Adult specimens of *H. mana* were collected while they visited flowers of the native plants *Psychotria* spp. and *Santalum freycinetianum* var. *freycinetianum* (iliahi, sandalwood) (Wagner *et al.* 1999, p. 1221). It is likely *H. mana* visits several other native plant species including *Acacia koa*, *Metrosideros polymorpha*, *Leptecophylla tameiameia*, *Scaevola* spp., and *Chamaesyce* spp. (Magnacca 2005g, p. 2).

*Hylaeus mana* is known only from lowland mesic forest dominated by native *Acacia koa* located along the Manana Trail in the Koolau Mountains of Oahu, at 1,400 ft (430 m). Few other *Hylaeus* species have been found in this type of forest on Oahu (Daly and Magnacca 2003, p. 138). This type of native forest is increasingly rare and patchily distributed because of competition and encroachment into habitat by nonnative plants (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66–67, 75). Decline of this forest type could lead to decline in populations and numbers of *H. mana*. Three additional population sites were discovered on Oahu in 2012, including a new observation of the species at the Manana Trail site (Magnacca and King 2013, pp. 17–18). The three new sites are within a narrow range of lowland mesic forest at 1,400 ft (430 m), bordered by nonnative plant habitat at lower elevations and wetter native forest habitat above (Magnacca and King 2013, pp. 17–18). *Hylaeus mana* was most often observed on *Santalum freycinetianum* var. *freycinetianum*, which suggests that *H. mana* may be closely associated with this plant species (Magnacca and King 2013, p. 18). Additional surveys may reveal more populations; however, the extreme rarity of this species, its absence from

many survey sites, the fact that it was not discovered until very recently, and the limited range of its possible host plant, all suggest that few populations remain (Magnacca 2005g, p. 2; Magnacca and King 2013, pp. 17–18).

Habitat destruction and modification by feral pigs leads to fragmentation, and eventual loss, of foraging and nesting areas of *H. mana* (Daly and Magnacca 2003, pp. 217–229). Habitat destruction and modification by nonnative plants adversely impacts native Hawaiian plant species used by *H. mana* as a food source by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering the fire characteristics, and ultimately converting native dominated plant communities to nonnative plant communities. Nonnative plant species that modify and destroy habitat of *H. mana* are noted in the descriptions for *H. assimulans* and *H. facilis*, above, and can outcompete native canopy species such as *A. koa*, the known preferred native canopy type of *H. mana* (GISD 2011, in litt.; State of Hawaii 2013, in litt. (S.C.R. No. 74)). Fire is a potential threat to *H. mana*, as it destroys native plant communities on which the species depends, and opens habitat for increased invasion by nonnative plants. Because of the greater frequency, intensity, and duration of fires that have resulted from the human alteration of landscapes and the introduction of nonnative plants, especially grasses, fires are now more destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire often kills most native trees and shrubs in the area (D'Antonio and Vitousek 1992, p. 74) and could destroy food and nesting resources for *H. assimulans*. The numbers of wildfires, and the acreages involved, are increasing in the main Hawaiian Islands; however, their occurrences and locations are unpredictable, and could affect habitat for yellow-faced bees at any time (Gima 1998, in litt.; County of Maui 2009, ch. 3, p. 3; Hamilton 2009, in litt.; Honolulu Advertiser 2010, in litt.; Pacific Disaster Center 2011, in litt.). Random, naturally occurring events such as hurricanes and drought can modify and destroy habitat of *H. mana* by creating disturbed areas conducive to invasion by nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671; Businger 1998, pp. 1–2). Predation and competition for food sources by nonnative ants and the nonnative western yellow jacket wasp are threats to *H. mana* (see *H. kuakea*, above) (Gambino *et al.* 1987, p. 169; Howarth 1985, p. 155; Hopper *et al.*

1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155). Existing regulatory mechanisms and agency policies do not address the primary threats to the yellow-faced bees and their habitat from nonnative ungulates. Competition with nonnative bees (honeybees, carpenter bees, Australian colletid bees) for nectar and pollen is a potential threat to *H. mana* (Magnacca 2007b, p. 188). The small number of populations and individuals of *H. mana* makes this species more vulnerable to extinction because of the higher risks from genetic bottlenecks, random demographic fluctuations, and localized catastrophes such as fire, hurricanes, and drought (Daly and Magnacca 2003, p. 3; Magnacca 2007b, p. 173). Changes in precipitation resulting from the effects of climate change may degrade habitat for all *Hylaeus* species; however, we are unable to determine the extent of these negative impacts at this time. Because of these threats, we find that *Hylaeus mana* should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

Orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*)

The orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*; family Coenagrionidae) is small in size. The adults measure from 1.3 to 1.5 in (33 to 37 mm) in length and have a wingspan of 1.4 to 1.6 in (35 to 40 mm). Males are bright red in color, females are pale tan in color, and both sexes exhibit strong patterns including striping. Naiads (the immature aquatic stage) of this species exhibit flattened, leaf-like gills (Asquith and Polhemus 1996, p. 91). The orangeblack Hawaiian damselfly was first described by Selys-Longchamps (1876).

Habitat for this species is standing or very slow-moving water. The naiads are active swimmers and rest on exposed areas of the bottom on submerged vegetation (Williams 1936, p. 314). They have been observed breeding in garden pools, large reservoirs, pools of an intermittent stream, a pond formed behind a cobble bar at the seaward terminus of a large stream, coastal springs, and freshwater marshes (Polhemus 1996, pp. 36, 42–45; Williams 1936, pp. 239, 310). In 1913, Perkins (p. clxxviii) described it as a common insect in Honolulu gardens and in lowland districts generally, not usually partial to the mountains, though in the Kona district of Hawaii Island it was common in stagnant pools up to elevations of about 3,000 ft (900 m).

The orangeblack Hawaiian damselfly was once Hawaii's most abundant damselfly species because it utilizes a variety of aquatic habitats for breeding sites. Historically, the orangeblack Hawaiian damselfly probably occurred on all of the main Hawaiian Islands (except Kahoolawe) in suitable aquatic habitat within the coastal, lowland dry, and lowland mesic ecosystems (Perkins 1913, p. clxxviii; Zimmerman 1948a, p. 379; Polhemus 1996, p. 30). Its historical range on Kauai is unknown. On Oahu, it was recorded from Honolulu, Kaimuki, Koko Head, Pearl City, Waialua, the Waianae Mountains, and Waianae (Polhemus 1996, pp. 31, 33). On Molokai, it was known from Kainalu, Meyer's Lake (Kalaupapa Peninsula), Kaunakakai, Mapulehu, and Palaau (Polhemus 1996, pp. 33–41). On Lanai, small populations occurred on Maunalei Gulch, and in ephemeral coastal ponds at the mouth of Maunalei Gulch drainage, at Keomuku, and in a mixohaline habitat at Lopa (Polhemus 1996, pp. 37–41; HBMP 2010). On Maui, this species was recorded from an unspecified locality in the west Maui Mountains (Polhemus 1996, pp. 41–42; Polhemus *et al.* 1999, pp. 27–29). On Hawaii Island, it was known from Hilo, Kona, Naalehu, and Panaewa Forest Reserve (FR) (Polhemus 1996, pp. 42–47).

Currently, the orangeblack Hawaiian damselfly occurs on five islands. In 1994, on Oahu, a very small population was discovered in pools of an intermittent stream at the Tripler Army Medical Facility (Englund 2001, p. 256). On Molokai, populations occur at the mouths of Pelekunu and Waikolu streams, and at the Palaau wetlands on the south coast (Polhemus 1996, p. 47). On Lanai, a large population occurs in an artificial pond at Koele (Polhemus 1996, p. 47). The species is present on Maui at Ukumehame stream (west Maui) and near anchialine pools at La Perouse Bay (leeward east Maui) (Polhemus *et al.* 1999, p. 29). Several large populations exist in coastal wetlands on Hawaii Island at the following locations: Anaehoomalu Bay, Kawa Bay, Hilea Stream, Hilo, Honokohau, Kiholo Bay, Ninole Springs, Onomea Bay, Whittington Beach, Keaukaha, Kapoho, Honaunau, and Pohue Bay (Polhemus 1996, pp. 42–47). The species is believed to be extirpated from Kauai (Asquith and Polhemus 1996, p. 91).

Past and present land use and water management practices, including agriculture, urban development, ground water development, feral ungulates, and destruction of perched aquifer and surface water resources, modify and destroy habitat of the orangeblack

Hawaiian damselfly (Harris *et al.* 1993, pp. 9–13; Meier *et al.* 1993, pp. 181–183). Nonnative plant species such as *Brachiaria mutica* (California grass) form dense, monotypic stands that can completely eliminate any open water habitat of the orangeblack Hawaiian damselfly, and nonnative grasses provide fuel for wildfires (Smith 1985, p. 186). Other stochastic events such as flooding and hurricanes can also modify and destroy habitat, and kill individuals. Predation by nonnative fish and nonnative aquatic invertebrates on the orangeblack Hawaiian damselfly is a significant threat. Hawaiian damselflies evolved with few, if any, predatory fish and the exposed behavior of most of the fully aquatic damselfly species, including the orangeblack Hawaiian damselfly, makes them particularly vulnerable to predation by nonnative fish (Englund 1999, pp. 225–225, 235). The damselfly is not observed in any bodies of water that support nonnative fish (Henrickson 1988, p. 183; McPeck 1990a, pp. 92–96). Nonnative backswimmers (aquatic true bugs; Heteroptera) are voracious predators and frequently feed on prey much larger than themselves, such as tadpoles, small fish, and other aquatic invertebrates including damselfly naiads (Borror *et al.* 1989, p. 296). Several species of backswimmers have become established in Hawaii, and their presence in aquatic habitat can cause orangeblack Hawaiian damselflies to reduce foraging, thereby reducing its growth, development, and survival (Heads 1986, pp. 374–375). Hawaii State law (State Water Code) does not provide for permanent or minimal instream flow standards, and stream channels can be undertaken at any time by the Water Commission or via public petitions to revise flow standards or modify stream channels, possibly resulting in modification and destruction of the aquatic habitat of the orangeblack Hawaiian damselfly (Hawaii Administrative Rule (HAR)-State Water Code, title 13, chapter 169–36). In addition, competition with nonnative invertebrates for space and resources by a nonnative insect group, the *Trichoptera* (caddisflies), is a potential threat to the orangeblack Hawaiian damselfly (Flint *et al.* 2003, p. 38).

The remaining populations and habitat of the orangeblack Hawaiian damselfly are at risk; numbers are decreasing on Oahu, Molokai, Lanai, Maui, and Hawaii Island, and both the species and its habitat continue to be negatively affected by modification and destruction by development and water management practices and by nonnative

plants, combined with predation by nonnative fish and nonnative invertebrates. Competition with nonnative insects is a potential threat to the orangeblack Hawaiian damselfly. Because of these threats, we find that this species should be listed throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

#### Anchialine Pool Shrimp (*Procaris hawaiana*)

The anchialine pool shrimp *Procaris hawaiana* (family Procarididae) ranges in total length from 0.4 to 1.2 in (10 to 30 mm). This species has a pink to light-red pigmentation that is darkest along the midline with the dorsal thorax white to yellow. Black pigments are associated with the eyes. Conspicuous chelapeds (claws) are lacking. Locomotion is accomplished by swimming with the swimmerets (modified appendages) and occurs just above the substrate to mid-water (Holthius 1973, pp. 12–19). *Procaris hawaiana* was described by Holthius in 1973, and is recognized as a valid taxon in McLaughlin *et al.* (2005, p. 212), the most recently accepted taxonomy.

*Procaris hawaiana* is known to occur in mid-salinity (19 to 25 parts per thousand (ppt)) anchialine pools. Except for some records of native eels, anchialine pools in Hawaii do not typically support native fish species; however, nonnative fish have been introduced to pools, and they prey on native invertebrates such as *P. hawaiana* (Bailey-Brock and Brock 1993, p. 354; Brock 2004, p. i). Little is known of the reproductive biology or the diet of *P. hawaiana*, although it has been documented to scavenge other species of anchialine shrimp and has taken frozen brine shrimp when in captivity (Holthius 1973, pp. 12–19).

Although anchialine pools are widespread, being found in areas such as Saudi Arabia, Madagascar, Fiji, and other Indo-Pacific islands, the total area they occupy globally is extremely small (Maciolek 1983, pp. 607–612). While many species of anchialine pool shrimp have disjunct, global distributions, most geographic locations contain some endemic taxa (*i.e.*, taxa found nowhere else on Earth) (Maciolek 1983, pp. 607–612). The shrimp family Procarididae is represented by a small number of species globally, with only two species within the genus *Procaris* (Holthius 1973, pp. 12–19). *Procaris hawaiana* is an endemic species known only from the islands of Maui and Hawaii. The second species, *P. ascensionis*, is restricted to similar habitat on

Ascension Island in the South Atlantic Ocean. Of the anchialine pools on Hawaii Island, only 25 are known to contain *Procaris hawaiiana*. During nocturnal-diurnal surveys conducted from 2009 to 2010, 19 pools within the Manuka Natural Area Reserve (NAR) were found to contain *P. hawaiiana*. Five additional pools located on unencumbered State land adjacent to Manuka NAR also contained *P. hawaiiana* (from the total 24 recorded pools within the Manuka watershed). A single pool located at Lua o Palahemo also contains *P. hawaiiana*, along with the endangered anchialine pool shrimp *Vetericaris chaceorum* (Holthius 1973, pp. 12–19; Maciolek 1983, pp. 607–614; Brock 204, pp. 30–57). On Maui, *P. hawaiiana* occurs in two anchialine pools at Ahihi-Kinau NAR (Holthius 1973, pp. 12–19; Maciolek 1983, pp. 607–614; Brock 2004, pp. 30–57).

Like other anchialine pool shrimp species, *P. hawaiiana* inhabits extensive networks of water-filled interstitial spaces (cracks and crevices) leading to and from the actual pool, a trait which has precluded researchers from ascertaining accurate population size estimates (Holthius 1973, p. 36; Maciolek 1983, pp. 613–616). Often, surveys for many rare species of anchialine pool shrimp, including *P. hawaiiana*, involve a presence-absence survey approach in their respective habitat (often with the aid of baiting). Absence, and presumably extirpation, of shrimp species from suitable habitat is likely the best or only measure of species decline as population sizes are not easily determined (Holthius 1973, pp. 7–12; Maciolek 1983, pp. 613–616). Disappearance of the anchialine pool shrimp *Halocaridina rubra* from an anchialine pool at Honokohau Harbor (Hawaii Island) has been documented, as a result of the use of the pool for dumping of used oil, grease, and oil filters (Brock 2004, p. 14); however, to date, there is no documentation of extirpation of *Procaris hawaiiana* from the pools that it is known to occupy (Wada 2015, in litt.).

Habitat modification and destruction by human activities is a threat to *Procaris hawaiiana*. It is estimated that up to 90 percent of existing anchialine pools have been destroyed by filling and bulldozing (Baily-Brock and Brock 1993, p. 354; Brock 2004, p. i). Anchialine pools are used as dumping pits for bottles, cans, and used oil and grease, and these activities are a known cause of the disappearance of another anchialine pool shrimp, *Halocaridina rubra*, from a pool adjacent to Honokohau Harbor on the island of Hawaii (Brock 2004, p. 16). Trampling

damage from use of anchialine pools for swimming and bathing has been documented (Brock 2004, pp. 13–17). Although a permit from the State is required to collect anchialine pool shrimp, unpermitted collection of shrimp for trade for the aquarium hobby market is ongoing (Fuku-Bonsai 2015, in litt.). Collection is not prohibited at State Parks or City and County property where some anchialine pools occur. Predation by nonnative fish is a direct threat to *P. hawaiiana*. Nonnative fish (tilapia, *Oreochromis mossambica*) also outcompete native herbivorous species of shrimp that serve as a prey-base for *P. hawaiiana*, disrupting the delicate ecological balance in the anchialine pool system, and leading to decline of the pools and the shrimp inhabiting them (Brock 2004, pp. 13–17). Although anchialine pools within State NARs are provided some protection, these areas are remote and signage does not prevent human use and damage of the pools. The persistence of existing populations of *P. hawaiiana* is hampered by the small number of extant populations and the small geographic range of the known populations. The small populations of *P. hawaiiana* are at risk of extinction because of their increased vulnerability to loss of individuals from chance occurrences, habitat destruction, and the effects of invasive species; to demographic stochasticity; and to the reduction in genetic variability that may make the species less able to adapt to changes in the environment (Harmon and Braude 2010, pp. 125–128). In addition, large-scale water extraction from underground water sources may negatively impact the habitat and *P. hawaiiana* directly (Conry 2012, in litt.).

The remaining populations of *Procaris hawaiiana* and its habitat are at risk. The known individuals are restricted to a small area number of anchialine pools on Maui and Hawaii Island and continue to be negatively affected by habitat destruction and modification by human use of the pools for bathing and for dumping of trash and nonnative fish; by water extraction; by predation by and competition with nonnative fish; and by collection for the aquarium trade. The small number of remaining populations may limit this species' ability to adapt to environmental changes. Because of these threats, we find that this species should be listed as endangered throughout all of its range, and, therefore, we find that it is unnecessary to analyze whether it is threatened or endangered or threatened in a significant portion of its range.

## Distinct Population Segment

### *Band-Rumped Storm-Petrel* (*Oceanodroma castro*)

Under the Act, we have the authority to consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To guide the implementation of the DPS provisions of the Act, we and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries) published the 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) to guide the implementation of the DPS provisions of the Act. Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population segment's discreteness from the remainder of the species to which it belongs, and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the population segment's conservation status is evaluated based on the five listing factors established by the Act to determine if listing it as either endangered or threatened is warranted. Below, we evaluate the Hawaii population of the band-rumped storm-petrel to determine whether it meets the definition of a DPS under our DPS Policy.

### Discreteness

Under the DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. The Hawaii population of the band-rumped storm-petrel meets the first criterion: it is markedly separated from other populations of this species by physical

(geographic) and physiological (genetic) factors, as described below.

The band-rumped storm-petrel is widely distributed in the tropics and subtropics, with breeding populations in numerous island groups in the Atlantic and in Hawaii, Galapagos, and Japan in the Pacific (Harrison 1983, p. 274; Carboneras *et al.* 2014, p. 1; Fig. 1). The geographic, and in some cases seasonal, separation of these breeding populations is widely recognized, with strong genetic differentiation between the two ocean basins and among individual populations (Friesen *et al.* 2007b, p. 1768; Smith *et al.* 2007, p. 768). Whether individual populations merit taxonomic separation remains unclear, and further study is needed (Friesen *et al.* 2007a, p. 18591; Smith *et al.* 2007, p. 770; reviewed in Howell 2011, pp. 349, 369–370); some populations, such as those in the Galapagos and Cape Verde islands, may warrant full species status (Smith *et al.* 2007, p. 770). Like other storm-petrels, the band-rumped storm-petrel is a highly pelagic (open-ocean) seabird (Howell 2011, p. 349). In addition, like other species in the seabird order Procellariiformes, band-rumped storm-petrels exhibit strong philopatry, or fidelity to their natal sites (Allan 1962, p. 274; Harris 1969, pp. 96, 113, 120; Harrison *et al.* 1990, p. 49; Smith *et al.* 2007, pp. 768–769). Both of these characteristics contribute to isolation of breeding populations, in spite of the absence of physical barriers such as land masses within ocean basins (Friesen *et al.* 2007b, pp. 1777–1778).

Band-rumped storm-petrels from Hawaii are likely to encounter individuals from other populations only very rarely. The approximate distances from Hawaii to other known breeding sites are much greater than the birds' average foraging range of 860 mi (1,200 km); 4,000mi (6,600 km) to Japan and 4,600 mi (7,400 km) to Galapagos (the two other Pacific populations), and 7,900 mi (12,700 km) to Madeira, 7,300 mi (11,700 km) to the Azores, and 9,700 mi (15,600 km) to Ascension Island (in the Atlantic). Data from at-sea surveys of the eastern tropical Pacific conducted since 1988 show that the density of band-rumped storm-petrels attenuates north and northwest of Galapagos and that the species rarely occurs in a broad area southeast of Hawaii (Pitman, Ballance, and Joyce 2015, unpublished). This pattern suggests a gap in the at-sea distribution of this species, and low likelihood of immigration on an ecological timescale, between Hawaii and Galapagos. We are not aware of any data describing the at-sea distribution of this species between Hawaii and Japan,

but the absence of breeding records from western Micronesia (Pyle and Engbring 1985, p. 59) suggests there is a distributional gap between these two archipelagoes as well. Other than occasional encounters in their foraging habitat, the vast expanses of ocean between Japan, Hawaii, and Galapagos provide for no other sources of potential connectivity between band-rumped storm-petrel populations in the Pacific, such as additional breeding sites.

Even those disparate breeding populations of pelagic seabirds that do overlap at sea may remain largely isolated otherwise and exhibit genetic differentiation (*e.g.*, Walsh and Edwards 2005, pp. 290, 293). Despite the birds' capacity to move across large areas of ocean, genetic differentiation among breeding populations of band-rumped storm-petrels is high (Friesen *et al.* 2007a, p. 18590; Smith *et al.* 2007, p. 768), even between populations nesting in different seasons on the same island (in Galapagos; Smith and Friesen 2007, p. 1599). No haplotypes are shared (1) Between Atlantic and Pacific populations; (2) among Japan, Hawaii, and Galapagos populations; or (3) between Cape Verde, Ascension, and northeast Atlantic breeding populations (Smith *et al.* 2007, p. 768). Hawaiian birds have not been well-sampled for genetic analysis, but the few individuals from Hawaii included in a rangewide analysis showed differentiation from all other populations, and were most closely related to birds from Japan (Friesen *et al.* 2007, p. 18590).

We have determined that the Hawaii population of the band-rumped storm-petrel is discrete from the rest of the taxon because its breeding and foraging range are markedly separated from those of other populations. The Hawaii population is geographically isolated from populations in Japan and Galapagos, as well as from populations in very distant island groups in the central and western Atlantic Ocean. Molecular evidence indicates that the genetic structure of the species reflects the spatial or temporal separation of individual populations; the scant molecular data from Hawaii suggest that this holds for the Hawaii population as well.

#### Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is

unusual or unique for the taxon, (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. We have found substantial evidence that the Hawaii population of the band-rumped storm-petrel meets two of the significance criteria listed above: the loss of this population would result in a significant gap in the range of the taxon, and this population persists in a unique ecological setting. As described above, the physical isolation that defines the discreteness of Hawaii population is likely reflected in genetic differentiation from other populations, but at this time we lack sufficient data to consider genetic characteristics *per se* in our determination of the Hawaii population's significance to the rest of the taxon. Genetic patterns on an ocean-basin or species-wide scale, however, have implications for connectivity and potential gaps in the band-rumped storm-petrel's range (described below).

Dispersal between populations of seabird species with ranges fragmented by large expanses of ocean may play a vital role in the persistence of individual populations (Bicknell *et al.* 2012, p. 2872). No evidence currently exists of such dispersal among Pacific populations of band-rumped storm-petrels at frequencies or in numbers that would change the population status between years, for example, by providing immigrants that compensate for breeding failure or adult mortality resulting from predation, as has been hypothesized for Leach's storm-petrel in the Atlantic (Bicknell *et al.* 2012, p. 2872). Given the remnant population of band-rumped storm-petrels in Hawaii and recently documented decline in Japan (Biodiversity Center of Japan 2014, p. 1), we would not expect to see exchange on such short timescales. However, genetic evidence is suggestive of exchange between these two populations on an evolutionary timescale (Friesen *et al.* 2007a, p. 18590).

The loss of this population would result in a significant gap in the range of the band-rumped storm-petrel. As noted above, seabirds in the order Procellariiformes, including the band-rumped storm-petrel, exhibit very high natal site fidelity, and so are slow to recolonize extirpated areas or range-

gaps (Jones 2010, p. 1214), and may lack local adaptations; they thus face a potentially increased risk of extinction with the loss of individual populations (Smith *et al.* 2007, p. 770). The Hawaii population of the band-rumped storm petrel constitutes the entire Central Pacific distribution of the species, located roughly half-way between the populations in Galapagos and Japan (Fig. 1), and its loss would create a gap of approximately 8,500 mi. (13,680 km) between them and significantly reducing the likelihood of connectivity and genetic exchange. Such exchange would be reliant on chance occurrences, such as severe storms that could result in birds being displaced to the opposite side of the Pacific Ocean basin, and such chance dispersal events would not necessarily result in breeding.

The Hawaii population of the band-rumped storm-petrel is significant also because it persists in a unique ecological setting. This is the only population of the species known to nest at high-elevation sites (above 6,000 ft (1,800 m; Banko *et al.* 1991, pp. 651–653; Athens *et al.* 1991, p. 95)). In prehistory, the species likely nested in lowland habitats and more accessible habitats in Hawaii as well as in the high-elevation and otherwise remote areas where the species is found today; archaeological evidence suggests that band-rumped storm-petrels were once sufficiently common at both high (5,260 and 6,550 ft (1,600 and 2,000 m)) and low elevations on Hawaii Island to be used as a food source by humans (Ziegler pers. comm. in Harrison *et al.* 1990, pp. 47–48; Athens *et al.* 1991, pp. 65, 78–80; Banko *et al.* 1991, p. 650). In lowland areas, the species was common enough for the Hawaiians to name it and to identify it by its call (Harrison *et al.* 1990, p. 47; Banko *et al.* 1991, p. 650). In addition to the impacts of harvest by humans in prehistory, seabirds in

Hawaii, including the band-rumped storm-petrel, were negatively affected by the proliferation of nonnative predators such as rats and pigs, and, later, cats and mongoose, and by loss of habitat (reviewed in Duffy 2010, pp. 194–196). Predation and habitat loss combined likely led to the extirpation of the band-rumped storm-petrel from coastal and lowland habitats and other accessible nesting areas, as occurred in the endangered Hawaiian petrel (*Pterodroma sandwichensis*) and threatened Newell's shearwater, which have similar nesting habits and life histories (Olson and James 1982, p. 43; Slotterback 2002, p. 6; Troy *et al.* 2014, pp. 315, 325–326). The band-rumped storm-petrel's persistence in sites such as the Southwest Rift Zone (6,900 ft (2,100 m)) on Mauna Loa (Hawaii Island) has required them to surmount physiological challenges posed by nesting in high-elevation conditions (cold temperatures, low humidity, and less oxygen). They may possess special adaptations for this, such as reduction in porosity and other eggshell modifications to reduce the loss of water and carbon dioxide during incubation at high elevation (Rahn *et al.* 1977, p. 3097; Carey *et al.* 1982a, p. 716; Carey *et al.* 1982b, p. 349). In sum, the remnant distribution of band-rumped storm-petrel breeding sites in only the most remote and rugged terrain in Hawaii reflects conditions necessary for the species' persistence: relatively undisturbed habitat in areas least accessible to predators; in addition, adaptations unique in this species may be necessary for its persistence in high-elevation areas.

We have determined that the Hawaii population of band-rumped storm-petrel is significant to the rest of the taxon. Its loss would result in a gap in the range of the species of more than 8,500 mi (13,680 km), reducing and potentially

precluding connectivity between the two remaining populations in the Pacific Basin. In addition, the Hawaii population nests at high elevation on some islands, constituting a unique ecological setting represented nowhere else in the species' breeding range.

#### DPS Conclusion

We have evaluated the Hawaii population of band-rumped storm-petrel to determine if it meets the definition of a DPS, considering its discreteness and significance as required by our policy. We have found that this population is markedly separated from other populations by geographic distance, and this separation is likely reflected in the population's genetic distinctiveness. The Hawaii population is significant to the rest of the species because its loss would result in a significant gap in the species' range; Hawaii is located roughly half-way between the other two populations in the Pacific Ocean, and little or no evidence exists of current overlap at sea between the Hawaii population and either the Japan or Galapagos populations. The Hawaii population of band-rumped storm-petrel also nests at high elevation in Hawaii—conditions at high elevation constitute an ecological setting unique to the species. We conclude that the Hawaii population of band-rumped storm-petrel is a distinct vertebrate population segment under our 1996 DPS Policy (61 FR 4722), and that it warrants review for listing under the Act. Therefore, we have incorporated the Hawaii DPS of the band-rumped storm-petrel in our evaluation of threats stressors affecting the other 48 species addressed in this proposed rule (summarized above; see also “Summary of Factors Affecting the 49 Species Proposed for Listing,” below).

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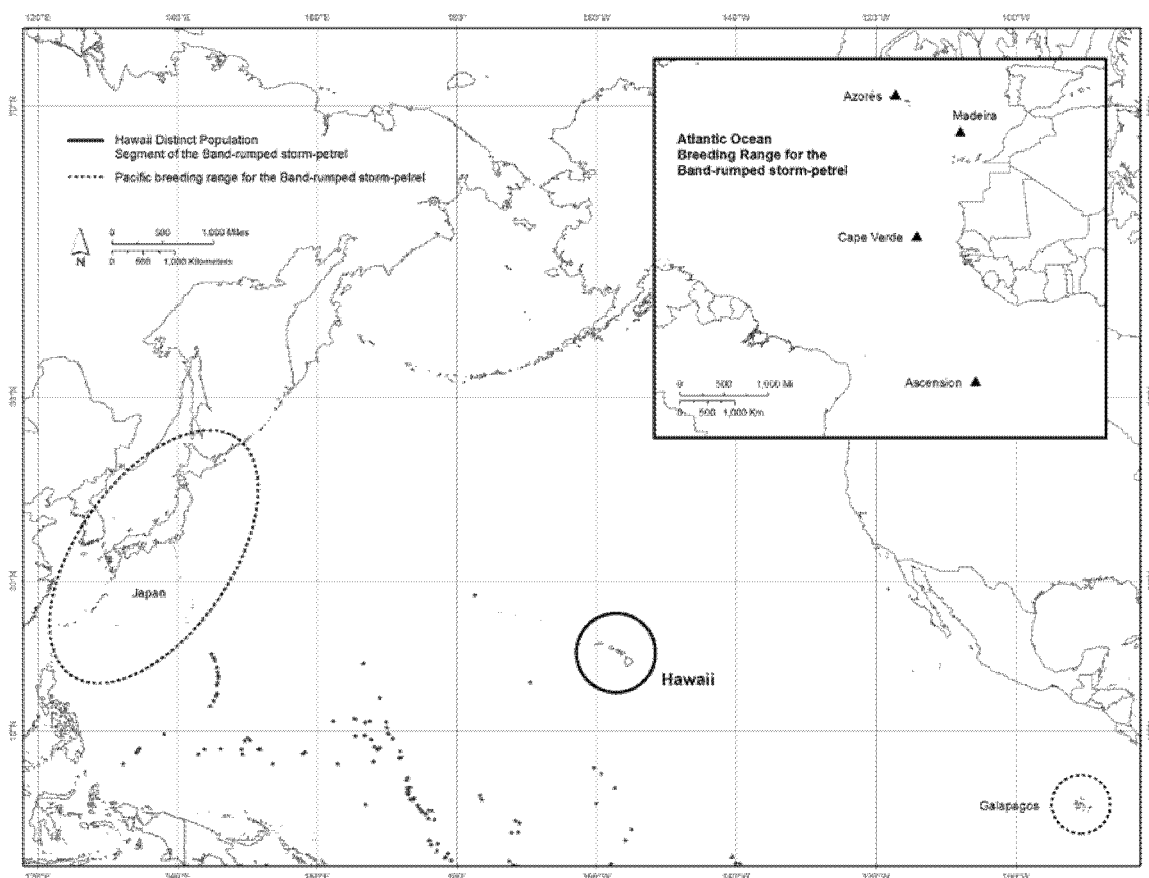


Figure 2. Location of the Hawaii Distinct Population Segment of the band-rumped storm-petrel and the two other breeding locations for the species in the Pacific Ocean.

Atlantic breeding locations also provided for context.

**BILLING CODE 4310-55-C**

**Summary of Factors Affecting the 49 Species Proposed for Listing**

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. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above

threat factors, singly or in combination. Each of these factors is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the mere exposure of the species to the factor to evaluate whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to warrant listing the species under the Act. The information must include evidence sufficient to show that these factors are

operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act. That evidence is discussed below for each of the species proposed for listing in this rule.

If we determine that the level of threat posed to a species by one or more of the five listing factors is such that the species meets the definition of either endangered or threatened under section 3 of the Act, that species may then be proposed for listing. The Act defines an endangered species as “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The threats to each of the individual 49 species proposed for listing in this



document are summarized in Table 3, and discussed in detail, below.

Each of the species proposed for listing in this proposed rule is adversely affected by the threats to the ecosystems on which it depends. There is information available on many of the threats that act on Hawaiian ecosystems, and for some ecosystems, there is a growing body of literature regarding these threats (e.g., nonnative ungulates and invasive plant species). The best available information on ecosystem threats affecting the species therein is discussed below. Table 3 identifies the threats to the ecosystems and the individual species within those ecosystems that are affected by those threats. Information on threats specific to certain species is also discussed where necessary and available; however, we acknowledge that we do not completely understand all the threats to each species. Scientific research directed toward each of these species is limited because of their rarity and the generally challenging logistics associated with conducting field work in Hawaii (e.g., areas are typically remote, difficult to survey in a comprehensive manner, and the target species are exceptionally uncommon).

The following threats affect the species proposed for listing in one or more of the ecosystems addressed in this proposed rule:

(1) Foraging and trampling of native plants by nonnative ungulates, including feral pigs, goats, axis deer, black-tailed deer, mouflon, sheep, and cattle, which can result in severe erosion of watersheds. Foraging and trampling events destabilize soils that support native plant communities, bury or damage native plants, have adverse water quality effects due to runoff over exposed soils, and can negatively affect burrows and nesting areas used by the band-rumped storm-petrel.

(2) Disturbance of soils by feral pigs from rooting, which can create fertile seedbeds for nonnative plants.

(3) Increased nutrient availability and changes to nutrient cycling processes as a result of rooting by pigs in nitrogen-poor soils, which facilitates establishment of nonnative plants, as they are more adapted to nutrient-rich soils than native plants, and rooting activity creates open areas in forests allowing nonnative plants to completely replace native stands.

(4) Ungulate destruction of seeds and seedling of native plants, and facilitation of distribution of seeds of nonnative plants, promoting conversion of disturbed areas from native to nonnative vegetative communities.

(5) Damage by rat herbivory to plant propagules, seedlings, or native trees, which changes forest composition and structure.

(6) Feeding on or defoliation of native plants by nonnative invertebrates (e.g., slugs), which can reduce the geographic ranges of eight plant species (*Cyanea kauaulaensis*, *Deparia kaalaana*, *Labordia lorenciana*, *Phyllostegia brevidens*, *P. stachyoides*, *Ranunculus mauiensis*, *Schiedea diffusa* ssp. *diffusa*, and *S. pubescens*) because of damage or removal.

(7) Competition for food and nesting sites of the *Hylaeus* yellow-faced bees by nonnative wasps and bees.

(8) Predation by nonnative vertebrates such as fish, rats, cats, mongoose, and barn owls.

(9) Predation by nonnative invertebrates such as ants, wasps, and backswimmers.

(10) Water extraction leading to conversion of wetlands and surface fresh water resources, and changes to anchialine pools.

(11) Habitat modification and destruction by ungulates and fires, resulting in loss of forage plants used by *Hylaeus* for nectar and pollen.

(12) Injury and mortality of the band-rumped storm-petrel caused by artificial lighting, communication towers, and power lines.

Each of the above threats is discussed in more detail below, and summarized in Table 3.

TABLE 3—PRIMARY AND POTENTIAL FUTURE THREATS IDENTIFIED FOR EACH OF THE 49 HAWAIIAN ISLANDS SPECIES

Species	Ecosystem	Factor A					Factor B			Factor C			Factor D		Factor E		
		Agriculture and urban development	Ungulates	Non-native plants	Fire	Stochastic events	Over-utilization	Predation/herbivory by ungulates	Predation/herbivory by other NN vertebrates	Predation/herbivory by NN invertebrates	Inadequate existing regulatory mechanisms	Other species-specific threats	Climate change				
<b>PLANTS:</b>																	
<i>Asplenium diellachianum</i>	MM		P, G, BTD	X												LN	Fl
<i>Calamagrostis expansa</i>	MW		P	X												LN	Fl, FV
<i>Cyanea kaulaensis</i>	LW			X					L, F							LN, NR	Fl
<i>Cyclosorus boydii</i>	LW, MW	WE	P	X					L, F							LN, NR	Fl, FV
<i>Cyperus neokunthianus</i>	LW		P	X												LN, NR	Fl
<i>Cyrtandra hematois</i>	MW		P, G	X												LN, NR	Fl, FV
<i>Daparia kaalana</i>	LM, LW		P	X					F, DR							LN	Fl
<i>Dryopteris glabra</i> var. <i>pusilla</i>	MW		P	X												LN	Fl, FV
<i>Exocarpos menziesii</i>	LM, MM, MD		P, G, M, SH	X												LN	Fl, FV
<i>Festuca hawaiiensis</i>	MD		P, G, M, SH	X												LN	Fl, FV
<i>Gardenia remyi</i>	LM, LW		P, G, D	X												LN, NR	Fl, FV
<i>Huperzia stemmermanniae</i>	MW		P, G, D, C	X					DR							LN, NR	Fl, FV
<i>Hypolepis hawaiiensis</i> var. <i>mauiensis</i>	MW		P, G, D	X												LN, NR	Fl, FV
<i>Joinvillea ascendens</i> ssp. <i>ascendens</i>	LW, LM, MW, MM			X												LN, NR	Fl, FV
<i>Kadua fluviatilis</i>	LM, LW		P, G	X												LN	Fl, FV
<i>Kadua hawaiiensis</i>	LM		P	X												LN, NR	Fl
<i>Labordia lorenciana</i>	MM		P, G	X					L, F, TF							LN, NR	Fl
<i>Lepidium orbiculare</i>	LM		P	X												LN, NR	Fl
<i>Microlepia strigosa</i> var. <i>mauiensis</i>	LM, MW, MM		P, G	X												LN, HY	Fl, FV
<i>Myrsine tosborgii</i>	LM, LW, MW		P, G, D	X												LN, NR	Fl, FV
<i>Nothocestrum latifolium</i>	LD, LM, DC	X	P, G, D	X												LN, NR	Fl, FV
<i>Ochrosia haleakalae</i>	LM, LW, MM, DC		P, G, C	X												LN	Fl, FV
<i>Phyllostegia brevidens</i>	LW, MW, WC		P, M, SH, C	X												LN	Fl, FV
<i>Phyllostegia helleri</i>	LW, MW, WC		P, G	X												LN	Fl, FV
<i>Phyllostegia stachyoides</i>	MW, MM		P, G, D	X												LN	Fl, FV
<i>Pontica villosa</i>	CO, LD, MD	X	G, D, M, SH, C	X												LN	Fl, FV
<i>Pritchardia bakeri</i>	LM		P	X												LN	Fl
<i>Pseudognaphalium sandwicensium</i> var. <i>mokalaense</i>	CO		P, G, D	X					HUR							LN	Fl, FV
<i>Ranunculus hawaiiensis</i>	MM, MD, SA		P, M, C	X												LN	Fl, FV
<i>Ranunculus mauianus</i>	MW, MM, MD, WC		P, G, D, C	X					DR, E							LN	Fl, FV
<i>Sanicula sandwicensis</i>	MM, MD, SA		G	X												LN	Fl, FV
<i>Sanialium involutum</i>	LM, LW		P, G, BTD	X												LN	Fl
<i>Schiedea diffusa</i> ssp. <i>diffusa</i>	LW, MW		P	X												LN	Fl
<i>Schiedea pubescens</i>	LW, MW, MM, WC		P, G, D, C	X					F, DR, E							LN	Fl, FV
<i>Sicyos lanceolobus</i>	LM, MM, DC		P, G	X												LN	Fl, FV
<i>Sicyos macrophyllus</i>	MW, MM, MD		P, M, C	X												LN	Fl, FV
<i>Solanum nelsonii</i>	CO		D, C	X												LN	Fl, FV
<i>Stenogyne kaalae</i> ssp. <i>sheffii</i>	LW		P	X												LN	Fl, FV
<i>Wikstroemia skottsbergiana</i>	LW		P	X												LN	Fl
<b>ANIMALS:</b>																	
Band-rumped storm-petrel ( <i>Oceanodroma castro</i> )	CO, DC, WC		G, M													LI, ST, H, LN	Fl
Orangeblack Hawaiian damselfly <i>Megalagrion xanthomelas</i>	AP, CO, LD, LM		P, G, D	X												LN	Fl
Anchialine pool shrimp ( <i>Procaris hawaiiensis</i> )	AP		X, WE	X												LN, RU	Fl
Yellow-faced bee ( <i>Hylaeus anthracinus</i> )	CO, LD		P, G, C, M, S, D	X												LN, W, B	Fl
Yellow-faced bee ( <i>Hylaeus assimulans</i> )	CO, LD		P, G, C, M, D	X												LN, W, B, LHP	Fl
Yellow-faced bee ( <i>Hylaeus facialis</i> )	CO, LD, LM		P, G, C, M, D	X												LN, W, B, LHP	Fl
Yellow-faced bee ( <i>Hylaeus hiliaris</i> )	CO, LD		P, G, C, M, D	X												LN, W, B, LHP	Fl

TABLE 3—PRIMARY AND POTENTIAL FUTURE THREATS IDENTIFIED FOR EACH OF THE 49 HAWAIIAN ISLANDS SPECIES—Continued

Species	Ecosystem	Factor A					Factor B		Factor C			Factor D	Factor E	
		Agriculture and urban development	Ungulates	Non-native plants	Fire	Stochastic events	Over-utilization	Predation/herbivory by ungulates	Predation/herbivory by other NN vertebrates	Predation/herbivory by NN invertebrates	Inadequate existing regulatory mechanisms	Other species-specific threats	Climate change	
Yellow-faced bee ( <i>Hylaeus kuakea</i> )	LM		P, G	X	X	DR, HUR					A, W	X	LN, W, B, LHP	Ft.
Yellow-faced bee ( <i>Hylaeus longiceps</i> )	CO, LD	X	M, D	X	X	DR, HUR					A, W	X	LN, W, B, LHP	Ft.
Yellow-faced bee ( <i>Hylaeus mana</i> )	LM		P	X	X	DR, HUR					A, W	X	LN, W, B, LHP	Ft.

Factor A = Habitat Modification; Factor B = Overutilization; Factor C = Disease or Predation; Factor D = Inadequacy of Regulatory Mechanisms; Factor E = Other Species-Specific Threats; AP = Anchiaine Pools; CO = Coastal; LD = Lowland Dry; LM = Lowland Mesic; LW = Lowland Wet; MW = Montane Wet; MM = Montane Mesic; MD = Montane Dry; SA = Subalpine; DC = Dry Cliff; WC = Wet Cliff.  
 A = Ants; B = Bees (competition); BS = Backswimmer; BTM = Black Tailed Deer; C = Cattle; CA = Cats; D = Axis Deer; FS = Fish; G = Goats; M = Mongoose; MO = Mouflon; P = Pigs; R = Rats; S = Slugs; SH = Sheep; TF = Tree Fall; W = Wasps (competition, predation).  
 DR = Drought; E = Erosion; F = Flooding; H = Human (fisheries, marine debris); HUR = Hurricanes; HY = Hybridization; L = Landslides; LHP = Loss of Host Plants; LJ = Lights; LN = Low Numbers; NR = No Regeneration; RF = Rockfalls; RU = Recreational Use (swimming, fishing, dumping trash and nonnative fish); SD = Sedimentation; ST = Structures; WE = Water Extraction; FV = Fortini Vulnerability analysis; Ft = Future threat.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The Hawaiian Islands are located over 2,000 miles (mi) (3,200 kilometers (km)) from the nearest continent. This isolation has allowed the few plants and animals that arrived by wind, water, or bird, to evolve into many highly varied and endemic species. The only native terrestrial mammals on the Hawaiian Islands include two bat taxa, the Hawaiian hoary bat (*Lasiurus cinereus semotus*), and an extinct, unnamed insectivorous bat (Ziegler 2002, p. 245). The native plants of the Hawaiian Islands therefore evolved in the absence of mammalian predators, browsers, or grazers, and subsequently, many of the native species lost unneeded defenses against threats such as herbivory and competition with aggressive, weedy plant species typical of continental environments (Loope 1992, p. 11; Gagne and Cuddihy 1999, p. 45; Wagner *et al.* 1999, pp. 3–6). For example, Carlquist (*in* Carlquist and Cole 1974, p. 29) notes, “Hawaiian plants are notably nonpoisonous, free from armament, and free from many characteristics thought to be deterrents to herbivores (oils, resins, stinging hairs, coarse texture).” In addition, species restricted to highly specialized habitats (*e.g.*, Hawaiian damselflies) or food sources (*e.g.*, Hawaiian yellow-faced bees) are particularly vulnerable to changes (from nonnative species, hurricanes, fire, and projected climate change) in their habitat (Carlquist and Cole 1974, pp. 28–29; Loope 1992, pp. 3–6).

*Habitat Destruction and Modification by Agriculture and Urban Development*

Past land use practices such as agriculture or urban development have resulted in little or no native vegetation below 2,000 ft (600 m) throughout the Hawaiian Islands (TNC 2006), largely impacting the anchialine pool, coastal, lowland dry, and lowland mesic ecosystems, including streams and wetlands that occur within these areas. Hawaii’s agricultural industries (*e.g.*, sugar cane, pineapple) have been declining in importance, and large tracts of former agricultural lands are being converted into residential areas or left fallow (TNC 2006). In addition, Hawaii’s population has increased almost 10 percent in the past 10 years, further increasing demands on limited land and water resources in the islands (Hawaii Department of Business, Economic Development and Tourism 2013, *in litt.*).

Development and urbanization of anchialine pool, coastal, lowland dry,

and lowland mesic ecosystems on Oahu, Molokai, Maui, Lanai, and Hawaii Island are a threat to the following species proposed for listing in this rule:

- On Oahu, the plants *Nothocestrum latifolium*, *Portulaca villosa*, and *Pseudognaphalium sandwicense* var. *molokaiense*, and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, and *H. longiceps*.

- On Molokai, the plants *Portulaca villosa*, *Pseudognaphalium sandwicense* var. *molokaiense*, and *Solanum nelsonii*; the orangeblack Hawaiian damselfly; and the yellow-faced bees *Hylaeus anthracinus*, *H. facilis*, *H. hiliaris*, and *H. longiceps*.

- On Maui, the plants *Nothocestrum latifolium*, *Portulaca villosa*, and *Solanum nelsonii*; and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hiliaris*, and *H. longiceps*.

- On Lanai, the plants *Nothocestrum latifolium*, *Portulaca villosa*, and *Pseudognaphalium sandwicense* var. *molokaiense*; the orangeblack Hawaiian damselfly; and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hiliaris*, and *H. longiceps*.

- On Hawaii Island, the orangeblack Hawaiian damselfly and the anchialine pool shrimp *Procaris hawaiiensis* (Daly and Magnacca 2003, pp. 55, 173; FWS Rare Taxon Database 2005, *in litt.*; HBMP 2007, *in litt.*; Magnacca 2007b, p. 188; IUCN 2007, *in litt.*; Kallstrom 2008, *in litt.*; MNTF 2010, *in litt.*; Duvall 2011, *in litt.*; Magnacca and King 2013, pp. 22–25).

Although we are unaware of any comprehensive, site-by-site assessment of wetland development in Hawaii (Erikson and Puttock 2006, p. 40), Dahl (1990, p. 7) estimated that at least 12 percent of lowland to upper-elevation wetlands in Hawaii had been converted to non-wetland habitat by the 1980s. If only coastal plain (below 1,000 ft (300 m)) marshlands and wetlands are considered, it is estimated that 30 percent were developed or converted to agricultural use (Kosaka 1990, *in litt.*). Records show the reduction in area of these marshlands and wetlands that provided habitat for many damselfly species, including the orangeblack Hawaiian damselfly (Englund 2001, p. 256; Rees and Reed 2013, Fig 2S). Once modified, these areas then lack the aquatic habitat features that the orangeblack Hawaiian damselfly requires for essential life-history needs, such as pools of intermittent streams, ponds, and coastal springs (Polhemus 1996, pp. 30–31, 36). Although the filling of wetlands is regulated by section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*), the loss of riparian

or wetland habitats utilized by the orangeblack Hawaiian damselfly may still occur due to Hawaii’s population growth and development, with concurrent demands on limited developable land and water resources. The State’s Commission of Water Resource Management (CWRM) recognizes the need to update the 2008 water resource protection plan, and an update is currently under development with a target completion date of 2015 (CWRM 2015, *in litt.*). In addition, marshes have been slowly filled and converted to meadow habitat as a result of sedimentation from increased storm water runoff from upslope development, the accumulation of uncontrolled growth of invasive vegetation, and blockage of downslope drainage (Wilson Okamoto & Associates, Inc. 1993, pp. 3–4–3–5). Agriculture and urban development have thus contributed to habitat destruction and modification, and continue to be a threat to the habitat of the orangeblack Hawaiian damselfly.

On Hawaii Island, it is estimated that up to 90 percent of the anchialine pools have been destroyed or altered by human activities, including bulldozing and filling of pools (Brock 2004, p. i; Bailey-Brock and Brock 1993, p. 354). Dumping of trash and nonnative fish has impacted anchialine pools on this island (Brock 2004, pp. 13–17) (see “E. Other Natural or Manmade Factors Affecting Their Continued Existence,” below). Brock also noted that garbage like bottles and cans appear to have no net negative impact, while the dumping of used oil, oil filters, and grease has resulted in the disappearance of a related anchialine pool shrimp *Halocaridina rubra* from a pool adjacent to Honokohau Harbor on Hawaii Island. Lua O Palahemo (where *Procaris hawaiiensis* occurs) on Hawaii Island is accessible to the public, and dumping has previously occurred there (Brock 2004, pp. 13–17). We are not aware of any dumping activities within the two Maui anchialine pools known to be occupied by *P. hawaiiensis*; however, this threat remains a possibility (Brock 2004, pp. 13–17).

Destruction and modification of *Hylaeus* habitat by urbanization and land use conversion, including agriculture, has led to the fragmentation of foraging and nesting habitat of these species. In particular, because native host plant species are known to be essential to the yellow-faced bees for foraging of nectar and pollen, any further loss of this habitat may reduce their long-term chances for recovery. Additionally, further destruction and modification of *Hylaeus* habitat is also likely to facilitate the

introduction and spread of nonnative plants within these areas (see “Habitat Destruction and Modification by Nonnative Plants,” below).

#### Habitat Destruction and Modification by Nonnative Ungulates

Nonnative ungulates have greatly impacted the native vegetation, as well as the native fauna, of the Hawaiian Islands. Impacts to the native species and ecosystems accelerated following the arrival of Captain James Cook in 1778. The Cook expedition and subsequent explorers intentionally introduced a European race of pigs (*i.e.*, boars) and other livestock such as goats to serve as food sources for seagoing explorers (Tomich 1986, pp. 120–121; Loope 1998, p. 752). The mild climate of the islands, combined with lack of competitors or predators, led to the successful establishment of large populations of these mammals, to the detriment of native Hawaiian species and ecosystems (Cox 1992, pp. 116–117). The presence of introduced mammals is considered one of the primary factors underlying the modification and destruction of native vegetation and habitats of the Hawaiian Islands (Cox 1992, pp. 118–119). All of the 11 ecosystems on the main islands (except Kahoolawe) are currently impacted by habitat destruction resulting from the activities of various combinations of nonnative ungulates, including pigs (*Sus scrofa*), goats (*Capra hircus*), axis deer (*Axis axis*), black-tailed deer (*Odocoileus hemionus columbianus*), sheep (*Ovis aries*), mouflon (*Ovis gmelini musimon*) (and mouflon-sheep hybrids), and cattle (*Bos taurus*). Habitat destruction or modification by ungulates is a threat to 37 of the 39 plant species, the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, and the seven yellow-faced bees proposed for listing in this rule (see Table 3).

#### Pigs (*Sus Scrofa*)

The destruction or modification of habitat by pigs currently affects five of the ecosystems (lowland dry, lowland mesic, lowland wet, montane wet, and montane mesic). Feral pigs are known to cause deleterious impacts to ecosystem processes and functions throughout their worldwide distribution (Campbell and Long 2009, p. 2319). Pigs have been described as having the most pervasive and disruptive nonnative influences on the unique ecosystems of the Hawaiian Islands and are widely recognized as one of the greatest current threats (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195; Anderson *et al.* 2007, in litt.). Introduced European pigs

hybridized with smaller, domesticated Polynesian pigs, became feral, and invaded forested areas, especially mesic and wet forests, from low to high elevations, and are present on all the main Hawaiian Islands except Lanai and Kahoolawe, where they have been eradicated (Tomich 1986, pp. 120–121; Munro 1911–1930 2006, p. 85). By the early 1900s, feral pigs were already recognized as a threat to these areas, and an eradication project was conducted by the Hawaii Territorial Board of Agriculture and Forestry, which removed 170,000 pigs from forests Statewide (Diong 1982, p. 63).

Feral pigs are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, pigs directly impact native plants by disturbing and destroying vegetative cover, and by trampling plants and seedlings. It has been estimated that at a conservative rooting rate of 2 square yards (sq yd) (1.7 sq m) per minute and only 4 hours of foraging per day, a single pig could disturb over 1,600 sq yd (1,340 sq m) (or approximately 0.3 ac (0.1 ha)) of groundcover per week (Anderson *et al.* 2007, in litt.). Feral pigs are a major vector for promoting establishment and spread of competing invasive nonnative plant species, such as *Passiflora tarminiana* (banana poka) and *Psidium cattleianum* (strawberry guava), by dispersing seeds carried on their hooves and coats and in their feces (which also serve to fertilize disturbed soil) (Diong 1982, pp. 169–170; Matson 1990, p. 245; Siemann *et al.* 2009, p. 547). Pigs also feed directly on native plants such as Hawaiian tree ferns. Pigs preferentially eat the core of tree-fern trunks, and these cored trunks then fill with rainwater and serve as breeding sites for introduced mosquitoes that spread avian malaria, with devastating consequences for Hawaii’s native forest birds (Baker 1975, p. 79). Additionally, rooting pigs contribute to erosion, especially on slopes, by clearing vegetation and creating large areas of disturbed soil (Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Medeiros *et al.* 1986, pp. 27–28; Scott *et al.* 1986, pp. 360–361; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Aplet *et al.* 1991, p. 56; Loope *et al.* 1991, pp. 1–21; Gagne and Cuddihy 1999, p. 52; Nogueira-Filho *et al.* 2009, pp. 3677–3682; Dunkell *et al.* 2011, pp. 175–177). The resulting erosion impacts native plant communities by contributing to watershed degradation and by alteration of nutrient availability

for plants, as well as by directly damaging individual plants, and, in addition, impacts aquatic animals by contributing to sedimentation in streams and pools (Vitousek *et al.* 2009, pp. 3074–3086; Nogueira-Filho *et al.* 2009, p. 3681; Cuddihy and Stone 1992, p. 667). The following 14 plants proposed for listing in this rule are at risk from erosion and landslides resulting from the activities of feral pigs: *Cylcosorus boydiae*, *Gardenia remyi*, *Joinvillea ascendens ssp. ascendens*, *Kadua fluviatilis*, *Kadua haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Ochrosia haleakalae*, *Phyllostegia brevidens*, *P. helleri*, *P. stachyoides*, *Ranunculus hawaiiensis*, *R. mauiensis*, and *Schiedea pubescens*. Thirty-one of the 39 plants (all except for *Cyanea kauaulaensis*, *Exocarpos menziesii*, *Festuca hawaiiensis*, *Hypolepis hawaiiensis* var. *mauiensis*, *Portulaca villosa*, *Pseudognaphalium sandwicense* var. *molokaiense*, *Sanicula sandwicensis*, and *Solanum nelsonii*) proposed for listing in this rule are at risk of habitat destruction and modification by feral pigs, and the orangeblack Hawaiian damselfly and six of the seven yellow-faced bees (all except *Hylaeus longiceps*) proposed for listing in this rule are at risk of habitat destruction and modification by feral pigs (see Table 3).

#### Goats (*Capra Hircus*)

Feral goats currently destroy and modify habitat in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane wet, montane mesic, montane dry, dry cliff, and wet cliff). Goats, native to the Middle East and India, were successfully introduced to the Hawaiian Islands in the late 1700s. Actions to control populations began in the 1920s (Tomich 1986, pp. 152–153); however, goats still occupy a wide variety of habitats on all the main islands (except for Kahoolawe; see below), where they consume native vegetation, trample roots and seedlings, strip tree bark, accelerate erosion, and promote the invasion of nonnative plants (van Riper and van Riper 1982, pp. 34–35; Stone 1985, p. 261; Kessler 2010, pers. comm.). Kahoolawe was negatively impacted by ungulates beginning in 1793, with the introduction of goats and the addition of sheep (up to 15,000) and cattle (about 900) by ranchers between 1858 and 1941, with the goat population estimated to be as high as 50,000 individuals by 1988 (KIRC 2014, in litt.; KIRC 2015, in litt.). Beginning in 1941, the U.S. military used the entire island as a bombing range; for over 50 years, and in 1994, control of Kahoolawe was

returned to the State and the Kahoolawe Island Reserve Commission. The remaining ungulates were eradicated in 1993 (McLeod 2014, in litt.). Because they are able to access extremely rugged terrain, and have a high reproductive capacity (Clark and Cuddihy 1980, pp. C-19-C2-20; Culliney 1988, p. 336; Cuddihy and Stone 1990, p. 64), goats are believed to have completely eliminated some plant species from certain islands (Atkinson and Atkinson 2000, p. 21). Goats can be highly destructive to native vegetation and contribute to erosion by: (1) Eating young trees and young shoots of plants before they become established; (2) creating trails that damage native vegetative cover; (3) destabilizing substrate and creating gullies that convey water; and (4) dislodging stones from ledges that results in rockfalls and landslides that damage or destroy native vegetation below (Cuddihy and Stone 1990, pp. 63-64). Feral goats forage along some cliffs where band-rumped storm-petrels nest on Kauai, and may trample nests and increase erosion (Scott *et al.* 1986, pp. 8, 352-357; Tomich 1986, pp. 152-153). The following 12 plants proposed for listing in this rule are at risk from landslides or erosion caused by feral goats:

*Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Kadua fluviatilis*, *Labordia lorenciana*, *Ochrosia haleakalae*, *Phyllostegia helleri*, *P. stachyoides*, *Portulaca villosa*, *Pseudognaphalium sandwicense* var. *molokaiense*, *Ranunculus mauiensis*, *Sanicula sandwicensis*, and *Schiedea pubescens*; and the band-rumped storm-petrel. Twenty-two of the 39 plants (all except for *Calamagrostis expansa*, *Cyanea kauaulaensis*, *Cyclosorus boydiae*, *Cyperus neokunthianus*, *Deparia kaalaana*, *Dryopteris glabra* var. *pusilla*, *Hypolepis hawaiiensis* var. *mauiensis*, *Kadua haupuensis*, *Lepidium orbiculare*, *Phyllostegia brevidens*, *Portulaca villosa*, *Pritchardia bakeri*, *Ranunculus hawaiiensis*, *Schiedea diffusa* ssp. *diffusa*, *Sicyos macrophyllus*, *Solanum nelsonii*, *Stenogyne kaalae* ssp. *sherffii*, and *Wikstroemia skottsbergiana*), and the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, and *H. kuakea* proposed for listing in this rule, are at risk of habitat destruction and modification by feral goats.

#### Axis Deer (*Axis Axis*)

Axis deer destroy and modify 8 of the 11 ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane

mesic, montane wet, montane dry, and dry cliff). Axis deer were introduced to the Hawaiian Islands for hunting opportunities on Molokai in 1868, on Lanai in 1920, and on Maui in 1959 (Hobdy 1993, p. 207; Erdman 1996, pers. comm. in Waring 1996, in litt, p. 2; Hess 2008, p. 2). Axis deer are primarily grazers, but also browse numerous palatable plant species including those grown as commercial crops (Waring 1996, p. 3; Simpson 2001, in litt.). They prefer the lower, more openly vegetated areas for browsing and grazing; however, during episodes of drought (e.g., from 1998 to 2001 on Maui (Medeiros 2010, pers. comm.)), axis deer move into urban and forested areas in search of food (Waring 1996, p. 5; Nishibayashi 2001, in litt.). Like goats, axis deer are highly destructive to native vegetation and contribute to erosion by eating young trees and young shoots of plants before they can become established. Other axis deer impacts include stripping bark from mature trees, creating trails, and promoting erosion by destabilizing substrate; creating gullies that convey water; and by dislodging stones from ledges that can cause rockfalls and landslides, directly damaging vegetation (Cuddihy and Stone 1990, pp. 63-64).

On Molokai, axis deer likely occur at all elevations from sea level to almost 5,000 ft (1,500 m) at the summit area (Kessler 2011, pers. comm.). The most current population estimate for axis deer on the island of Molokai is between 4,000 and 5,000 individuals (Anderson 2003, p. 119). Little management for deer control has been implemented on Molokai, and this figure from more than a decade ago is likely an underestimate of the axis deer population on this island today (Scott *et al.* 1986, p. 360; Anderson 2003, p. 30; Hess 2008, p. 4). On Lanai, axis deer were reported to number approximately 6,000 to 8,000 individuals in 2007 (The Aloha Insider 2008, in litt; WCities 2010, in litt.). On Maui, five adult axis deer were released east of Kihei in 1959 (Hobdy 1993, p. 207; Hess 2008, p. 2). In 2013, the Maui Axis Deer Working Group estimated that there may be 8,000 deer on southeast Maui alone, based on helicopter surveys (Star Advertiser 2015, in litt.; Hawaii News Now 2014, in litt.) According to Medeiros (2010, pers. comm.), axis deer can be found in all but high-elevation ecosystems (subalpine and alpine) and montane bogs on Maui, and are increasing at such high rates on Maui that native forests are changing in unprecedented ways. Additionally, Medeiros (2010, pers. comm.) asserted that native plants will only survive in

habitat that is fenced or otherwise protected from the browsing and trampling effects of axis deer. Kessler (2010, pers. comm.) and Hess (2010, pers. comm.) reported the presence of axis deer up to 9,000 ft (2,700 m) on Maui, and Kessler suggests that no ecosystem is safe from the negative impacts of these animals. Montane bogs are also susceptible to impacts from axis deer. As the native vegetation is removed by browsing and trampling, the soil dries out, and invasive nonnative plants invade. Eventually, the bog habitat and its associated native plants and animals are replaced by grassland or shrubland dominated by nonnative plants (Mitchell *et al.* 2005, p. 6-32).

While axis deer are managed as game animals on these three islands, the State does not permit their introduction to other Hawaiian Islands. Recently (2010-2011), there was an illegal introduction of axis deer to Hawaii Island as a game animal (Kessler 2011, pers. comm.; Aila 2012, in litt.), and deer have now been observed across the southern portion of the island including in Kohala, Kau, Kona, and Mauna Kea (HDLNR 2011, in litt.). The Hawaii Department of Land and Natural Resources—Division of Forestry and Wildlife (HDLNR-HDOFAW) has developed a response-and-removal plan, including a partnership now underway with the Hawaii Department of Agriculture (HDOA), the Big Island Invasive Species Committee (BIISC), Federal natural resource management agencies, ranchers, farmers, private landowners, and concerned citizens (Big Island.com, June 6, 2011). Also, in response to the introduction of axis deer to Hawaii Island, the Hawaii Invasive Species Council drafted House Bill 2593 to amend House Revised Statutes (H.R.S.) 91, which allows agencies to adopt emergency rules in the instances of imminent peril to public health, including to livestock and poultry health (BigIsland.com 2011, in litt.; Martin 2012, in litt.). This emergency rule became permanent on June 21, 2012, when House Bill 2593 was enacted into law as Act 194 (State of Hawaii 2012, in litt.).

The following species proposed for listing in this rule are at risk from the activities of axis deer: *Gardenia remyi*, *Huperzia stemmerrmanniae*, *Joinvillea ascendens* ssp. *ascendens*, *Nothoecium latifolium*, *Phyllostegia stachyoides*, *Portulaca villosa*, *Pseudognaphalium sandwicense* var. *molokaiense*, *Ranunculus mauiensis*, *Schiedea pubescens*, and *Solanum nelsonii*, and the orangeblack Hawaiian damselfly, and five of the yellow-faced bees (*Hylaeus anthracinus*,

*H. assimulans*, *H. facilis*, *H. hilaris*, and *H. longiceps*).

**Black-Tailed Deer (*Odocoileus hemionus columbianus*)**

Black-tailed deer destroy and modify habitat in 5 of the 11 ecosystems (lowland mesic, lowland wet, montane wet, montane mesic, and dry cliff). The black-tailed deer is one of nine subspecies of mule deer (Natural History Museum 2015, in litt.). On Kauai, black-tailed deer were first introduced in 1961, for the purpose of sport hunting (Tomich 1986, pp. 131–134). Currently, these deer are limited to the western side of the island, where they feed on a variety of native (e.g., *Acacia koa* and *Coprosma* spp.) and nonnative plants (van Riper and van Riper 1982, pp. 42–46; Tomich 1986, p. 134). In addition to their direct impacts on native plants (browsing), black-tailed deer likely impact native plants indirectly by serving as a primary vector for the spread of introduced plants by carrying their seeds or other propagules on their coats and in their hooves and feces. Black-tailed deer have been noted as a cause of habitat alteration in the Kauai ecosystems (NTBG 2007, in litt.; HBMP 2010). Four of the 39 plants proposed for listing in this rule (*Asplenium diellaciniatum*, *Nothoecstrum latifolium*, *Ranunculus mauiensis*, and *Santalum involutum*) are at risk of habitat destruction and modification by black-tailed deer.

**Sheep (*Ovis aries*)**

Four of the described ecosystems on Hawaii Island (lowland wet, montane wet, montane dry, and wet cliff), are currently affected by habitat modification and destruction due to the activities of domestic sheep. Sheep were introduced to Hawaii Island in 1791, when Captain Vancouver brought five rams and two ewes from California (Tomich 1986, pp. 156–163). Soon after, stock was brought from Australia, Germany, and the Mediterranean for sheep production (Tomich 1986, pp. 156–163; Cuddihy and Stone 1990, pp. 65–66). By the early 1930s, herds reached close to 40,000 individuals (Scowcroft and Conrad 1992, p. 627). Capable of acquiring the majority of their water needs by consuming vegetation, sheep can inhabit dry forests in remote regions of Mauna Kea and Mauna Loa, including the saddle between the two volcanoes. Feral sheep browse and trample native vegetation and have decimated large areas of native forest and shrubland on Hawaii Island (Tomich 1986, pp. 156–163; Cuddihy and Stone 1990, pp. 65–66). Browsing results in the erosion of top soil that

alters moisture regimes and micro-environments, leading to the loss of native plant and animal taxa (Tomich 1986, pp. 156–163; Cuddihy and Stone 1990, pp. 65–66). In addition, nonnative plant seeds are dispersed into native forest by adhering to sheep's wool coats (DOFAW 2002, p. 3). In 1962, game hunters intentionally crossbred feral sheep with mouflon sheep and released them on Mauna Kea, where they have done extensive damage to the montane dry ecosystem (Tomich 1986, pp. 156–163). Over the past 30 years, attempts to protect the vegetation of Mauna Kea and the saddle area between the two volcanoes have been only sporadically effective (Hess 2008, pp. 1, 4). Currently, a large population of sheep (and mouflon hybrids) extends from Mauna Kea into the saddle and northern part of Mauna Loa, including State forest reserves, where they trample and browse all vegetation, including endangered plants (Hess 2008, p. 1). One study estimated as many as 2,500 mouflon within just the Kau district of the Kahuku Unit (Volcanoes National Park) in 2006 (Hess *et al.* 2006, p. 10). Five of the 39 plants, *Exocarpos menziesii*, *Festuca hawaiiensis*, *Nothoecstrum latifolium*, *Phyllostegia brevidens*, and *Portulaca villosa*, and the yellow-faced bee *Hylaeus anthracinus*, which are proposed for listing in this rule, are reported to be at risk of habitat destruction and modification by feral sheep (see Table 3).

**Mouflon Sheep (*Ovis gmelini musimon*)**

Mouflon sheep destroy and modify habitat in 7 of the 11 described ecosystems on Maui, Lanai, and Hawaii Island (coastal, lowland dry, lowland mesic, montane wet, montane mesic, montane dry, subalpine). Native to Asia Minor, mouflon sheep were introduced to the islands of Lanai and Hawaii in the 1950s as a managed game species, and are now widely established on these islands (Tomich 1986, pp. 163–168; Cuddihy and Stone 1990, p. 66; Hess 2008, p. 1). Due to their high reproductive rate, the original population of 11 mouflon on the island of Hawaii increased to more than 2,500 individuals in 36 years, even though hunted as a game animal (Hess 2008, p. 3). Mouflon have decimated vast areas of native shrubland and forest through grazing, browsing, and bark stripping (Stone 1985, p. 271; Cuddihy and Stone 1990, pp. 63, 66; Hess 2008, p. 3). Mouflon also create trails and pathways through vegetation, resulting in soil compaction and increased runoff and erosion. In some areas, the interaction of browsing and soil compaction has led to

a shift from native forest to grassy scrublands (Hess 2008, p. 3). Mouflon only gather in herds when breeding, thus complicating control techniques and hunting efficiency (Hess 2008, p. 3; Ikagawa 2011, in litt.). Currently, many of the current and proposed fence enclosures on Hawaii Island constructed to protect rare species and habitat are only 4 ft (1.3 m) in height, as they are designed to exclude feral pigs, goats, and sheep; however, in actuality, a fence height of at least 6 ft (2 m) is necessary to exclude mouflon (Ikagawa 2011, in litt.). Seven of the 39 plant species (*Exocarpos menziesii*, *Festuca hawaiiensis*, *Nothoecstrum latifolium*, *Phyllostegia brevidens*, *Portulaca villosa*, *Ranunculus hawaiiensis*, and *Sicyos macrophyllus*); the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, and *H. longiceps*; and the band-rumped storm-petrel proposed for listing in this rule are at risk of destruction and modification of habitat resulting from the activities of mouflon sheep.

**Cattle (*Bos taurus*)**

Cattle destroy and modify habitat in 7 of the 11 ecosystems on Maui and Hawaii Island (coastal, lowland dry, lowland mesic, lowland wet, montane wet, montane mesic, and montane dry). Cattle, the wild progenitors of which were native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793, and large feral herds (as many as 12,000 on the island of Hawaii) developed as a result of restrictions on killing cattle decreed by King Kamehameha I (Cuddihy and Stone 1990, p. 40). While small cattle ranches were developed on Kauai, Oahu, Molokai, west Maui, and Kahoolawe, very large ranches of tens of thousands of acres were created on east Maui and Hawaii Island (Stone 1985, pp. 256, 260; Broadbent 2010, in litt.). Large areas of native forest were quickly converted to grassland through the combined logging of native koa and establishment of cattle ranches (Tomich 1986, p. 140; Cuddihy and Stone 1990, p. 47). Feral cattle can be found today on the islands of Molokai, Maui, and Hawaii. Feral cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants carried in their feces and on their bodies. The forest in areas grazed by cattle rapidly degrades into grassland pasture, and plant cover remains reduced for many years following removal of cattle from an area. Increased nitrogen availability through the feces of cattle contributes to the ingress of nonnative plant species

(Kohala Mountain Watershed Partnership (KMWP) 2007, pp. 54–55; Laws *et al.* 2010, in litt.). Furthermore, several alien grasses and legumes purposely introduced for cattle forage have become invasive weeds (Tomich 1986, pp. 140–150; Cuddihy and Stone 1990, p. 29). According to Kessler (2011, pers. comm.), approximately 300 individuals roam east Maui as high as the subalpine ecosystem (*i.e.*, to 9,800 ft (3,000 m)), and feral cattle are occasional observed on west Maui. Feral cattle (more than 100 individuals) are reported from remote regions of Hawaii Island, including the back of Pololu and Waipio Valleys in the Kohala Mountains, and the Kona Unit of the Hakalau Forest NWR (KMWP 2007, p. 55; USFWS 2010, pp. 3–15, 4–86). Nine of the 39 plant species (*Huperzia stemmermanniae*, *Ochrosia haleakalae*, *Phyllostegia brevidens*, *Portulaca villosa*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Schiedea pubescens*, *Sicyos macrophyllus*, and *Solanum nelsonii*) and four of the yellow-faced bees (*Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, and *H. hiliaris*) are currently at risk of habitat destruction or modification due to the activities of feral cattle.

In summary, 37 of the 39 plant species (all except *Cyanea kauaulaensis* and *Hypolepis hawaiiensis* var. *mauiensis*), and 9 of the 10 animals (all except the anchialine pool shrimp *Procaris hawaiana*), which are proposed for listing in this rule, are at risk of habitat destruction and modification by feral ungulates including pigs, goats, axis deer, black-tailed deer, sheep, mouflon, and cattle (see Table 3). The effects of these nonnative animals include the destruction of vegetative cover; trampling of plants and seedlings; direct consumption of native vegetation; soil disturbance and sedimentation; dispersal of nonnative plant seeds by animals; alteration of soil nitrogen availability; and creation of open, disturbed areas conducive to further invasion by nonnative pest plant species. All of these impacts also can lead to the conversion of a native plant community to one dominated by nonnative species (see “Habitat Modification and Destruction by Nonnative Plants,” below). In addition, because these animals inhabit terrain that is often steep and remote, foraging and trampling contributes to severe erosion of watersheds and degradation of streams and wetlands (Cuddihy and Stone 1990, p. 59; Dunkell *et al.* 2011, pp. 175–194).

#### Habitat Destruction and Modification by Nonnative Plants

Ten of the 11 ecosystems (all but the anchialine pool ecosystem) are currently at risk of habitat destruction and modification by nonnative plants. Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices, including ranching, deliberate introduction of nonnative plants and animals, and agriculture (Cuddihy and Stone 1990, pp. 27, 58). The original native flora of Hawaii (present before human arrival) consisted of about 1,000 taxa, 89 percent of which are endemic (Wagner *et al.* 1999, pp. 3–6). Over 800 plant taxa have been introduced to the Hawaiian Islands, brought to Hawaii for food or for cultural reasons, to reforest areas destroyed by grazing feral and domestic animals, or for horticultural or agricultural purposes (Scott *et al.* 1986, pp. 361–363; Cuddihy and Stone 1990, p. 73). We have compiled descriptions of 115 nonnative plant species reported to destroy and modify the habitat of, or outcompete, 44 of the 49 species proposed for listing in this rule (all except *Exocarpos menziesii*, *Huperzia stemmermanniae*, *Joinvillea ascendens* ssp. *ascendens*, the band-rumped storm-petrel, and the anchialine pool shrimp). Fourteen of these nonnative plants are included in the Hawaii Noxious Weed List (Hawaii Department of Agriculture HAR Title 4, Subtitle 6, Chapter 68).

Nonnative plants adversely impact native habitat in Hawaii by: (1) Modifying the availability of light; (2) altering soil-water regimes; (3) modifying nutrient cycling; and (4) altering fire regimes of native plant communities (*e.g.*, by fostering series of fires that burn successively farther into native habitat, destroying native plants and removing native plant habitat by altering microclimatic conditions to favor nonnative species), thus ultimately converting native-dominated plant communities to nonnative plant communities (Smith 1985, pp. 180–181; Cuddihy and Stone 1990, p. 74; D’Antonio and Vitousek 1992, p. 73; Vitousek *et al.* 1997, p. 6). The contribution of nonnative plants to the extinction of native species in the lowland and upland habitats of Hawaii is well-documented (Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74). The most often observed effect of nonnative plants on native species is displacement through competition. Competition occurs for water or nutrients, or it may involve allelopathy (chemical inhibition of growth of other plants), shading, or precluding sites for

seedling establishment (Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74).

Alteration of fire regimes represents an ecosystem-level change caused by the invasion of nonnative plants, mainly grasses (D’Antonio and Vitousek 1992, p. 73). Grasses generate standing dead material that burns readily, and grass tissues with large surface-to-volume ratios dry out quickly, contributing to flammability (D’Antonio and Vitousek 1992, p. 73). The finest size classes of grass material ignite and spread fires under a broader range of conditions than do woody fuels or even surface litter (D’Antonio and Vitousek 1992, p. 73). The grass life form allows rapid recovery following fire; there is little above-ground structure. Grasslands also support a microclimate in which surface temperatures are hotter, contributing to drier vegetative conditions that favor fire (D’Antonio and Vitousek 1992, p. 73). In summary, nonnative plants directly and indirectly affect 44 species (36 plants, the orangeblack Hawaiian damselfly, and all 7 yellow-faced bees) proposed for listing in this rule, by modifying or destroying their habitat, by removing their native host plants, or by direct competition. Below, we have organized lists of the nonnative plants reported to negatively affect each of 10 of the 11 ecosystems (the anchialine pool ecosystem is not included). These lists include a total of 115 nonnative plant species with the specific negative effects they have on native ecosystems and the proposed species.

**Nonnative Plants in the Coastal Ecosystem:** Nonnative plants threatening the coastal ecosystem plants proposed for listing (*Portulaca villosa*, *Pseudognaphalium sandwicense* var. *molokaiense*, and *Solanum nelsonii*) and the coastal ecosystem animals proposed for listing (the orangeblack Hawaiian damselfly, and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hiliaris*, and *H. longiceps*), include the nonnative understory and subcanopy species *Asystasia gangetica* (Chinese violet), *Atriplex semibaccata*, *Conyza bonariensis* (hairy horseweed), *Kalanchoe pinnata* (air plant), *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), *Neonotonia wightii* (glycine), *Nicotiana glauca* (tree tobacco), *Pluchea carolinensis* (sourbush), *P. indica* (Indian fleabane), *Stachytarpheta* spp., and *Verbesina encelioides* (golden crown-beard) (DOFAW 2007, pp. 20–22, 54–58; HBMP 2010). Nonnative canopy species include *Acacia farnesiana* (klu) and *Prosopis pallida* (HBMP 2010). In addition, the nonnative grasses *Cenchrus ciliaris* (buffelgrass), *Chloris*



*barbata* (swollen fingergrass), *Cynodon dactylon* (Bermuda grass), *Digitaria insularis* (sourgrass), *Setaria verticillata* (bristly foxtail), *Urochloa maxima* (guinea grass), and *U. mutica* (California grass) negatively affect this ecosystem (HBMP 2010) (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Lowland Dry Ecosystem: Nonnative plants threatening the lowland dry ecosystem plants proposed for listing (*Nothocestrum latifolium* and *Portulaca villosa*) and the lowland dry ecosystem animals proposed for listing (the orangeblack Hawaiian damselfly and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hiliaris*, and *H. longiceps*) include the nonnative understory and subcanopy species *Ageratina adenophora* (Maui pamakani), *Asystasia gangetica*, *Atriplex semibaccata*, *Conyza bonariensis*, *Lantana camara*, *Leonotis nepetifolia* (lion’s ear), *Leucaena leucocephala*, *Neonotia wightii*, *Nicotiana glauca*, *Passiflora foetida* (love-in-a-mist), *P. suberosa* (huehue haole), *Stachytarpheta* spp., and *Stapelia gigantea* (giant toad plant) (Perlman 2007, p. 3; HBMP 2010). Nonnative canopy species include *Acacia confusa* (Formosa koa), *A. farnesiana*, *Casuarina equisetifolia* (ironwood), *Chrysophyllum oliviforme* (satinleaf), *Grevillea robusta* (silk oak), *Prosopis pallida*, *Psidium guajava* (common guava), and *Schinus terebinthifolius* (Christmas berry) (Perlman 2007, p. 7; HBMP 2010). In addition, the nonnative grasses *Andropogon virginicus* (broomsedge), *Cenchrus ciliaris*, *C. setaceus* (fountain grass), *Chloris barbata*, *Cynodon dactylon*, *Digitaria insularis*, *Melinis minutiflora* (molasses grass), *M. repens* (natal redtop), and *Setaria verticillata* negatively affect this ecosystem (HBMP 2010) (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Lowland Mesic Ecosystem: Nonnative plants threatening the lowland mesic ecosystem plants proposed for listing (*Deparia kaalaana*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Kadua fluviatilis*, *K. haupeensis*, *Lepidium orbiculare*, *Microlepia strigosa* var. *mauiensis*, *Myrsine fosbergii*, *Nothocestrum latifolium*, *Ochrosia haleakalae*, *Pritchardia bakeri*, *Santalum involutum*, and *Sicyos lanceoloideus*) and the lowland mesic ecosystem animals proposed for listing (the orangeblack Hawaiian damselfly and the yellow-faced bees *Hylaeus facilis*, *H. kuakea*, and *H. mana*) include the nonnative understory and subcanopy species *Ageratina riparia*

(*Hamakua pamakani*), *Anemone hupehensis* var. *japonica* (Japanese anemone), *Ardisia elliptica* (shoebuttan ardisia), *Asystasia gangetica*, *Blechnum appendiculatum* (no common name (NCN)), *Buddleja asiatica*, *Caesalpinia decapetala* (cat’s claw), *Cestrum diurnum* (day cestrum), *Clidemia hirta* (Koster’s curse), *Conyza bonariensis*, *Cordyline fruticosa* (ti, ki), *Cuphea carthagenensis*, *Cyclosorus dentatus*, *Delairea odorata* (German ivy), *Erigeron karvinskianus* (daisy fleabane), *Hedychium coronarium* (white ginger), *Kalanchoe pinnata* (air plant), *Lantana camara*, *Leptospermum scoparium* (tea tree), *Passiflora laurifolia* (yellow granadilla, water lemon), *P. suberosa*, *Rubus argutus* (prickly Florida blackberry), *R. rosifolius* (thimbleberry), *Sphaeropteris cooperi*, and *Stachytarpheta* spp. (TNC 1997, pp. 10, 15; HBMP 2010). Nonnative canopy species include *Acacia confusa*, *Aleurites moluccana* (kukui), *Casuarina equisetifolia*, *Chrysophyllum oliviforme*, *Cinchona pubescens* (quinine), *Coffea arabica* (coffee), *Falcataria moluccana* (albizia), *Ficus microcarpa* (Chinese banyan), *Fraxinus uhdei* (tropical ash), *Grevillea robusta*, *Morella faya* (firetree), *Omalanthus populifolius* (Queensland poplar), *Psidium cattleianum* (strawberry guava), *P. guajava*, *Ricinus communis* (castor bean), *Schefflera actinophylla* (octopus tree), *Schinus terebinthifolius*, *Syzygium cumini* (java plum), *S. jambos* (rose apple), *Tecoma stans* (yellow elder), and *Toona ciliata* (Australian red cedar). Additional threats are the nonnative grasses *Cynodon dactylon*, *Digitaria setigera*, *Ehrharta stipoides* (meadow rice grass), *Melinis minutiflora*, and *Paspalum conjugatum* (Hilo grass) (TNC 1997, p. 15; Motley 2005, p. 109; HBMP 2010) (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Lowland Wet Ecosystem: Nonnative plants threatening the lowland wet ecosystem plants proposed for listing (*Cyanea kauaulaensis*, *Cyclosorus boydiae*, *Cyperus neokunthianus*, *Deparia kaalaana*, *Gardenia remyi*, *Kadua fluviatilis*, *Myrsine fosbergii*, *Ochrosia haleakalae*, *Phyllostegia brevidens*, *P. helleri*, *Santalum involutum*, *Schiedea diffusa* ssp. *diffusa*, *S. pubescens*, *Stenogyne kaalae* ssp. *sherffii*, and *Wikstroemia skottsbergiana*) include the nonnative understory and subcanopy species *Ageratina adenophora*, *A. riparia*, *Ageratum conyzoides*, *Angiopteris evecta*, *Blechnum appendiculatum*, *Buddleja asiatica*, *Cestrum diurnum*, *C. nocturnum* (night cestrum), *Clidemia hirta*, *Conyza*

*bonariensis*, *Cordyline fruticosa*, *Cuphea carthagenensis*, *Cyclosorus dentatus*, *Drymaria cordata* (chickweed), *Erechtites valerianifolia* (fireweed), *Erigeron karvinskianus* (daisy fleabane), *Hedychium gardnerianum* (kahili ginger), *Juncus planifolius* (bog rush), *Leptospermum scoparium* (tea tree), *Passiflora edulis* (passion fruit), *P. foetida*, *P. suberosa*, *Persicaria punctata* (water smartweed), *Pterolepis glomerata* (NCN), *Rubus argutus*, *R. rosifolius*, *Sphaeropteris cooperi*, *Tibouchina herbacea* (glorybush), and *Youngia japonica* (oriental hawkbeard); and the nonnative canopy species *Ardisia elliptica*, *Cinnamomum burmannii* (padang cassia), *Coffea arabica*, *Cryptomeria japonica* (tsugi pine), *Eucalyptus* spp., *Falcataria moluccana*, *Heliocarpus popayanensis* (mohoc), *Miconia calvescens* (miconia), *Morella faya*, *Pimenta dioica* (allspice), *Psidium cattleianum*, *P. guajava*, *Schefflera actinophylla*, *Schinus terebinthifolius*, and *Syzygium jambos* (TNC 1997, p. 10; HBMP 2010). Nonnative grasses that negatively impact the lowland wet ecosystem include *Axonopus fissifolius* (narrow-leaved carpetgrass), *Cortaderia jubata* (pampas grass), *Ehrharta stipoides*, *Melinis minutiflora*, *Oplismenus hirtellus* (basketgrass), *Paspalum conjugatum*, *Sacciolepis indica* (glenwood grass), *Urochloa maxima*, and *U. mutica* (TNC 1997, p. 10; Erickson and Puttock 2006, p. 270) (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Montane Wet Ecosystem: Nonnative plants threatening the montane wet ecosystem plants proposed for listing (*Calamagrostis expansa*, *Cyclosorus boydiae*, *Cyrtandra hematos*, *Dryopteris glabra* var. *pusilla*, *Hypolepis hawaiiensis* var. *mauiensis*, *Microlepia strigosa* var. *mauiensis*, *Myrsine fosbergii*, *Phyllostegia brevidens*, *P. helleri*, *P. stachyoides*, *Ranunculus mauiensis*, *Schiedea diffusa* ssp. *diffusa*, *S. pubescens*, and *Sicyos macrophyllus*) include the nonnative understory and subcanopy species *Ageratina adenophora*, *A. riparia*, *Ageratum conyzoides* (maile honohono), *Anemone hupehensis* var. *japonica*, *Blechnum appendiculatum*, *Buddleja asiatica*, *Cestrum nocturnum*, *Clidemia hirta*, *Cyclosorus dentatus*, *Drymaria cordata*, *Erechtites valerianifolia*, *Erigeron karvinskianus*, *Hedychium gardnerianum*, *Hypochaeris radicata* (hairy cat’s ear), *Juncus effusus*, *J. ensifolius*, *J. planifolius*, *Lantana camara*, *Lapsana communis* (nipplewort), *Persicaria punctata*,

*Rubus argutus*, *R. ellipticus* (yellow Himalayan raspberry), *R. rosifolius*, *Sphaeropteris cooperi*, *Tibouchina herbacea*, *Ulex europaeus* (gorse), and *Youngia japonica*, and the nonnative canopy species *Cinnamomum burmannii*, *Cryptomeria japonica*, *Eucalyptus* spp., *Morella faya*, *Psidium cattleianum*, and *Schinus terebinthifolius* (HBMP 2010). Nonnative grasses that negatively impact the montane wet ecosystem include *Anthoxanthum odoratum* (sweet vernalgrass), *Axonopus fissifolius*, *Cortaderia jubata*, *Ehrharta stipoides*, *Holcus lanatus* (common velvet grass), *Melinis minutiflora*, *Paspalum conjugatum*, *Sacciolepis indica* (glenwood grass), and *Setaria palmifolia* (palmgrass) (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Montane Mesic Ecosystem: Nonnative plants threatening the montane mesic ecosystem plants proposed for listing (*Asplenium diellaciniatum*, *Labordia lorenciana*, *Microlepia strigosa* var. *mauiensis*, *Ochrosia haleakalae*, *Phyllostegia stachyoides*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Sanicula sandwicensis*, *Schiedea pubescens*, *Sicyos lanceoloideus*, *S. macrophyllus*) include the nonnative understory and subcanopy species *Ageratina adenophora*, *Buddleja asiatica*, *Clidemia hirta*, *Cotoneaster pannosus*, *Cyclosorus dentatus*, *Delairea odorata*, *Epilobium ciliatum* (willow herb), *Lantana camara*, *Leptospermum scoparium*, *Passiflora edulis*, *P. tarminiana*, *Rubus argutus*, *R. rosifolius*, and *Ulex europaeus* (Leeward Haleakala Watershed Partnership (LHWP) 2006, p. 25; HBMP 2010; TNCH 2009, 14 pp.); and the nonnative canopy species *Cinchona pubescens*, *Fraxinus uhdei*, *Morella faya*, *Pinus* spp., *Psidium cattleianum*, and *Schinus terebinthifolius*. Nonnative grasses that negatively impact the montane mesic ecosystem include *Andropogon virginicus*, *Cenchrus setaceus*, *Cortaderia jubata*, *Cynodon dactylon*, *Ehrharta stipoides*, *Holcus lanatus*, *Melinis minutiflora*, *Paspalum conjugatum*, and *Setaria palmifolia* (HBMP 2010) (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Montane Dry Ecosystem: Nonnative plants threatening the montane dry ecosystem plants proposed for listing (*Festuca hawaiiensis*, *Portulaca villosa*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Sanicula sandwicensis*, and *Sicyos macrophyllus*) include the nonnative understory and subcanopy species *Clidemia hirta*, *Cotoneaster pannosus*,

*Heterotheca grandiflora* (telegraph weed), *Rubus argutus*, and *Senecio madagascariensis*, and the nonnative canopy species *Grevillea robusta*, *Psidium cattleianum*, and *Schinus terebinthifolius* (HBMP 2010). Nonnative grasses such as *Cenchrus setaceus* and *Melinis minutiflora* negatively impact the montane dry ecosystem (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Subalpine Ecosystem: Nonnative plants threatening the subalpine ecosystem plants proposed for listing (*Ranunculus hawaiiensis* and *Sanicula sandwicensis*) include the nonnative understory and subcanopy species *Ageratina adenophora*, *Cotoneaster pannosus*, *Epilobium billardierianum* ssp. *cinereum* (willow herb), *E. ciliatum*, *Hypochoeris radicata*, *Lapsana communis*, *Passiflora tarminiana*, and *Rubus argutus*, and the nonnative canopy species *Pinus* spp. Nonnative grasses such as *Anthoxanthum odoratum*, *Cenchrus setaceus*, *Cynodon dactylon*, *Dactylis glomerata* (cocksfoot), and *Holcus lanatus* negatively impact the montane dry ecosystem (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Dry Cliff Ecosystem: Nonnative plants threatening the dry cliff ecosystem plants proposed for listing (*Nothocestrum latifolium*, *Ochrosia haleakalae*, and *Sicyos lanceoloideus*) and the dry cliff ecosystem animal, the band-rumped storm-petrel, include the nonnative understory and subcanopy species *Ageratina adenophora*, *A. riparia*, *Blechnum appendiculatum*, *Clidemia hirta*, *Erigeron karvinskianus*, *Hypochoeris radicata*, *Kalanchoe pinnata*, *Lantana camara*, *Lapsana communis*, *Leucaena leucocephala*, *Lythrum maritimum* (loosestrife), *Passiflora suberosa*, *Pluchea carolinensis*, *Prunella vulgaris*, and *Rubus rosifolius*, and the nonnative canopy species *Acacia confusa*, *Casuarina equisetifolia*, *Grevillea robusta*, *Melia azedarach* (chinaberry), *Psidium cattleianum*, *P. guajava*, *Schinus terebinthifolius*, *Sphaeropteris cooperi*, *Syzygium cumini*, *Tecoma stans*, and *Toona ciliata* (HBMP 2010). Nonnative grasses that negatively impact the dry cliff ecosystem include *Andropogon virginicus*, *Cenchrus setaceus*, *Dactylis glomerata*, *Digitaria insularis*, *Ehrharta stipoides*, *Holcus lanatus*, *Melinis minutiflora*, and *Urochloa maxima* (HBMP 2010) (see “Specific Nonnative Plant Species Impacts,” below).

Nonnative Plants in the Wet Cliff Ecosystem: Nonnative plants

threatening the wet cliff ecosystem plants proposed for listing (*Phyllostegia brevidens*, *P. helleri*, *Ranunculus mauiensis*, and *Schiedea pubescens*) and the wet cliff ecosystem animal, the band-rumped storm-petrel, include the nonnative understory and subcanopy species *Ageratina adenophora*, *Blechnum appendiculatum*, *Clidemia hirta*, *Erechtites valerianifolia*, *Erigeron karvinskianus*, *Hedychium gardnerianum*, *Juncus effusus*, *Passiflora suberosa*, *Pterolepis glomerata*, *Rubus argutus*, *R. rosifolius*, and *Tibouchina herbacea*, and the nonnative canopy species *Ardisia elliptica*, *Buddleja asiatica*, *Heliocarpus popayanensis*, *Psidium cattleianum*, *P. guajava*, *Schinus terebinthifolius*, and *Toona ciliata* (HBMP 2010). Nonnative grasses that negatively impact the wet cliff ecosystem include *Axonopus fissifolius*, *Ehrharta stipoides*, *Melinis minutiflora*, *Oplismenus hirtellus*, *Paspalum conjugatum*, and *Setaria palmifolia* (HBMP 2010) (see “Specific Nonnative Plant Species Impacts,” below).

Specific Nonnative Plant Species Impacts: Destruction and modification of habitat, and competition, by nonnative plants represent ongoing threats to 45 species (36 plants, the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, and all 7 yellow-faced bees) proposed for listing in this rule throughout their ranges. Nonnative plants adversely affect microhabitat by modifying availability of light and nutrient cycling processes, and by altering soil-water regimes. Some nonnative plants may release chemicals that inhibit growth of other plants. They also alter fire regimes leading to incursions of fire-tolerant, nonnative plant species in native habitat. These competitive advantages allow nonnative plants to convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35).

The Hawaii Weed Risk Assessment (HWRA) is cited in many of the descriptions below. This assessment was created as a research collaboration between the University of Hawaii and the U.S. Forest Service for use in Hawaii and other high Pacific islands (*i.e.*, volcanic in origin, as opposed to low-lying atolls), and is an adaptation of the Australian/New Zealand Weed Risk Assessment protocol developed in the 1990s (Denslow and Daehler 2004, p. 1). The Australian/New Zealand protocol was developed to screen plants proposed for introduction into those countries, while the Hawaii-Pacific Weed Risk Assessment (HWRA) was developed to evaluate species already

used in landscaping, gardening, and forestry, and is also used to predict whether or not a nonnative plant species is likely to become invasive. Not all nonnative plant species present in Hawaii have been assessed, and information on propensity for invasiveness is lacking from some of the following descriptions. When known, we describe specific negative impacts of individual nonnative plants that threaten 45 of the 49 species proposed for listing.

- *Acacia confusa* (Formosa koa) is a tree introduced to Hawaii from Taiwan and the Philippine Islands in 1915 by the Board of Agriculture and Forestry and the Hawaiian Sugar Planter's Association for use as a windbreak; it is naturalized on all the main islands except Niihau (Geesink *et al.* 1999, p. 641). This species forms monotypic stands at lower elevations that prevent establishment of native plants. Seeds present in the ground germinate profusely after fire, allowing it to outcompete native plants (Pacific Islands Ecosystems at Risk (PIER) 2008). This species occurs in lowland dry, lowland mesic, and dry cliff habitats on all the main islands except Niihau (Geesink 1999, p. 641).

- *Acacia farnesiana* (klu) is a shrub to 13 ft (4 m) tall, native to the Neotropics, and formerly cultivated in Hawaii for an attempted perfume industry. This species is thorny and forms dense thickets, and regenerates quickly after fire. The seeds are dispersed by ungulates that eat the pods (PIER 2011). It is now naturalized (*i.e.*, initially introduced from another area, and now reproducing in the wild) in coastal and lowland dry areas on all of the main Hawaiian Islands except Niihau (Geesink *et al.* 1999, p. 641). According to the HWRA for *A. farnesiana*, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2011).

- *Ageratina adenophora* (Maui pamakani) is native to tropical America, and has naturalized in lowland to subalpine, dry to wet forest, including cliffs, on the islands of Kauai, Oahu, Molokai, Lanai, and Maui (Wagner *et al.* 1999, pp. 254–255; Wagner *et al.* 2012, p. 9). This shrub is 3 to 5 ft (1 to 1.5 m) tall with trailing branches that root on contact with the soil. It forms dense mats, which prevent regeneration of native plants (Anderson *et al.* 1992, p. 315). It is considered a harmful weed in agriculture, especially in rangeland, because it often displaces more desirable vegetation or native species, and is fatally toxic to horses and most livestock. The eupatorium gall fly, *Procecidochares utilis*, was introduced

to Hawaii in 1944 for control of Maui pamakani, with some success in suppression of some infestations, but not those in higher rainfall areas (Bess and Haramoto 1959, p. 248; Bess and Haramoto 1972, pp. 166, 175).

- *Ageratina riparia* (Hamakua pamakani) is a subshrub native to Mexico and the West Indies that spreads from a creeping rootstock (Wagner *et al.* 1999, p. 255). This species forms dense mats that prevent regeneration of native plants (Davis *et al.* 1992, p. 427), and is naturalized in dry cliffs, lowland mesic, lowland wet, and montane wet forest on Kauai, Oahu, Molokai, Lanai, and Maui (Wagner *et al.* 1999, p. 255; Wagner *et al.* 2012, p. 9).

- *Ageratum conyzoides* (maile honohono) is a perennial herb native to Central and South America and now widespread on all the main Hawaiian Islands (Wagner *et al.* 1999, pp. 254–255). This species invades lowland and montane wet areas, tolerates shade, and can outcompete and displace native plants. It produces many thousands of seeds that spread by wind and water, with over half the seeds germinating shortly after they are shed (PIER 2007).

- *Aleurites moluccana* (kukui) is a spreading, tall tree (66 ft; 20 m), native to Malesia, and considered a Polynesian introduction to Hawaii. It is now a significant component of the lowland mesic valley vegetation from sea level to 2,300 ft (700 m) on all the main islands (Wagner *et al.* 1999, p. 598). According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2008). This species tolerates a wide range of soil conditions and forms dense thickets, shading out other plants (Wagner *et al.* 1999, p. 598).

- *Andropogon virginicus* (broomsedge) is a perennial bunch grass native to northeastern America and naturalized on Kauai, Oahu, Molokai, Maui, and Hawaii Island (Wagner *et al.* 2012, p. 88). It occurs along roadsides and in disturbed dry to mesic forest and shrubland, and cliffs (O'Connor 1999, p. 1497). Seeds are easily distributed by wind, clothing, vehicles, and animals (Smith 1989, pp. 60–69). This species can outcompete and displace native plants, and may release allelopathic substances that prevent the establishment of other plants (Rice 1972, pp. i, 752–755). This species is fire-adapted, and has become dominant in areas subjected to natural or human-caused fires (Mueller-Dombois 1972, pp. 1–2), and is included in the Hawaii State Noxious Weed List (HAR Title 4, Subtitle 6, Chapter 68).

- *Anemone hupehensis* var. *japonica* (Japanese anemone), an herbaceous

perennial, is native to China and is naturalized and locally common in open, wet areas along roadsides and in lowland mesic and montane wet forest on Hawaii Island (Duncan 1999, p. 1087). This species has wind-distributed seeds, spreads by suckers, and resists grazing because of toxic chemicals that induce vomiting when ingested. According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a pest species (PIER 2011).

- *Angiopteris evecta* (mule's foot fern) is native throughout much of the South Pacific, including Australia and New Guinea, and is naturalized on Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii Island (Palmer 2003, p. 49; Wagner *et al.* 2012, p. 103). Rhizomes form a massive trunk, and fronds may grow up to 23 ft (7 m) long and 10 ft (3 m) wide, allowing this species to form dense stands and displace and shade out native plants in lowland wet forest (Global Invasive Species Database (GISD) 2011; Palmer 2003, pp. 48–49). It has become the dominant understory plant in some valleys on Oahu.

- *Anthoxanthum odoratum* (sweet vernalgrass) is a perennial bunchgrass native to Eurasia and now naturalized on Kauai, Oahu, Molokai, Maui, and Hawaii Island, in pastures, disturbed areas in montane wet forest, and sometimes subalpine shrubland (O'Connor 1999, p. 1498; Wagner *et al.* 2012, p. 88). This grass forms extensive ground cover, crowding out and preventing reestablishment of native plants (PIER 2008).

- *Ardisia elliptica* (shoebutton ardisia) is a branched shrub native to Sri Lanka that is now naturalized on Kauai, Oahu, Maui, and Hawaii Island (Wagner *et al.* 1999, pp. 932–933; Wagner *et al.* 2012, p. 53). This species is shade-tolerant and can rapidly form dense, monotypic stands, preventing establishment of native species (Global Invasive Species Database (GISD) 2005). Its fruit are attractive to birds, which then spread the seeds over the landscape. According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2008). This species occurs in lowland mesic and wet forest, and on wet cliffs (Wagner *et al.* 1999, p. 933).

- *Asystasia gangetica* (Chinese violet) is a perennial herb native to India, Malay Peninsula, and Africa (Wagner *et al.* 1999, p. 168). This species can grow over shrubs and smother all vegetation in the herbaceous layer, covering native plants and preventing their establishment (Smith 1985, p. 185). According to the HWRA, this species has a high risk of invasiveness or a high

risk of becoming a serious pest (PIER 2009). This species occurs in all low-elevation coastal, dry and mesic habitats on Midway Atoll, and all the main Hawaiian Islands (Wagner *et al.* 1999, p. 168; Wagner *et al.* 2012, p. 3).

- *Atriplex semibaccata* (Australian saltbush) is a drought- and saline-tolerant, low-growing shrub, native to Australia, which forms dense spreading mats and displaces native plants. It was introduced to Hawaii in 1895 as an experimental forage grass for cattle; it is now naturalized in coastal and lowland dry to seasonally wet areas on all the main Hawaiian Islands (Wagner *et al.* 1999, p. 535). The seeds are attractive to fruit eaters, which may contribute to its dispersal (California Invasive Plant Council 2006, in litt.).

- *Axonopus fissifolius* (carpetgrass) is a pasture grass that forms dense mats with tall foliage. This species does well in soils with low nitrogen levels, and can outcompete native plants in wet forests and bogs, an impact exacerbated by drought (Olaa Kilauea Partnership 2007, p. 3). The species is not subject to any major diseases or insect pests, and recovers quickly from fire. Seeds are readily spread by water, vehicles, and grazing animals (O'Connor 1999, pp. 1500–1502; Cook *et al.* 2005, p. 4). This species occurs in lowland and montane wet pastures, cliffs, wet forests, and bogs on all the main islands except Kahoolawe and Niihau (O'Connor 1999, p. 1502; Wagner *et al.* 2012, p. 88).

- *Blechnum appendiculatum* (NCN) is a fern with fronds to 23 in (60 cm) long. This species occurs on all the main islands, and forms large colonies in closed canopy lowland and montane wet forest, especially on rocky substrate or cliffs, outcompeting and displacing native species (Palmer 2003, pp. 79–81).

- *Buddleja asiatica* (dog tail) is a shrub or small tree native to Pakistan, India, China, Taiwan, Malesia, and the Mariana Islands, and is naturalized on Kauai, Maui, Oahu, Lanai, and Hawaii Island (Wagner *et al.* 1999, p. 415; Wagner *et al.* 2012, p. 20). This species can tolerate a wide range of lowland and montane mesic and wet habitats, and forms dense thickets, rapidly spreading into forest and lava and cinder substrate areas, displacing native vegetation (Wagner *et al.* 1999, p. 415; PIER 2011).

- *Caesalpinia decapetala* (cat's claw), a prickly climber or shrub, native to tropical Asia, is naturalized on all the main Hawaiian Islands except Kahoolawe (Geesink *et al.* 1999, p. 647). This sprawling, noxious shrub forms large, impenetrable thickets; is used as a fence plant for ranches (Geesink *et al.* 1999, p. 647); and is a pest in lowland mesic habitat (Smith 1985, p. 187).

Seeds are dispersed by rodents, birds, and human activities (Smith 1985, p. 187). According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2013).

- *Casuarina equisetifolia* (ironwood), native to Australia, is a tall tree (66 ft; 20 m) and is naturalized in the Northwest Hawaiian Islands on Kure, Midway Atoll, Pearl and Hermes, Lisianski, Laysan, French Frigate Shoals, and all of the main Hawaiian Islands (Wagner *et al.* 1999, pp. 528–529; Cronk and Fuller 2001, p. 144 in PIER 2011). This species is a pioneer plant, salt-resistant, that forms monotypic stands in lowland dry and mesic areas and cliffs, under which little else grows (PIER 2011). This species spreads by root suckers, and the roots and needle litter may exude a chemical that kills or inhibits the growth of other plants. Ironwood is fire-resistant, and the seeds are wind- and water-dispersed, further contributing to its competitive advantage over native species (Staples and Herbst 2005, p. 229).

- *Cenchrus ciliaris* (buffelgrass), native to Africa and tropical Asia, is naturalized on Midway Atoll and all the main islands except Niihau (O'Connor 1999, p. 1512; Wagner *et al.* 2012, p. 90). This fire-adapted grass provides fuel for fires and recovers quickly after fire, rapidly increasing its cover because it can reproduce through vegetative fragmentation and is readily dispersed by animals or other vectors. These attributes allow it to displace native plants and alter fire regimes (PIER 2007). This species occurs in coastal and lowland dry areas (O'Connor 1999, p. 1512).

- *Cenchrus setaceus* (formerly known as *Pennisetum setaceum*; fountain grass), a densely tufted grass, is an aggressive colonizer that outcompetes most native species. Native to northern Africa, *C. setaceus* is naturalized on Kauai, Oahu, Maui, Lanai, Kahoolawe, and Hawaii Island (O'Connor 1999, p. 1581; Wagner *et al.* 2012, p. 99). This fire-adapted grass burns swiftly and hot, causing extensive damage to the surrounding habitat (O'Connor 1999, p. 1581). In Hawaii, this species occurs in lowland and montane, mesic to dry, and subalpine, open areas, cliffs, barren lava flows, and cinder fields (O'Connor 1999, p. 1581). This species is included on the Hawaii State Noxious Weed list as *Pennisetum setaceum* (HAR Title 4, Subtitle 6, Chapter 68).

- *Cestrum diurnum* (day cestrum), a shrub up to 7 ft (2 m) tall, is native to the West Indies, and cultivated for its fragrant flowers. It is naturalized on

Kauai, Oahu, and Molokai (Symon 1999, p. 1254). This species invades lowland mesic and wet areas, forming dense thickets. Seeds are dispersed by birds; however, the seeds are poisonous to humans and other mammals (Florida Exotic Pest Plant Council (FEPC) 2011).

- *Cestrum nocturnum* (night cestrum), a shrub or small tree native to the Antilles and Central America, was cultivated in Hawaii prior to 1871, and is naturalized on Kauai, Oahu, Maui, and Lanai (Symon 1999, pp. 1254–1255; Wagner *et al.* 2012, p. 70). It forms dense, impenetrable thickets in lowland and montane wet forest and open areas. According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2010).

- *Chloris barbata* (swollen fingergrass), native to Central and South America and the West Indies, is widely naturalized on Kure Atoll, Midway Atoll, and all the main Hawaiian islands (O'Connor 1999, p. 1514; Wagner *et al.* 2012, p. 90). This species developed resistance to Group C1/5 herbicides in Hawaii in 1987, and infests roadsides and sugarcane plantations (WeedScience.com 2009; HBMP 2010). According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2008) because of its ability to outcompete native species. It occurs in coastal and lowland dry, disturbed areas, roadsides, vacant lots, and pastures (O'Connor 1999, p. 1514).

- *Chrysophyllum oliviforme* (satinleaf) is a small tree native to Florida, the West Indies, and Central America, and is naturalized on Kauai, Niihau, Oahu, Maui, and Hawaii Island (Pennington 1999, p. 1231; Wagner *et al.* 2012, p. 69; PIER 2009). Birds disperse the fleshy fruit and the species becomes a dominant component in native forest (Pennington 1999, p. 1231; Maui Land and Pineapple Company 2002, pp. 20, A1–A4). According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2006). This species has been documented in lowland dry and mesic forest in Hawaii.

- *Cinchona pubescens* (quinine) is a densely-canopied tree up to 33 ft (10 m) tall. It is native to Central and South America, and it is widely cultivated for quinine (Wagner *et al.* 1999, p. 1120). A small plantation was started on Maui in 1868, and this species was also planted by State foresters on Oahu, Maui, and Hawaii Island between 1928 and 1947. Currently, the only naturalized populations are reported from Maui and Hawaii Island (Wagner *et al.* 1999, p. 1120). It reproduces with wind-

dispersed seeds and also vegetatively by suckering, resulting in displacement of native lowland and montane mesic forest (GISD 2011; PIER 2013).

- *Cinnamomum burmannii* (padang cassia), a tree native to Indonesia, is cultivated and now naturalized on Kauai, Oahu, Maui, Lanai, and Hawaii Island (van der Werff 1999, p. 846; Wagner *et al.* 2012, p. 48). Seeds are bird-dispersed (Starr *et al.* 2003). On Maui, this species is included in the weed control program at Puu Kukui Preserve, as it becomes a dominant component of lowland and montane wet forest habitat (Maui Land and Pineapple Company (MLP) 2002, p. 20).

- *Clidemia hirta* (Koster's curse) is a noxious shrub in the Melastomataceae family that forms a dense understory, shades out native plants and prevents their regeneration, and is considered a significant nonnative plant threat (Wagner *et al.* 1985, p. 41; Smith 1989, p. 64; Almeda 1999, p. 906). *Clidemia hirta* is native to the Neotropics, and is naturalized on all the main islands except Kahoolawe and Niihau (Almeda 1999, p. 906; Wagner *et al.* 2012, p. 51). All plants in the Melastomataceae family are included in the Hawaii State Noxious Weed List (HAR Title 4, Subtitle 6, Chapter 68) because of their high germination rates, rapid growth, early maturity, ability of fragments to root, possible asexual reproduction, and efficient seed dispersal (especially by birds that are attracted by the plants' copious production of berries) (Smith 1985, p. 194; University of Florida Herbarium 2006; <http://www.ctahr.hawaii.edu/invweed/weedsHI.html>). These characteristics enable the plants to be aggressive and successful competitors in Hawaiian lowland and montane, dry, mesic, and wet ecosystems.

- *Coffea arabica* (Arabian coffee), a shrub or tree to 17 ft (5 m) tall, native to Ethiopia, is widely cultivated in Hawaii as a commercial crop. It was naturalized in Hawaii by the mid-1800s in mesic to wet sites, usually in valleys or along streambeds on all the main islands except Niihau (Wagner *et al.* 1999, pp. 1120–1121). This species is shade-tolerant, and can form dense stands in the forest understory, displacing and shading out lowland mesic and lowland wet native vegetation. The seeds are dispersed by birds and rats (PIER 2008).

- *Conyza bonariensis* (hairy horseweed) is an annual herb common in urban and nonurban areas in Hawaii. It occurs from coastal and lowland dry areas to lowland mesic and lowland wet forest, on Kure Atoll, Midway Atoll, Laysan, French Frigate Shoals, and all of

the main Hawaiian Islands, where it outcompetes and displaces native vegetation (Wagner *et al.* 1999, p. 288).

- *Cordyline fruticosa* (ki, ti), a shrub to 12 ft (4 m) tall, is considered a Polynesian introduction to Hawaii. It was extensively cultivated and occurs in lowland mesic and wet valleys and forest and is naturalized on all the main islands except Kahoolawe (Wagner *et al.* 1999, pp. 1348–1350). It can become a dominant element of the understory (Department of Land and Natural Resources (DLNR) 1989).

- *Cortaderia jubata* (pampas grass), a large, clump-forming, perennial grass native to the northern Andes, was first reported in 1987 in Hawaii from the slopes of Haleakala on east Maui, where it had escaped cultivation (Wagner *et al.* 2012, p. 91; PIER 2013). This species is a serious pest in California, New Zealand, and South Africa, and is included in the Hawaii State Noxious Weed List (Chimera *et al.* 1999, p. 3; HAR Title 4, Subtitle 6, Chapter 68). Pampas grass has razor-sharp leaves, produces abundant seed, and spreads readily, allowing it to outcompete native species in the lowland wet, montane wet, and montane mesic ecosystems (Staples and Herbst 2005, p. 744).

- *Cotoneaster pannosus* (silver-leaf cotoneaster) is a shrub native to China that is cultivated in Hawaii (Volcano on Hawaii Island and Kula, Maui) (Wagner *et al.* 1999, p. 1100; Wagner *et al.* 2012, p. 61). Previously thought to be contained, this species has escaped and become a threat to native montane mesic, montane dry, and subalpine ecosystems on Maui and Hawaii Island (Oppenheimer 2010, in litt.). The attractive, bird-dispersed fruits, aggressive root systems, and tendency to shade out and smother native plants contribute to the invasiveness of this species (PIER 2010).

- *Cryptomeria japonica* (Japanese cedar, tsugi) is a pyramidal evergreen tree native to China and Japan. This tree grows to 60 ft (18m) and has dense foliage (North Carolina State University 2006; University of Connecticut 2006). Its life-history traits of small seed mass, short juvenile period, and short intervals between large seed crops contribute to its invasiveness (Richardson and Rejmanek 2004, p. 321). This species is also highly flammable and is not recommended for landscaping in fire-prone areas (Scripps Ranch Fire Safe Council 2006, in litt.). It occurs in lowland wet and montane wet areas of Maui and Hawaii Island (Wagner *et al.* 2012, p. 107; Smithsonian Institution Online Herbarium Database 2015, in litt.).

- *Cuphea carthagenensis* (tarweed) is an annual or short-lived perennial herb native to South America and naturalized in lowland mesic to wet areas on Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii Island (Wagner *et al.* 1999, p. 866; Wagner *et al.* 2012, p. 49). This species forms dense, shrubby mats that displace and prevent the establishment of native plants (Hawaii National Park 1959, p. 7; Wagner *et al.* 1999, p. 866).

- *Cyclosorus dentatus* (previously *Christella dentata*) (NCN) is a medium-sized fern widely distributed in the tropics and subtropics of the Old World, now widespread as a weed in the Americas. In Hawaii, this species is most common in disturbed lowland and montane mesic and wet habitats on all the main Hawaiian Islands (Wagner *et al.* 2012, p. 103). This fern hybridizes with the endemic *Cyclosorus cyatheoides*, forming extensive numbers of the sterile hybrid (Palmer 2003, pp. 88–90).

- *Cynodon dactylon* (Bermuda grass, manienie) is a strongly rhizomatous or stoloniferous grass native to tropical Africa (O'Connor 1999, p. 1520). Introduced to Hawaii in 1935, it is widely cultivated and naturalized on Kure, Midway, Pearl and Hermes atolls, Laysan, French Frigate Shoals, and all of the main Hawaiian Islands except Niihau (O'Connor 1999, p. 1520; Wagner *et al.* 2012, p. 91). This grass occurs in rocky or sandy sites in dry and mesic areas, from coastal to alpine habitats, and forms a solid mat where seepage may be present. *Cynodon dactylon* outcompetes native species as it readily roots at the nodes, covering an area of up to 26 sq ft (2.5 sq m) within 150 days, with culms up to 4 ft (130 cm) long (PIER 2013). According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2013).

- *Dactylis glomerata* (cocksfoot), a tufted, perennial grass native to Europe, is widely cultivated and now naturalized in Hawaii. It is abundant in pastures and along trails and roadsides on Kauai, Oahu, Molokai, Maui, and Hawaii (O'Connor 1999, p. 1521). This species establishes in disturbed sites in dry cliff to subalpine habitat, and forms dense mats that suppress growth of native grasses and herbaceous plants (PIER 2010).

- *Delairea odorata* (formerly known as *Senecio mikanioides*, German ivy), a rapidly growing perennial vine, native to South Africa, is naturalized on Maui and Hawaii Island (Wagner *et al.* 1999, p. 356; Staples and Herbst 2005, p. 169; Benitez *et al.* 2008, p. 38; Wagner *et al.* 2012, p. 16). This bushy vine covers and suppresses growth and germination of

native species by rooting at leaf nodes and carpeting other plants and the ground. It can also grow in forest canopy, where it smothers and kills native trees in lowland and montane mesic areas (Benitez *et al.* 2008, p. 38; PIER 2012; Weeds of Blue Mountains Bushland 2011, in litt.).

- *Digitaria insularis* (sourgrass) is a densely tufted, perennial grass up to 5 ft (150 cm) tall. It is native to the Neotropics, and is naturalized on Midway Atoll and all the main Hawaiian islands (O'Connor 1999, p. 1531; Wagner *et al.* 2012, p. 92). This grass forms dense mats that crowd out native species (Motooka *et al.* 2003, in litt.) in disturbed coastal, lowland dry and cliff habitats (O'Connor 1999, p. 1531).

- *Digitaria setigera* (kukaepuaa, itchy crabgrass), an annual 3-ft tall (80 cm) grass, is native to tropical Asia from India to Sri Lanka, and the Pacific Islands. It is naturalized on all of the main Hawaiian Islands except Kahoolawe in lowland mesic forest, fields and pastures, and along roadsides (O'Connor 1999, pp. 1531–1532). This species rapidly spreads through runners and prolific seeding.

- *Drymaria cordata* (chickweed) is a straggling herb naturalized in shaded moist areas on Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii Island (Wagner *et al.* 1999, p. 505; Wagner *et al.* 2012, p. 26). This species is known to invade plantation crops such as tea and coffee, as well as pastures, lawns, gardens, riverbanks, ditches, and sandbars in rivers, displacing or preventing the establishment of native plants in lowland wet and montane wet habitats (PIER 2010).

- *Ehrharta stipoides* (meadow ricegrass), a grass native to Australia, New Zealand, and the Philippines, is naturalized on all the main Hawaiian Islands except Lanai (O'Connor 1999, p. 1536; Wagner *et al.* 2012, p. 93). This species creates thick mats and its bristled seeds are easily dispersed, preventing the establishment of native plants in lowland mesic, lowland wet, montane wet, montane mesic, dry cliff, and wet cliff habitats (U.S. Army Garrison 2006, p. 2–1–20; O'Connor 1999, p. 1536).

- *Epilobium billardierianum* ssp. *cinereum* (willow herb), a (native to Australia, New Zealand, and Chatham Islands) and *E. ciliatum* (native to North America, Japan, Asia, Mexico, and South America) are perennial herbs naturalized in open forest and disturbed grassland, and especially on open lava, pastures, and along roadsides on Kauai, Oahu, Maui, and Hawaii Island (Wagner *et al.* 1999, p. 995; Wagner *et al.* 2012,

p. 56). These species are dominant components of subalpine areas on Maui and in wet forest on Hawaii Island, Maui, and Kauai, growing to 5 ft (2 m) in height, and outcompeting native plant species (Anderson *et al.* 1992, p. 328). Seeds are wind-dispersed; rapid germination and spread are not effectively controlled by herbicides (Oregon State, 2015, in litt.). These species are self-compatible and also can reproduce from leafy rosettes from the stem base (Wagner *et al.* 1999, p. 995; New England Wildflower Society, in litt.). *Epilobium* spp. invade montane mesic, montane wet, montane dry, and subalpine forest on Maui, Kauai, and Hawaii Island (Wagner *et al.* 1999, p. 995; Wagner *et al.* 2012, p. 56).

- *Erechtites valerianifolia* (fireweed) is a tall (8 ft, 2.5 m), widely distributed annual herb that produces thousands of wind-dispersed seeds, and outcompetes native plants (Wagner *et al.* 1999, p. 314). Native to Mexico and South America, this species is naturalized in disturbed lowland wet, montane wet, and wet cliff habitats on all of the main islands except Niihau (Wagner *et al.* 2012, p. 11).

- *Erigeron karvinskianus* (daisy fleabane), an annual or perennial herb native to Central and South America and the Neotropics, reproduces and spreads rapidly to form dense mats by stem layering and regrowth from broken roots. This species crowds out and displaces native ground-level plants (Weeds of Blue Mountains Bushland 2006), and occurs in lowland to montane, mesic to wet habitats on Kauai, Oahu, Molokai, Maui, and Hawaii Island (Wagner *et al.* 1999, p. 315; Wagner *et al.* 2012, p. 12).

- *Eucalyptus* spp. are tall trees or shrubs, and almost all of the more than 600 species are native to Australia (Chippendale 1999, pp. 948–959). In an attempt to protect Hawaii's watersheds in the early 20th century, over 90 *Eucalyptus* species and thousands of individuals were planted by Hawaii State foresters on all the main islands except Niihau and Kahoolawe (Cuddihy and Stone 1990, p. 51; Chippendale 1999, p. 949; Wagner *et al.* 2012, pp. 53–54). Approximately 30 species are reported to be spreading beyond the forestry plantings. Three species species in particular, *Eucalyptus grandis* (flooded gum), *E. paniculata* (gray ironbark), and *E. saligna* (Sydney blue gum), were the principal species used in reforestation efforts and greatly threaten native habitat in Hawaii (Chippendale 1999, p. 958). *Eucalyptus* are quick-growing, reach up to 180 ft (55 m) in height, reproduce from wind-dispersed seeds, thereby outcompeting and

replacing native forest species in lowland wet and montane wet habitats (PIER 2011). According to the HWRA for *Eucalyptus*, these species have a high risk of invasiveness or a high risk of becoming a pest species (PIER 2011).

- *Falcataria moluccana* (albizia), a tree up to 130 ft (40 m) tall, is native to the Moluccas, New Guinea, New Britain, and the Solomon Islands. This species was widely planted in Hawaii for reforestation and is naturalized in lowland mesic to lowland wet areas on all the main Hawaiian islands except Kahoolawe and Niihau (Geesink *et al.* 1999, p. 690; Wagner *et al.* 2012, p. 41). Its rapid growth habit enables it to outcompete and shade out native trees, and its high-nitrogen leaf litter alters nutrient dynamics in the soil, allowing nonnative plant species to flourish (GISD 2011, in litt.). The roots are shallow and the wood is brittle, and falling branches are a hazard to humans, animals, and other vegetation (State of Hawaii 2013, in litt. (S.C.R. No. 74)).

- *Ficus microcarpa* (Chinese banyan) is a very large, spreading tree native to Ceylon, India, China, Ryuku Islands, Australia, and New Caledonia, and is naturalized on Midway Atoll and all the main Hawaiian islands except Kahoolawe and Niihau (Wagner *et al.* 1999, pp. 924–926; Wagner *et al.* 2012, p. 52). This epiphytic species has large branches with numerous aerial roots that form columnar stems, eventually strangling its host, and can shade out native plants with its broad canopy. Seeds are spread by birds (Motooka *et al.* 2003, in litt.). This species occurs in lowland mesic habitat in Hawaii (Wagner *et al.* 1999, pp. 924–926).

- *Fraxinus uhdei* (tropical ash) is a tree to 80 ft (24 m) tall, native to central and southern Mexico. In Hawaii, between 1924 and 1960, over 700,000 trees were planted by State foresters on all the main islands (except Kahoolawe and Niihau) (Wagner *et al.* 1999, p. 991). Tropical ash is now naturalized in lowland mesic and montane mesic habitat, and is currently considered a serious threat to the mesic native *Acacia-Metrosideros* (koa-ohia) forest at Waikamoi on east Maui (TNCH 2006, p. A5). This species reproduces by wind-dispersed seed and spreads rapidly along watercourses and forms dense, monotypic stands, crowding out and replacing native plants (Holt 1992, pp. 525–535).

- *Grevillea robusta* (silk oak) is a large (100 ft, 30 m) evergreen tree native to Australia (Wagner *et al.* 1999, p. 1086; PIER 2013). Over two million trees were planted in Hawaii between 1919 and 1959, in an effort to reduce erosion and to provide timber (Motooka

*et al.* 2003, in litt.). This species is an aggressive, drought-tolerant tree, with the ability to establish in little to no soil, and forms dense, monotypic stands (Santos *et al.* 1992, p. 342). The leaves produce an allelopathic substance that inhibits the establishment of other plants (Smith 1985, p. 191). This species occurs in lowland to montane, dry to mesic forest and open areas on all the main Hawaiian Islands except Kahoolawe (Wagner *et al.* 1999, p. 1086; Wagner *et al.* 2012, p. 61).

- *Hedychium coronarium* (white ginger) is an herbaceous perennial up to 7 ft (2 m) tall, native to southwestern China and the Himalayas (Nagata 1999, p. 1622). White ginger is naturalized in lowland mesic forest on Oahu, Molokai, Lanai, Maui, and Hawaii Island (Nagata 1999, p. 1622). This species is shade tolerant but can grow in full sun (Csurhes and Hannan-Jones 2008, p. 7). Similar to *H. gardnerianum*, the creeping growth habit of *H. coronarium* overwhelms native plants, and is difficult to control due to new growth from rhizomes (GISD 2011).

- *Hedychium gardnerianum* (kahili ginger) is native to India (Nagata 1999, p. 1623). This showy ginger was introduced to Hawaii for ornamental purposes, and was first collected outside of cultivation in 1954 at Hawaii Volcanoes National Park, and is now naturalized in lowland wet and montane wet areas on Kauai, Oahu, Maui, Lanai, and Hawaii Island (Nagata 1999, p. 1623; Wester 1992, pp. 99–154; Wagner *et al.* 2012, p. 102). Kahili ginger grows over 3 ft (1 m) tall in open light environments; however, it will readily grow in full shade beneath forest canopy (Smith 1985, pp. 191–192). It forms vast, dense colonies, displacing other plant species, and reproduces by rhizomes. The conspicuous fleshy red seeds are dispersed by fruit-eating birds. Studies show that ginger reduces the amount of nitrogen in the native *Metrosideros* forest canopy in Hawaii (Asner and Vitousek 2005, in litt.). This species may also block stream edges, altering water flow (GISD 2007).

- *Heliocarpus popayanensis* (moho) is a nearly 100-ft (30-m) tall tree native to Mexico and Argentina. This species was planted extensively in Hawaii by foresters beginning in 1941, and has since escaped into lowland wet forest and cliffs on Kauai, Oahu, Lanai, and Hawaii Island (Wagner *et al.* 1999, p. 1292; Wagner *et al.* 2012, p. 72). The seeds are wind-dispersed, and this species is becoming a dominant feature in some forest areas on Oahu (Smith 1998). It grows rapidly, and spreads readily in disturbed forest where it can

outcompete native vegetation (Motooka *et al.* 2003, in litt.).

- *Heterotheca grandiflora* (telegraph weed) is an annual or biennial herb native to California and Mexico and now common from lowland to subalpine habitats of all the main Hawaiian Islands except Niihau (Wagner *et al.* 1999, p. 326; Wagner *et al.* 2012, p. 13). This species is an opportunistic colonizer that grows quickly, forms dense stands, and has been observed to inhibit recruitment of native plants in montane dry areas (Csurhes 2009, p. 2; PIER 2011).

- *Holcus lanatus* (common velvetgrass), native to Europe, is naturalized in Hawaii from montane to subalpine habitat, and occurs on all the main islands except Kahoolawe and Niihau (O'Connor 1999, p. 1551; Wagner *et al.* 2012, p. 95). It is an aggressive plant, growing rapidly from basal shoots or its prolific seed, and can become a dominant element of the vegetation if not controlled (Smith 1985, p. 192). Allelopathy may also play a role in the dominance of this species over other grasses (Remison and Snaydon *in* Pitcher and Russo 2005, p. 2).

- *Hypochoeris radicata* (hairy cat's ear) is a perennial herb up to 2 ft (0.6 m) tall, native to Eurasia. In Hawaii, it is naturalized in montane wet to dry cliff and subalpine sites on all the main islands (Wagner *et al.* 1999, p. 327; Wagner *et al.* 2012, p. 13). This species has a deep, succulent taproot favored by feral pigs, which dig up large areas searching for the roots (Smith 1985, p. 192). Seeds are produced in large numbers and dispersed by wind. It regenerates rapidly from the crown of the taproot after fire (Smith 1985, p. 192). These attributes contribute to its ability to outcompete native plants.

- *Juncus effusus* (Japanese mat rush) is a perennial herb widely distributed in temperate regions and naturalized in Hawaii in montane ponds, streams, and open boggy sites on Oahu, Molokai, Maui, and Hawaii Island (Coffey 1999, p. 1453; Wagner *et al.* 2012, p. 84). It was brought to Hawaii as a source of matting material, but grew too slowly to be of commercial value (Coffey 1999, p. 1453). This plant spreads by seeds and rhizomes, and forms dense mats that crowd out native plants (U.S. Department of Agriculture-Agricultural Research Division-National Genetic Resources Program (USDA-ARS-NGRP) 2011).

- *Juncus ensifolius* (dagger-leaved rush), a perennial herb native to the western United States, is naturalized in Hawaii and occurs in standing water of marshy montane wet areas on Maui and Hawaii Island (Coffey 1999, p. 1453;

Wagner *et al.* 2012, p. 84). This weedy colonizer can tolerate environmental stress and outcompete native species (Pojar and MacKinnon 1994, in litt.).

- *Juncus planifolius* (bog rush), a perennial herb native to South America, New Zealand, and Australia, is naturalized on Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii Island, in moist, open, disturbed margins of lowland and montane wet forests and in bogs (Coffey 1999, pp. 1453–1454; Wagner *et al.* 2012, p. 84). This species forms dense mats and displaces native plants by preventing establishment of native seedlings (Medeiros *et al.* 1991, pp. 22–23).

- *Kalanchoe pinnata* (air plant), a perennial herb, is widely established in many tropical and subtropical areas. In Hawaii, it was naturalized prior to 1871, and is abundant in low-elevation coastal, dry, and mesic areas on all the main islands except Niihau and Kahoolawe (Wagner *et al.* 1999, p. 568). It can reproduce by vegetatively at indentations along the leaf margin, usually after the leaf has broken off the plant and is lying on the ground, from which a new plant can take root (Motooka *et al.* 2003, in litt.). This species forms dense stands that prevent reproduction of native plants (Motooka *et al.* 2003, in litt.; Randall 2007-Global Compendium of Weeds Database).

- *Lantana camara* (lantana), a malodorous, branched shrub up to 6 ft (3 m) tall, was brought to Hawaii as an ornamental plant and is now naturalized on Midway Atoll and all the main Hawaiian Islands. This species forms dense stands that prevent establishment of native plants (Davis *et al.* 1992, p. 412; Wagner *et al.* 1999, p. 1320; Motooka *et al.* 2003, in litt.). Its berries are attractive to birds, which spread it to new areas (Davis *et al.* 1992, p. 412). This species occurs in almost all habitat types, from coastal, dry to mesic, lowland to montane forest and shrubland.

- *Lapsana communis* (nipplewort) is an annual herb (to 5 ft, 1.5 m) native to Eurasia, and is naturalized in montane wet forest, dry cliff, and alpine habitat (3,200 m) on Maui and Hawaii Island (Wagner *et al.* 1999, p. 331). It is identified as an agricultural weed and an invasive species in Hawaii (USDA-NRCS 2011).

- *Leonotis nepetifolia* (lion's ear) is a coarse, annual herb (to 8 ft, 2.5 m), native to tropical Africa, and is naturalized on all the main Hawaiian islands except Kahoolawe and Niihau (Wagner *et al.* 1999, p. 803; Wagner *et al.* 2012, p. 46). It forms dense thickets that displace native plants, especially in lowland dry habitat (Wagner *et al.* 1999,

p. 803). According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2006).

- *Leptospermum scoparium* (tea tree) is a shrub or small tree (7 to 16 ft (2 to 5 m)) native to New Zealand and Australia, and now naturalized on Kauai, Oahu, Maui, and Lanai (Wagner *et al.* 1999, p. 963; Wagner *et al.* 2012, p. 55). It forms thickets that crowd out other plants, and has allelopathic properties that prevent the growth of native plants (Smith 1985, p. 193). This species occurs in disturbed lowland to montane, mesic to wet forest habitat (Wagner *et al.* 1999, p. 963).

- *Leucaena leucocephala* (koa haole), a shrub (30 ft (9 m)) native to the Neotropics, is now naturalized on all of the main Hawaiian Islands and Midway Atoll. It is an aggressive, nitrogen-fixing competitor that often becomes the dominant component of vegetation in coastal and lowland dry areas (Geesink *et al.* 1999, pp. 679–680).

- *Lythrum maritimum* (loosestrife), native to Peru, is a many-branched shrub occurring in drier open areas and cliffs on all of the main Hawaiian islands except Kahoolawe and Niihau (Wagner *et al.* 1999, p. 868; Wagner *et al.* 2012, p. 49). It was collected by botanists as early as 1794, suggesting it may be indigenous to the Hawaiian Islands; however, *L. maritimum* is identified as an invasive species in Hawaii (Stone *et al.* 1992, p. 104; USDA–NRCS 2011).

- *Melia azedarach* (chinaberry) is a deciduous tree (to 65 ft (20 m)) native to southwestern Asia that is invading forests, fence lines, and disturbed areas on all of the main Hawaiian islands except Kahoolawe (Wagner *et al.* 1999, p. 918; Wagner *et al.* 2012, p. 52). Its fast growth and rapidly spreading thickets make it a significant pest plant by shading out and displacing native vegetation (University of Florida 2008). Feral pigs and fruit-eating birds further distribute the seeds (Stone 1985, pp. 194–195). According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2008). This species occurs in dry, open habitats and cliffs (Wagner *et al.* 1999, p. 918).

- *Melinis minutiflora* (molasses grass), native to Africa, is naturalized on all the main Hawaiian islands except Niihau (O'Connor 1999, p. 1562). *Melinis minutiflora* is a spreading, perennial grass up to 3 ft (1 m) tall that forms dense mats from root runners, crowding out and preventing establishment of native plants. These mats can fuel more intense fires and dense stands can contribute to recurrent

fires, with rapid expansion into adjacent burned areas (Cuddihy and Stone 1990, p. 89; O'Connor 1999, p. 1562; PIER 2013). This species occurs in almost all habitats, from dry to wet, lowland to montane (O'Connor 1999, p. 1562).

- *Melinis repens* (natal redtop), a perennial grass (1 to 3 ft (0.3 to 1 m)) native to Africa, is now naturalized on Midway Atoll and all of the main Hawaiian islands (O'Connor 1999, p. 1588; Wagner *et al.* 2012, p. 99). This species invades disturbed, dry areas from coastal regions to subalpine forest (O'Connor 1999, p. 1588). Dense stands of natal redtop can contribute to recurrent fires (Desert Museum 2011).

- *Miconia calvescens* (miconia or velvet tree), a tree up to 50 ft (15 m) tall, native to tropical America, first appeared on Oahu and the island of Hawaii as an introduced garden plant and subsequently escaped from cultivation (Almeda 1999, p. 903; Staples and Herbst 2005, p. 397). This species is now also found on Kauai and Maui (Wagner and Herbst 2003, p. 34; Wagner *et al.* 2012, p. 51). This species is remarkable for its 2- to 3-ft (70 cm) long, dark purple leaves (Staples and Herbst 2005, p. 397). It tolerates and reproduces in dense shade in lowland wet habitats, eventually shading out all other plants to form a monoculture. A single mature plant produces millions of seeds per year, which are spread by birds, ungulates, and humans (Motooka *et al.* 2003, in litt.). According to the HWRA assessment, miconia has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2010). This species, as well as all plants in the Melastoma family, are included on the Hawaii State Noxious Weed list (HAR Title 4, Subtitle 6, Chapter 68).

- *Morella faya* (firetree) is an evergreen shrub or small tree (26 ft (8 m)) native to the Canary Islands, Madeira, and the Azores, and naturalized on Kauai, Oahu, Maui, Lanai, and Hawaii Island (Wagner *et al.* 1999, p. 931; Wagner *et al.* 2012, p. 53). This species forms monotypic stands, is a nitrogen-fixer, and alters the successional ecosystems in areas that it invades by displacing native vegetation through competition. It is a prolific fruit producer (average of 400,000 fruits per tree per year), and these fruit are spread by birds and feral pigs (Vitousek 1990, pp. 8–9; Wagner *et al.* 1999, p. 931; PIER 2008). This species is included in the Hawaii State Noxious Weed List (HAR Title 4, Subtitle 6, Chapter 68), and is reported from lowland to montane mesic and wet forest habitat (PIER 2008).

- *Neonotonia wightii* (previously *Glycine wightii*; glycine), a twining herb

native to Central and South America, is naturalized on all the main Hawaiian islands except Niihau (Geesink *et al.* 1999, p. 674; Wagner *et al.* 2012, p. 39). It was brought to Hawaii for cultivation as a fodder plant. This species forms dense patches in coastal and lowland dry areas, and covers and outcompetes other plants (Geesink *et al.* 1999, p. 674; PIER 2010).

- *Nicotiana glauca* (tree tobacco), a shrub or spindly tree, is native to Argentina, and naturalized on all the main Hawaiian islands except Kauai and Niihau (Symon 1999, pp. 1261–1263; Wagner *et al.* 2012, p. 71). A drought-resistant plant, it occurs in lowland, open, arid, disturbed sites, and forms dense stands that crowd out native species and prevent their regeneration (Symon 1999, pp. 1261–1263; HBMP 2010; PIER 2011). According to the HWRA assessment, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2011).

- *Omalanthus populifolius* (Queensland poplar) is a large shrub (20 ft (6 m)) native to Australia that is now naturalized on Maui and Hawaii Island (Starr *et al.* 2003, in litt.). Based on information from its native range, infestations in Hawaii could invade lowland mesic forest. As a pioneer species, it is considered a potential pest plant in South Africa (Starr *et al.* 2003, in litt.). Bird-dispersed seeds germinate quickly when exposed to direct sunlight, but also have a long dormancy period, providing a long-lived seed bank (Hornsby Shire Council 2015, in litt.).

- *Oplismenus hirtellus* (basketgrass) is a perennial grass common through the tropics and now naturalized on all of the main Hawaiian Islands except Kahoolawe and Niihau (O'Connor 1999, p. 1565; Wagner *et al.* 2012, pp. 96–97). This species forms a dense ground cover, is sometimes climbing, and roots at the nodes, enabling its rapid spread. It also has sticky seeds that attach to animals and birds that results in its spread to new areas (O'Connor 1999, p. 1565; Johnson 2005, in litt.). This species displaces native plants on forest floors and trail sides, and occurs in lowland wet forest and cliffs (Motooka *et al.* 2003, in litt.; O'Connor 1999, p. 1565).

- *Paspalum conjugatum* (Hilo grass) is a perennial grass native to the Neotropics, up to 2 ft (0.6 m) tall, and occurs in lowland mesic and wet habitats, forming a dense ground cover. It occurs on all the main Hawaiian islands except Kahoolawe and Niihau (O'Connor 1999, pp. 1575–1576). Its small hairy seeds are easily transported on humans and animals, or are carried



by the wind through native vegetation, where it establishes and displaces native plants (University of Hawaii Botany Department 1998; Cuddihy and Stone 1990, p. 83; Motoooka *et al.* 2003, in litt.; PIER 2008).

- *Passiflora edulis* (passion fruit), native to South America, is a vigorous vine that can reach up to 50 ft (15 m) in length. This species is widely cultivated for its fruit juice, and is naturalized in lowland to montane mesic areas on all the main Hawaiian islands except Kahoolawe and Niihau (Escobar 1999, p. 1010; Wagner *et al.* 2012, p. 57). Seeds are dispersed by feral pigs, and this vine overgrows and smothers forest canopy. Rooting and trampling by feral pigs in search of its fruit disrupts topsoil, causing erosion, and may also destroy native plant seedlings (GISD 2012).

- *Passiflora foetida* (love-in-a-mist) is a vine with glandular hairs that give the plant a fetid odor. This species, native to American tropics and subtropics, is naturalized on all the main Hawaiian islands except Kahoolawe, and grows over and covers vegetation that prevents or delays establishment of native species (Escobar 1999, p. 1011; Wagner *et al.* 2012, p. 57). Its fruit are eaten and spread by birds (Escobar 1999, p. 1011; GISD 2006). This species occurs in lowland dry and wet habitat (Escobar 1999, p. 1011).

- *Passiflora laurifolia* (yellow granadilla, water lemon) is a vine native to the West Indies, Guianas, and South America, where it is widely cultivated (Escobar 1999, p. 1011). In Hawaii, it widely scattered in mostly inaccessible lowland mesic to wet habitat, and can grow over and smother vegetation (Escobar 1999, p. 1011; Starr *et al.* 2003, in litt.).

- *Passiflora suberosa* (huehue haole), a vine, has many-seeded purple fruits that are dispersed widely by birds. This species is native to the American subtropics and the West Indies, and naturalized on Kauai, Oahu, Maui, Lanai, and Hawaii Island (Escobar 1999, p. 1014; Wagner *et al.* 2012, p. 57). This vine grows over and smothers ground cover, shrubs, and small trees, sometimes reaching the upper canopy layer of the forest (Smith 1985, pp. 191–192). *Passiflora suberosa* occurs in lowland grassland, shrubland, open dry to wet forest, and exposed cliff habitats (Escobar 1999, p. 1014).

- *Passiflora tarminiana* (banana poka), a vine native to South America, is widely cultivated for its fruit (Escobar 1999, pp. 1007–1014). First introduced to Hawaii in the 1920s, it is now a serious pest in montane mesic and subalpine forest on Kauai, Maui, and

Hawaii Island, where it overgrows and smothers the forest canopy (Escobar 1999, p. 1012; Wagner *et al.* 2012, p. 57). Seeds are readily dispersed by humans, birds, and feral pigs (La Rosa 1992, pp. 281–282). Fallen fruit encourage rooting and trampling by pigs, resulting in destruction of native habitat (Diong 1982, pp. 157–158). Field releases of biocontrol agents have not been successful to date (PIER 2010). This species is included on the Hawaii State Noxious Weed list (HAR Title 4, Subtitle 6, Chapter 68).

- *Persicaria punctata* (previously *Polygonum punctatum*, water smartweed), a rhizomatous perennial herb native to North America, South America, and the West Indies, is a naturalized aquatic species found along streambeds, running or standing water, in lowland and montane wet habitat on Hawaii Island (Wagner *et al.* 1999, p. 1064; Wagner *et al.* 2012, p. 59). This species is fast-growing and has long-lived seeds and allelopathic properties (Gutsher 2007, in litt.). Loh and Tunison (1998, p. 5) found that in pig-disturbed sites, *P. punctata* expanded from 25 percent cover to 63 percent cover within 2 years. The combination of these attributes allows this species to form dense patches that inhibit establishment of native plants.

- *Pimenta dioica* (allspice), native to Mexico, Central America, Cuba, and Jamaica, is a tree (60 ft (18 m)) with sticky, grape-like seeds that are spread by birds. Widely cultivated, this species was introduced to Hawaii in 1885, and is naturalized on Kauai and Maui (Staples and Herbst 2005, p. 427; Wagner *et al.* 2012, p. 53). According to the HWRA, this species has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2008). This tree forms dense thickets and tolerates a wide range of soil types, and can outcompete native plants, and is naturalized in lowland wet forest.

- *Pinus* spp. (pine tree) are tall, evergreen trees or shrubs native to all continents and to some oceanic islands, but are not native to any of the Hawaiian Islands. *Pinus caribaea* var. *hondurensis*, *P. elliotii*, *P. patula*, *P. pinaster*, *P. radiata*, and *P. taeda* are naturalized on Molokai, Lanai, and Maui (Little and Skolmen 1989, pp. 56–60; Oppenheimer 2003, pp. 18–19; PIER 2011; Wagner *et al.* 2012, p. 107). *Pinus* species were primarily planted by Hawaii State foresters for reforestation and erosion control (Little and Skolmen 1989, pp. 56–60; Oppenheimer 2003, pp. 18–19; PIER 2010). *Pinus* species are known to establish readily; create dense stands that shade out native plants and prevent regeneration; outcompete native

plants for soil, water, and nutrients; change soil chemistry; promote growth of weed seeds dropped by perching birds; and be highly flammable (Oppenheimer 2010, in litt.; PIER 2010). On east Maui, *Pinus* species are a threat to higher elevation habitat because they invade pastures and native montane mesic and subalpine shrublands, and have contributed to wildfires in the area (Oppenheimer 2002, pp. 19–23; Oppenheimer 2010, in litt.).

- *Pluchea carolinensis* (sourbush) is native to Mexico, the West Indies, and South America (Wagner *et al.* 1999, p. 351; Wagner *et al.* 2012, p. 16). This 3 to 6 ft (1 to 2 m) tall, fast-growing shrub forms thickets in lowland dry habitats and can tolerate saline conditions. This species is widespread in Hawaii from coastal to lowland areas and is adapted to a wide variety of soils and sites on Kure Atoll, Midway Atoll, French Frigate Shoals, and all the main islands (Wagner *et al.* 1999, p. 351). The seeds are wind-dispersed (Francis 2004, in litt.). It quickly invades burned areas. These adaptive characteristics increase its ability to outcompete native plants. Some biological control agents have been introduced but have not been effective (U.H. Botany Department, [http://www.botany.hawaii.edu/faculty/cw\\_smith/plu\\_sym.htm](http://www.botany.hawaii.edu/faculty/cw_smith/plu_sym.htm)).

- *Pluchea indica* (Indian fleabane) is native to southern Asia, and is naturalized on Midway Atoll, Laysan Island, and all the main Hawaiian Islands (Wagner *et al.* 1999, p. 351; Wagner *et al.* 2012, p. 16). These 6 ft (2 m) tall, fast-growing shrubs form thickets in dry habitats and are widespread in Hawaii in coastal areas. The seeds are wind-dispersed (Francis 2006). It quickly invades burned areas, and can regenerate from basal shoots. These traits increase its competitive abilities over native plants (Wagner *et al.* 1999, p. 351).

- *Prosopis pallida* (kiawe, mesquite) is a tree up to 66 ft (20 m) tall. Native to Peru, Columbia, and Ecuador, it was introduced to Hawaii in 1828, and its seed pods were used as fodder for ranch animals. This species is now a dominant component of the vegetation in lowland, dry, disturbed sites, and it is well-adapted to dry habitats on Midway Atoll and all the main Hawaiian Islands (Geesink *et al.* 1999, pp. 692–693; Wagner *et al.* 2012, p. 41). It overshadows other vegetation and has deep tap roots that significantly reduce available water for native dryland plants. This species fixes nitrogen and can outcompete native plants (Geesink *et al.* 1999, pp. 692–693; PIER 2011).

- *Prunella vulgaris* (common selfheal) is a perennial herb in the mint family.

This species, native to North and Central America, Europe, and Asia, is naturalized in drier areas (including cliffs) on the islands of Molokai, Maui, and Hawaii (Wagner *et al.* 1999, pp. 828–829). It can root from stem nodes (PIER 2010). This species is reported as an invasive species in Hawaii (USDA–NRCS 2011).

- *Psidium cattleianum* (strawberry guava) is a tall shrub or tree (20 ft (6 m)) that forms dense stands in which few other plants can grow, displacing native vegetation through competition. Native to the Neotropics, *P. cattleianum* is naturalized on all the main Hawaiian islands except Kahoolawe and Niihau (Wagner *et al.* 1999, p. 971). The fruit is eaten by pigs and birds that disperse the seeds throughout the forest (Smith 1985, p. 200; Wagner *et al.* 1985, p. 24). This species occurs in lowland to montane, mesic to wet habitats (Wagner *et al.* 1999, p. 971).

- *Psidium guajava* (common guava) is a shrub or tree (32 ft (10 m)) that forms dense stands, excluding native species. Native to the Neotropics, *P. guajava* is naturalized on all the main Hawaiian islands except Kahoolawe and Niihau (Wagner *et al.* 1999, p. 972). Seeds are spread by pigs and birds, and it also regenerates from underground parts by suckering (Wagner *et al.* 1999, p. 972). These traits allow this species to outcompete native vegetation in lowland to montane dry, mesic, and wet habitats.

- *Pterolepis glomerata* (NCN) is an herb or subshrub in the Melastomataceae family. Native to South America, *P. glomerata* is naturalized on Kauai, Oahu, Molokai, and Hawaii Island (Almeda 1999, p. 912–913; Wagner *et al.* 2012, p. 52). This species has rapid growth, early maturity to fruiting, a high germination rate, possible asexual reproduction, the ability of fragments to root, and seed dispersal by birds (University of Florida Herbarium 2006). These attributes allow it to displace native vegetation through competition. All plants in the Melastomataceae family are included in the Hawaii State Noxious Weed List (HAR Title 4, Subtitle 6, Chapter 68). It is a pest in lowland wet habitat and along trail margins and cliffs (Almeda 1999, p. 912–913).

- *Ricinus communis* (castor bean), a shrub or small tree native to Africa, is naturalized in lowland mesic habitat on all the main Hawaiian Islands (Wagner *et al.* 1999, p. 629). This fast-growing species forms thickets, reaches 33 ft (10 m) in height, and shades and crowds out native plants, preventing their regeneration. Its toxic seeds are spread mainly by human activities (PIER 2012).

According to the HWRA assessment, this species has a high risk of becoming invasiveness or a high risk of becoming a serious pest (PIER 2012).

- *Rubus argutus* (prickly Florida blackberry) is a thorny shrub with long, arching stems that reproduces both vegetatively and by seed. Native to the continental United States, *R. argutus* is naturalized on Kauai, Oahu, Molokai, Maui, and Hawaii Island (Wagner *et al.* 1999, p. 1107; Wagner *et al.* 2012, p. 62). It readily sprouts from underground runners, and is quickly spread by frugivorous birds, displacing native vegetation through competition (Tunison 1991, p. 2; Wagner *et al.* 1999, p. 1107; U.S. Army 2006, pp. 2–1–21, 2–1–22). This species is included in the Hawaii State Noxious Weed List (HAR Title 4, Subtitle 6, Chapter 68). It occurs in almost all areas, from lowland to subalpine, dry to wet habitats.

- *Rubus ellipticus* (yellow Himalayan raspberry), native to India, is a prickly, climbing shrub, now naturalized on Hawaii Island in montane wet areas; an infestation on Oahu was removed (Wagner *et al.* 1999, pp. 1107–1108; Wagner *et al.* 2012, p. 62). It occurs in montane wet areas in the Volcano and Laupahoehoe areas (Motooka *et al.* 2003, in litt.). Its long, arching stems form impenetrable thickets, and cover and smother smaller native plants. Seeds are dispersed by frugivorous birds and other animals. The plants spread locally by underground shoots that also allow it to regenerate rapidly after fire (PIER 2012).

- *Rubus rosifolius* (thimbleberry) is an erect to trailing shrub that forms dense thickets and outcompetes native plant species. Native to India, southeastern Asia, the Philippines, and Indonesia, *R. rosifolius* is naturalized on Kauai, Maui, and Hawaii Island (Wagner *et al.* 1999, p. 1110). It readily reproduces from roots left in the ground, and seeds are spread by birds and animals (GISD 2008; PIER 2008). This species occurs in lowland to montane mesic and wet habitats (Wagner *et al.* 1999, p. 1110).

- *Sacciolepis indica* (glenwood grass) is an annual grass that invades disturbed and open areas, and prevents the establishment of native plants. Native to the Paleotropics, *S. indica* is naturalized on all the main Hawaiian islands except Kahoolawe and Niihau (O'Connor 1999, p. 1589; Wagner *et al.* 2012, p. 99). The seeds are dispersed by sticking to animal fur (Motooka *et al.* 2003, in litt.; PIER 2011). This species occurs from lowland to montane elevations in open, wet areas such as grasslands, ridge crests, openings in wet

forest, and along trails (O'Connor 1999, p. 1589).

- *Schefflera actinophylla* (octopus tree) is a tree (50 ft (15 m)) native to Australia and New Guinea, and now naturalized on all the main Hawaiian islands except Kahoolawe and Niihau (Lowry II 1999, p. 232; Wagner *et al.* 2012, p. 7). This species is shade-tolerant and can spread into undisturbed forest, forming dense thickets in lowland mesic and wet habitats (Lowry II 1999, p. 232). *Schefflera actinophylla* grows epiphytically, strangling host trees, and its numerous seeds are readily dispersed by birds (PIER 2008).

- *Schinus terebinthifolius* (Christmas berry or Brazilian pepper) is a shrub or tree up to 50 ft (15 m) tall that forms dense thickets (Wagner *et al.* 1999, p. 198). Its red berries are attractive to, and are spread by, birds (Smith 1989, p. 63). *Schinus* seedlings grow very slowly and can survive in dense shade, exhibiting vigorous growth when the canopy is opened after a disturbance (Brazilian Pepper Task Force 1997). Because of these attributes, *S. terebinthifolius* is able to displace native vegetation through competition (Wagner *et al.* 1999, p. 198). This species (native to Brazil) occurs in lowland to montane, dry to wet habitats on Midway Atoll and all of the main Hawaiian islands except Kahoolawe and Niihau (Wagner *et al.* 1999, p. 198).

- *Senecio madagascariensis* (fireweed), native to Madagascar and South Africa, is an annual or short-lived perennial herb with showy yellow flowers, and is poisonous to grazing animals (PIER 2010). It is naturalized in disturbed areas and in pastures, in lowland to montane, dry to mesic areas on all the main Hawaiian islands except Niihau (Wagner *et al.* 2012, p. 16). This species occurs in a wide range of soils, and its seeds are spread by wind, birds, animals, and humans, and can also be spread as a contaminant in agricultural products and machinery. It spreads locally by rooting from nodes (PIER 2010). According to the HWRA, for this species, there is a high risk of invasiveness or a high risk of it becoming a pest species (PIER 2010).

- *Setaria palmifolia* (palmgrass), native to tropical Asia, was first collected on Hawaii Island in 1903, and is now also naturalized on Oahu, Lanai, and Maui (O'Connor 1999, p. 1592; Wagner *et al.* 2012, p. 100). A large-leaved, perennial grass, this species reaches almost 7 ft (2 m) in height, and shades and crowds out native vegetation. Palmgrass is resistant to fire and recovers quickly after being burned (Cuddihy and Stone 1990, p. 83). This

species occurs from lowland to montane elevations in mesic to wet areas.

- *Setaria verticillata* (bristly foxtail), a tufted annual grass native to Europe, with culms up to 3 ft (1 m) tall, is naturalized on Kure, Midway, and Pearl and Hermes atolls; French Frigate Shoals; Nihoa; and all the main Hawaiian Islands (O'Connor 1999, p. 1593; HBMP 2010). The sticky seed heads are readily moved by animals and human activity (PIER 2008). This species outcompetes native plants in coastal and lowland dry areas.

- *Sphaeropteris cooperi* (previously *Cyathea cooperi*; Australian tree fern) is a large tree fern, 13 ft (4 m) tall, with individual fronds extending over 13 ft (4 m) (Palmer 2003, pp. 243–244). It is native to Australia and was introduced to Hawaii for use in landscaping, and now naturalized on Kauai, Oahu, Maui, Lanai, and Hawaii Island (Medeiros *et al.* 1992, p. 27; Wagner *et al.* 2012, p. 106). It can achieve high densities in lowland and montane Hawaiian forests, growing over 1 ft (0.3 m) per year (Jones and Clemesha 1976, p. 56), displacing native plant species. Understory disturbance by pigs facilitates the establishment of this tree fern (Medeiros *et al.* 1992, p. 30). It has been known to spread over 7 mi (12 km) through windblown dispersal of spores from plant nurseries (Medeiros *et al.* 1992, p. 29). This species has been documented in mesic and wet forest and in forest openings in wet areas.

- *Stachytarpheta* spp. are native to Cuba, Mexico, South America, West Indies, and tropical Asia. There are four known species naturalized in Hawaii: *Stachytarpheta australis* (on Kauai, Oahu, Maui, Lanai, and Hawaii Island), *S. cayennensis* (on all the main islands except Kahoolawe and Niihau), *S. jamaicensis* (on Midway Atoll, and all the main islands except Kahoolawe and Niihau), and *S. mutabilis* (on Kauai) (Wagner *et al.* 1999, pp. 1321–1324). These annual or perennial herbs or subshrubs occur in coastal, lowland dry, and mesic areas, and form dense stands (PIER 2011–2013, in litt.). Used intentionally as ornamental plants, seeds are dispersed by vehicles, by movement of soils from gardens, and by rainwater. *Stachytarpheta jamaicensis* is declared a noxious weed in Australia. According to the HWRA assessment, *S. cayennensis* and *S. mutabilis* are species with a high risk of invasiveness or a high risk of becoming serious pests (PIER 2011–2013, in litt.).

- *Stapelia gigantea* (giant toad plant) is a succulent, cactus-like plant native to tropical Africa and Mozambique, and is naturalized on Oahu, Molokai, and Maui in lowland dry forest and open

areas (Wagner *et al.* 1999, p. 241; Wagner *et al.* 2012, p. 8). This species outcompetes native plants for space and water.

- *Syzygium cumini* (java plum), a 66 ft- (20 m-) tall tree native to India, Ceylon, and Malesia, is widely cultivated and now naturalized in Hawaii in lowland mesic and dry cliff habitat on all the main islands except Kahoolawe and Niihau (Wagner *et al.* 1999, p. 975). It forms dense cover, excluding all other species, and prevents the reestablishment of native forest plants. The large, black fruit is dispersed by frugivorous birds and feral pigs (PIER 2008).

- *Syzygium jambos* (rose apple), a 50 ft (15 m) tall tree, brought to Hawaii from Rio de Janeiro in 1825, is naturalized on all the main Hawaiian islands except Kahoolawe and Niihau (Wagner *et al.* 1999, p. 975). Fruit are dispersed by birds, humans, and possibly feral pigs. This tree is particularly detrimental to native ecosystems because it does not need disturbance to become established, and can germinate and thrive in shade, eventually overtopping and replacing native canopy trees (U.S. Army Garrison 2006, p. 2–1–23). This species occurs in lowland mesic to wet sites, primarily in valleys (Wagner *et al.* 1999, p. 975).

- *Tecoma stans* (yellow elder) is a shrub or small tree (32 ft (10 m)) that forms dense stands that inhibit regeneration of native species. Native to Northern and Central America, Argentina, and the West Indies, *T. stans* is naturalized on Oahu, Maui, and Hawaii Island (Wagner *et al.* 1999, p. 389). Its seeds are wind-dispersed (PIER 2008). This species occurs in lowland mesic to dry cliff habitat (Wagner *et al.* 1999, p. 389).

- *Tibouchina herbacea* (glorybush), an herb or shrub up to 3 ft (1 m) tall, is native to southern Brazil, Uruguay, and Paraguay. In Hawaii, it is naturalized and abundant in lowland to montane wet forest and cliffs on Molokai, Lanai, Maui, and Hawaii Island (Almeda 1999, p. 915; Wagner *et al.* 2012, p. 52). This species forms dense thickets, crowding out all other plants, and inhibiting regeneration of native plants (Motooka *et al.* 2003, in litt.). All members of the Melastomataceae family are included in the Hawaii State Noxious Weed List (HAR Title 4, Subtitle 6, Chapter 68).

- *Toona ciliata* (Australian red cedar) is a fast-growing, almost 100 ft (30 m) tall tree, with wind-dispersed seeds and an open, spreading crown that overtops and displaces native forest (Wagner *et al.* 1999, p. 920; Koala Native Plants 2005). This species, native to India,

southeastern Asia, and Australia, occurs in lowland mesic to cliff habitat on all the main Hawaiian islands except Kahoolawe and Niihau (Wagner *et al.* 1999, p. 920; Wagner *et al.* 2012, p. 52).

- *Ulex europaeus* (gorse), a woody legume up to 12 ft (4 m) tall and covered with spines, is native to Western Europe and is now naturalized in montane wet and mesic habitat on Molokai, Maui, and Hawaii Island (Geesink 1999, pp. 715–716; Wagner *et al.* 2012, p. 43). It is cultivated and a hedge and fodder plant, and was inadvertently introduced to Hawaii before 1910, with the establishment of the wool industry (Tulang 1992, pp. 577–583; Geesink 1999, pp. 715–716). Gorse produces numerous seeds, which are widely spread by explosive opening of the pods (Mallinson 2011, in litt.). It can rapidly form extensive, dense and impenetrable infestations, and outcompetes native plants, preventing their establishment. Dense patches can also pose a fire hazard (Mallinson 2011, in litt.). Over 20,000 ac (8,100 ha) are infested by gorse on the island of Hawaii, and over 15,000 ac (6,100 ha) are infested on Maui (Tulang 1992, pp. 577–583). Gorse is included on the Hawaii State Noxious Weed List (HAR Title 4, Subtitle 6, Chapter 68).

- *Urochloa maxima* (previously *Panicum maximum*, guinea grass), native to Africa, is cultivated as an important forage grass throughout the tropics and is naturalized on Midway (Sand Island) and all the main Hawaiian Islands (Davidse 1999, p. 1569; Wagner *et al.* 2012, p. 97). This tall grass (10 ft (3 m)) produces profuse seeds that are spread by wind, birds, and water. It is strongly allelopathic and can form dense stands that exclude native species (PIER 2007). It regenerates rapidly from underground rhizomes after a fire (PIER 2007). This species has been documented in open, coastal areas, cliffs, and open areas of lowland wet forest (PIER 2007).

- *Urochloa mutica* (previously *Brachiaria mutica*, California grass) is a sprawling perennial grass with culms up to 20 ft (6 m) long. Native to Africa, it is now pantropical, and naturalized in Hawaii on Midway Atoll and all the main islands except Kahoolawe and Niihau (O'Connor 1999, p. 1504; PIER 2012; Wagner *et al.* 2012, p. 89). This species forms dense floating mats in open water, and monotypic stands along streams, ditches, and roadsides in wet habitat. It has mild allelopathic activity, outcompetes native species, and prevents their reestablishment (Chou and Young 1975 in PIER 2012). This grass is also fire-adapted, and dead leaves provide a high fuel load.

According to the HWRA assessment, *U. mutica* has a high risk of invasiveness or a high risk of becoming a serious pest (PIER 2012).

- *Verbesina encelioides* (golden crown-beard) is a tap-rooted, annual herb native to Mexico and the southwestern United States (Wagner *et al.* 1999, p. 372). This plant has a number of traits that allow it to outcompete native plants, including tolerance of a wide range of growing conditions, rapid growth, allelopathic effects on other plants, and high seed production and dispersal with high germination rates. In addition, it is poisonous to livestock (Shluker 2002, pp. 3–4, 7–8). *Verbesina* has become a widespread and aggressive weed on both Midway Atoll and Kure Atoll, where it interferes with seabird nesting and inhibits native plant growth (Shluker 2002, pp. 3–4, 8). This species has been documented in coastal habitat on Kure Atoll, Midway Atoll, Pearl and Hermes, and all of the main Hawaiian Islands except for Niihau (Wagner *et al.* 1999, p. 372; Wagner *et al.* 2012, p. 16).

- *Youngia japonica* (oriental hawkbeard), an annual herb 3 ft (1 m) tall and native to southeastern Asia, is now a pantropical weed (Wagner *et al.* 1999, p. 377). In Hawaii, this species occurs on all the main islands except Kahoolawe and Niihau. *Youngia japonica* can invade intact lowland and montane native wet forest, where it displaces native species (Wagner *et al.* 1999, p. 377).

#### Habitat Destruction and Modification by Fire

Six of the 11 ecosystems (coastal, lowland dry, lowland mesic, montane mesic, montane dry, and subalpine) are at risk of destruction and modification by fire. Fire is an increasing, human-exacerbated threat to native species and ecosystems in Hawaii. The pre-settlement fire regime in Hawaii was characterized by infrequent, low-severity events, as few natural ignition sources existed (Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, pp. 395–397). It is believed that prior to human colonization, fuel was sparse in wet plant communities and only seasonally flammable in mesic and dry plant communities. The only ignition sources were volcanism and lightning (Baker *et al.* 2009, p. 43). Although Vogl (1969, *in* Cuddihy and Stone 1990, p. 91) proposed that naturally occurring fires may have been important in the development of some of the original Hawaiian flora, Mueller-Dombois (1981, *in* Cuddihy and Stone 1990, p. 91) asserts that most natural vegetation types of Hawaii would not carry fire

before the introduction of alien grasses. Smith and Tunison (*in* Cuddihy and Stone 1990, p. 91) state that native plant fuels typically have low flammability. Existing fuel loads were often discontinuous, and rainfall in many areas on most islands was moderate to high. Fires inadvertently or intentionally set by the Polynesian settlers probably contributed to the initial decline of native vegetation in the drier plains and foothills. These early settlers practiced slash-and-burn agriculture that created open lowland areas suitable for the opportunistic invasion and colonization of nonnative, fire-adapted grasses (Kirch 1982, pp. 5–6, 8; Cuddihy and Stone 1990, pp. 30–31). Beginning in the late 18th century, Europeans and Americans introduced plants and animals that further degraded native Hawaiian ecosystems. Ranching and the creation of pasturals in particular created highly fire-prone areas of nonnative grasses and shrubs (D'Antonio and Vitousek 1992, p. 67). Although fires were infrequent in mountainous regions, extensive fires have recently occurred in lowland dry and lowland mesic areas, leading to grass-fire cycles that convert native dry forest and native wet forest to nonnative grassland (D'Antonio and Vitousek 1992, p. 77).

Because of the greater frequency, intensity, and duration of fires that have resulted from the human alteration of landscapes and the introduction of nonnative plants, especially grasses, fires are now more destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire often kills most native trees and shrubs in the area (D'Antonio and Vitousek 1992, p. 74). Fire destroys dormant seeds of these native species, as well as the individual plants and animals themselves, even in steep, inaccessible areas or near streams and ponds. Successive fires remove habitat for native species by altering microclimate conditions, creating conditions more favorable to nonnative plants. Nonnative grasses (*e.g.*, *Cenchrus setaceus*; fountain grass), many of which may be fire-adapted, produce a high fuel load that allow fire to burn areas that would not otherwise burn easily, regenerate quickly after fire, and establish rapidly in burned areas (Fujioka and Fujii 1980 *in* Cuddihy and Stone 1990, p. 93; D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122). Native woody plants may recover to some degree, but fire tips the competitive balance toward nonnative species (National Park Service 1989 *in* Cuddihy and Stone

1990, p. 93). During a post-burn survey on Hawaii Island, in an area of native *Diospyros* forest with undergrowth of the nonnative grass *Pennisetum setaceum* [*Cenchrus setaceus*], Takeuchi noted that “no regeneration of native canopy is occurring within the Puuwaawaa burn area” (Takeuchi 1991, p. 2). Takeuchi also stated that “burn events served to accelerate a decline process already in place, compressing into days a sequence which would ordinarily have taken decades” (Takeuchi 1991, p. 4), and concluded that, in addition to increasing the number of fires, the nonnative *Pennisetum* acted to suppress establishment of native plants after a fire (Takeuchi 1991, p. 6).

For many decades, fires have impacted rare or endangered species and their habitat on Molokai, Lanai, and Maui (Gima 1998, *in* litt.; Hamilton 2009, *in* litt.; Honolulu Advertiser 2010, *in* litt.; Pacific Disaster Center 2011, *in* litt.). These three islands experienced approximately 1,290 brush fires between 1972 and 1999 that burned a total of 64,250 ac (26,000 ha) (County of Maui 2009, ch. 3, p. 3; Pacific Disaster Center 2011, *in* litt.). Between 2000 and 2003, the annual number of wildfires on these islands jumped from 118 to 271; several of these alone burned more than 5,000 ac (2,023 ha) (Pacific Disaster Center 2011, *in* litt.). On Molokai, between 2003 and 2004, three wildfires each burned 10,000 ac (4,050 ha) (Pacific Disaster Center 2011, *in* litt.). From August through early September 2009, a wildfire burned approximately 8,000 ac (3,237 ha), including 600 ac (243 ha) of the remote Makakupaia section of the Molokai Forest Reserve, a small portion of TNC's Kamakou Preserve, and encroached on Onini Gulch, Kalamaula, and Kawela (Hamilton 2009, *in* litt.). Species proposed for listing in this rule at risk of wildfire on Molokai include the plants *Nothoecstrum latifolium*, *Portulaca villosa*, *Ranunculus mauiensis*, and *Schiedea pubescens*, *Solanum nelsonii*; the orangeblack Hawaiian damselfly; and the yellow-faced bees *Hylaeus anthracinus*, *H. facilis*, *H. hilaris*, and *H. longiceps*.

Several wildfires have occurred on Lanai in the last decade. In 2006, a wildfire burned 600 ac (243 ha) between Manele Road and the Palawai Basin, about 3 mi (4 km) south of Lanai City (The Maui News 2006, *in* litt.). In 2007, a brush fire at Mahana burned about 30 ac (12 ha), and in 2008, another 1,000 ac (405 ha) were burned by wildfire in the Palawai Basin (The Maui News 2007, *in* litt.; KITV Honolulu 2008, *in* litt.). Species proposed for listing in this

rule at risk of wildfire on Lanai include the plants *Exocarpos menziesii*, *Nothoecstrum latifolium*, and *Portulaca villosa*, the orangeblack Hawaiian damselfly, and yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, and *H. longiceps*.

On west Maui, wildfires burned more than 8,650 ac (3,501 ha) between 2007 and 2010 (Honolulu Advertiser 2010, in litt.; Shimogawa 2010, in litt.). These fires encroached into the West Maui Forest Reserve, on the ridges of Olowalu and Kealaloloa, habitat for several endangered plants. On east Maui, in 2007, a fire consumed over 600 ac (240 ha), increasing invasion of the area by nonnative *Pinus* spp. (Pacific Disaster Center 2007, in litt.; The Maui News 2011, in litt.). Species proposed for listing in this rule at risk of wildfire on west and east Maui include the plants *Festuca hawaiiensis*, *Nothoecstrum latifolium*, *Ochrosia haleakalae*, *Phyllostegia stachyoides*, *Portulaca villosa*, *Ranunculus mauiensis*, *Sanicula sandwicensis*, *Schiedea pubescens* and *Solanum nelsonii*; and the animals, the orangeblack Hawaiian damselfly; and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, and *H. longiceps*.

Several recent fires on Oahu in the Waianae Mountain range have impacted rare or endangered species. Between 2004 and 2005, wildfires burned more than 360 ac (146 ha) in Honouliuli Preserve, home to more than 90 rare and endangered plants and animals (TNC 2005, in litt.). In 2006, a fire at Kaena Point State Park burned 60 ac (24 ha), and encroached on endangered plants in Makuia Military Training Area. In 2007, there was a significant fire at Kaukonahua that crossed 12 gulches, eventually encompassing 5,655 ac (2,289 ha) and negatively impacted eight endangered plant species and their habitat (*Abutilon sandwicense*, *Bonamia menziesii*, *Colubrina oppositifolia*, *Eugenia koolauensis*, *Euphorbia haeleleana*, *Hibiscus brackenridgei* ssp. *mokuleianus*, *Nototrichium humile*, and *Schiedea hookeri*) (U.S. Army Garrison 2007, Appendices pp. 1–5). This fire provided ingress for nonnative ungulates (cattle, goats, and pigs) into previously undisturbed areas, and opened dense native vegetation to the invasive grass *Urochloa maxima* (*Panicum maximum*, guinea grass), also used as a food source by cattle and goats. The grass was observed to generate blades over 2 feet in length only 2 weeks following the fire (U.S. Army Garrison 2007, Appendices pp. 1–5). In 2009, two smaller fires burned 200 ac (81 ha) at Manini Pali (Kaena Point State Park) and almost 4 ac (1.5 ha) at

Makua Cave. Both of these fires burned into area designated as critical habitat, although no individual plants were directly affected (U.S. Army Natural Resource Program 2009, Appendix 2, 17 pp.). Most recently, in 2014, two fires impacted native forest, one in the Oahu Forest National Wildlife Refuge (350 ac, 140 ha), on the leeward side of the Koolau Mountains (DLNR 2014, in litt.), and one above Makakilo, in the Waianae Mountains, just below Honouliuli FR, burning more than 1,000 ac (400 ha) (KHON 2014, in litt.). The Makakilo fire took over two 2 weeks to contain. Species proposed for listing in this rule at risk of wildfire on Oahu include the plants *Joinvillea ascendens* ssp. *ascendens*, *Nothoecstrum latifolium*, *Portulaca villosa*, and *Sicyos lanceoloideus*, and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. kuakea*, *H. longiceps*, and *H. mana*.

In 2012 on Kauai, a wildfire that was possibly started by an unauthorized camping fire burned 40 ac (16 ha) in the Na Pali-Kona Forest Reserve on Milolii Ridge, forcing closure of a hiking trail. Fortunately, several threatened and endangered plants in the adjacent Kula Natural Area Reserve were not impacted (KITV 2012, in litt.). The same year, another wildfire burned over 650 ac (260 ha) on Hikimoe Ridge, and threatened the Puu Ka Pele section of Waimea Canyon State Park (Hawaii News Now 2012, in litt.; Star Advertiser 2012, in litt.). Species proposed for listing in this rule at risk of wildfire on Kauai include the plants *Joinvillea ascendens* ssp. *ascendens*, *Labordia lorenciana*, *Ranunculus mauiensis*, *Santalum involutum*, and *Sicyos lanceoloideus*.

In the driest areas on the island of Hawaii, wildfires are exacerbated by the uncontrolled growth of nonnative grasses such as *Cenchrus setaceus* (Fire Science Brief 2009, in litt.). Since its introduction to the island in 1917, this grass now covers more than 200 sq mi (500 sq km) of the leeward areas (Fire Science Brief 2009, in litt.). In the past 50 years, on the leeward side of Hawaii Island, three wildfires encompassed a total of 30,000 ac (12,140 ha) (Fire Science Brief 2009, in litt.). These wildfires traveled great distances, from 4 to 8 miles per hour (mph) (7 to 12 kilometers per hour (kph)), burning 2.5 ac (1 ha) to 6 ac (2.5 ha) per minute (the equivalent of 6 to 8 football fields per minute) (Burn Institute 2009, p. 4). Between 2002 and 2003, three successive lava-ignited wildfires in the east rift zone of Hawaii Volcanoes National Park affected native forests in lowland dry, lowland mesic, and

lowland wet ecosystems (Joint Fire Science Program (JFSP) 2009, p. 3), cumulatively burning an estimated 11,225 ac (4,543 ha) (Wildfire News, June 9, 2003; JFSP 2009, p. 3). These fires destroyed over 95 percent of the canopy cover and encroached upon forest areas that were previously thought to have low susceptibility to wildfires. After the fires, nonnative ferns were observed in higher elevation rainforest where they had not been previously seen, and were believed to inhibit the recovery of the native *Metrosideros polymorpha* (ohia) trees (JFSP 2003, pp. 1–2). Nonnative grasses invaded the burn area, increasing the risk of fire encroaching into the surrounding native forest (Ainsworth 2011, in litt.). Extreme drought conditions also contributed to the number and intensity of wildfires on Hawaii Island (Armstrong and Media 2010, in litt.; Loh 2010, in litt.). This “extreme” drought classification for Hawaii was recently lifted to “moderate;” however, drier than average conditions persist, and another extreme drought event may occur (NOAA 2015, in litt.). In addition, El Niño conditions in the Pacific (see “Climate Change” under Factor E, below), a half-century of decline in annual rainfall, and intermittent dry spells have contributed to the conditions favoring wildfires in all the main Hawaiian Islands (Marcus 2010, in litt.). Species proposed for listing in this rule at risk of wildfire on Hawaii Island include the plants *Exocarpos menziesii*, *Festuca hawaiiensis*, *Ochrosia haleakalae*, *Phyllostegia stacyoides*, *Portulaca villosa*, *Ranunculus mauiensis*, *Sanicula sandwicensis*, *Sicyos macrophyllus*, and *Solanum nelsonii*, and the yellow-faced bee *Hylaeus anthracinus*.

In summary, fire is a threat to 15 plant species (*Exocarpos menziesii*, *Festuca hawaiiensis*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia lorenciana*, *Nothoecstrum latifolium*, *Ochrosia haleakalae*, *Phyllostegia stacyoides*, *Portulaca villosa*, *Ranunculus mauiensis*, *Sanicula sandwicensis*, *Santalum involutum*, *Schiedea pubescens*, *Sicyos lanceoloideus*, *S. macrophyllus*, and *Solanum nelsonii*), and eight animal species (the orangeblack Hawaiian damselfly, and the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*) because these species or their habitat are located in or near areas that were burned previously, or in areas considered at risk of fire due to the cumulative and compounding effects of

drought and the presence of highly flammable nonnative grasses.

#### Habitat Destruction and Modification by Hurricanes

Ten of the 11 ecosystems (all except the anchialine pool ecosystem) are at risk of habitat destruction and modification by hurricanes. Hurricanes exacerbate the impacts from other threats such as habitat modification and destruction by ungulates and competition with nonnative plants. By destroying native vegetation, hurricanes open the forest canopy, thus modifying the availability of light, and create disturbed areas conducive to invasion by nonnative pest species (see “Specific Nonnative Plant Species Impacts,” above) (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 539–540). In addition, hurricanes adversely impact native Hawaiian stream habitat by defoliating and toppling vegetation, thus loosening the surrounding soil and increasing erosion. Along with catastrophic flooding, this soil and vegetative debris can be washed into streambeds (by hurricane-induced rain or subsequent rain storms), resulting in the scouring of stream bottoms and channels (Polhemus 1993, 88 pp.). Because many Hawaiian plant and animal species persist in low numbers and in restricted ranges, natural disasters such as hurricanes can be particularly devastating to the species (Mitchell *et al.* 2005, p. 4–3).

Hurricanes affecting Hawaii were only rarely reported from ships in the area from the 1800s until 1949. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands, 5 of which caused serious damage (Businger 1998, pp. 1–2). In November 1982, Hurricane Iwa struck the Hawaiian Islands with wind gusts exceeding 100 (mph) (160 kmh, 87 knots), causing extensive damage, especially on the islands of Kauai, Niihau, and Oahu (Businger 1998, pp. 2, 6). Many forest trees were destroyed (Perlman 1992, pp. 1–9), which opened the canopy and facilitated the invasion of nonnative plants into native forest (Kitayama and Mueller-Dombois 1995, p. 671). Hurricanes therefore have the potential to exacerbate the threat of competition with nonnative plants, as described in “Habitat Destruction and Modification by Nonnative Plants,” above. In September 1992, Hurricane Iniki, a category 4 hurricane with maximum sustained winds of 130 mph (209 kmh, 113 knots), passed directly over the island of Kauai and close to the island of Oahu, causing significant damage to Kauai and along Oahu’s southwestern coast (Blake *et al.* 2007, pp. 20, 24).

Biologists documented damage to the habitat of six endangered plant species on Kauai, and one plant on Oahu. Polhemus (1993, pp. 86–87) documented the extirpation of the scarlet Kauai damselfly (*Megalagrion vagabundum*, a species related to *M. xanthomelas* included in this listing proposal), from the entire Hanakapiai Stream system on the island of Kauai as a result of the impacts of Hurricane Iniki. Damage by future hurricanes could further impact the remaining native-plant dominated habitat areas that support rare plants and animals in native ecosystems of Kauai, Oahu, and other Hawaiian Islands (Bellingham *et al.* 2005, p. 681) (see “Climate Change” under Factor E, below).

In summary, hurricanes can exacerbate other habitat threats, such as competition with nonnative plants, as well as result in direct habitat destruction. This is a particular problem for the plant *Pritchardia bakeri*, the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, and all seven yellow-faced bees, (*Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*.)

#### Habitat Modification and Destruction Due to Landslides, Rockfalls, Treefall, Flooding, Erosion, and Drought

Habitat destruction and modification by landslides, rockfalls, treefall, flooding, erosion, and drought affect all 11 ecosystems (singly or in combination). Landslides, rockfalls, treefall, flooding, and erosion destabilize substrates, damage and destroy individual plants, and alter hydrological patterns resulting in changes to native plant and animal communities. In the open sea near Hawaii, rainfall averages 25 to 30 in (630 to 760 mm) per year, yet the islands may receive up to 15 times this amount in some places, caused by orographic features (topography) (Wagner *et al.* 1999, adapted from Price (1983) and Carlquist (1980), pp. 38–39). During storms, rain may fall at 3 in (76 mm) per hour or more, and sometimes may reach nearly 40 in (1,000 mm) in 24 hours, resulting in destructive flash-flooding in streams and narrow gulches (Wagner *et al.* 1999, adapted from Price (1983) and Carlquist (1980), pp. 38–39). Due to the steep topography in many mountainous areas on the Hawaiian Islands, disturbance caused by introduced ungulates exacerbates erosion and increases the potential for landslides, rockfalls, or flooding, which in turn damages or destroys native plants and disturbs habitat of the band-rumped storm-petrel (see Table 3).

These events have the potential to eliminate one or more isolated populations of a species that currently persists in low numbers and a limited geographic range, resulting in reduced redundancy and resilience of the species.

Landslides, rockfalls, treefall, flooding, and erosion are threats to 20 plant species (*Cyanea kauaulaensis*, *Cyclosorus boydiae*, *Deparia kaalaana*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Kadua fluviatilis*, *K. haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Ochrosia haleakalae*, *Phyllostegia brevidens*, *P. helleri*, *P. stachyoides*, *Portulaca villosa*, *Pseudognaphalium sandwicense* var. *molokaiense*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Sanicula sandwicensis*, *Schiedea pubescens*, and *Solanum nelsonii*), and the band-rumped storm-petrel, and the orangeblack Hawaiian damselfly. Destabilization of cliff habitat could lead to additional landslides and alteration of hydrological patterns, affecting the availability of soil moisture. Landslides can also modify and destroy riparian and stream habitat by direct physical damage, and create disturbed areas leading to invasion by nonnative plants, as well as damaging or destroying plants directly. *Kadua haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Phyllostegia brevidens*, and *P. helleri* are known only from a few individuals in single occurrences on cliffs or steep-walled stream valleys, and one landslide could lead to extirpation of the species by direct destruction. Monitoring data presented by the PEPP program and botanical surveys suggest that flooding is a likely threat to eight plant species (*Cyanea kauaulaensis*, *Cyclosorus boydiae*, *Deparia kaalaana*, *Labordia lorenciana*, *Phyllostegia stachyoides*, *Sanicula sandwicensis*, *Schiedea pubescens* and *Solanum nelsonii* as some individuals occur on stream banks (Wood *et al.* 2007, p. 198; PEPP 2011, pp. 162–164; Oppenheimer and Lorence 2012, pp. 20–21; PEPP 2013, p. 54; PEPP 2014, pp. 95, 142). The naiad life stage of the orangeblack Hawaiian damselfly could be impacted by flooding if most individuals are carried out of suitable habitat or into areas occupied by nonnative fish.

Drought has been reported to be a threat to nine plants (*Deparia kaalaana*, *Huperzia stemmermanniae*, *Phyllostegia stachyoides*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Sanicula sandwicensis*, *Schiedea pubescens*, *Sicyos lanceoloides*, and *Solanum nelsonii*), the orangeblack Hawaiian damselfly, and all seven yellow-faced bees proposed for listing in this rule

(Magnacca 2007b, pp. 181, 183; Polhemus 2008, p. 26; Chu *et al.* 2010, pp. 4887, 4891, 4898; PEPP 2011, pp. 162–164; Fortini *et al.* 2013, p. 2; PEPP 2013, p. 177; PEPP 2014, pp. 140–142, 154–156, 162, 166–167). Between 1860 and 2002, there were 49 periods of drought on Oahu; 30 periods of drought on Molokai, Lanai, and Maui; and at least 18 serious or severe drought events on Hawaii Island (Giambelluca *et al.* 1991, pp. 3–4; Hawaii Commission on Water Resource Management (CWRM) 2009a and 2009b; HDLNR 2009, pp. 1–6; Hawaii Civil Defense 2011, pp. 14–1–14–12). The most severe drought events over the past 15 years were associated with the El Niño phenomenon (Hawaii Civil Defense 2011, p. 14–3). In 1998, the city of Hilo had the lowest January total rainfall (0.014 in) ever observed for any month since records have been kept, with average rainfall being almost 10 in for January (Hawaii Civil Defense 2011, p. 14–3). Currently, the State remains under abnormally dry to moderate drought conditions, with the onset of another El Niño event (U.S. Drought Monitor 2015, in litt.; National Weather Service 2015, in litt.). Drought events dry up streams, irrigation ditches, and reservoirs, and deplete groundwater supplies (Hawaii CWRM 2009a and 2009b). Desiccation of these water sources directly reduces or eliminates habitat suitable for the larval stage of the orangeblack Hawaiian damselfly to grow and mature, as well as reduces habitat for the damselfly's adult stage to hunt prey. Drought leads to increases in the number of forest and brush fires, leading to a reduction of native plant cover over streams and ponds used by the orangeblack Hawaiian damselfly (Giambelluca *et al.* 1991, p. v; D'Antonio and Vitousek 1992, pp. 77–79). Recent episodes of drought have also driven axis deer farther into forested areas in search of food, increasing their negative impacts on native vegetation from herbivory, bark stripping, and trampling (see “C. Disease or Predation,” below) (Waring 1996, in litt; Nishibayashi 2001, in litt.). Drought events have the potential to eliminate one or more isolated populations of a species that currently persists in low numbers and a limited geographic range, resulting in reduced redundancy and resilience of the species.

#### Habitat Destruction and Modification by Water Extraction

Freshwater habitats on all the main Hawaiian Islands have been severely altered and degraded because of past and present land and water management practices, including agriculture; urban

development; and development of ground water, perched aquifer, and surface water resources (Harris *et al.* 1993, p. 11; Meier *et al.* 1993, p. 181). Extensive modification of lentic (standing water) habitat in the Hawaiian Islands began about 1100 A.D. with a rapid increase in the human population (Harris *et al.* 1993, p. 9; Kirch 1982, pp. 5–6). Hawaiians cultivated *Colocasia esculenta* (kalo, taro) by creating shallow, walled ponds, called loi, in marshes and riparian areas (Meier *et al.* 1993, p. 181; Handy and Handy 1972, p. 58). By 1778, virtually all valley bottoms with permanent stream flow and most basin marshes were converted to taro cultivation (Handy and Handy 1972, pp. 396, 411). Hawaiians also modified wetlands by constructing fishponds, many of which were primarily fresh water, fed by streams or springs (Meier *et al.* 1993, p. 181). Despite this habitat modification by early Hawaiians, many areas of extensive marshland remained intact and were utilized by the native damselflies. Over time, however, many of the wetlands formerly used for taro were drained and filled for dry-land agriculture or development (Stone 1989, p. 129; Meier *et al.* 1993, pp. 181–182). In addition, marshes are slowly filled and converted to meadow habitat due to increased sedimentation resulting from increased storm water runoff from upslope development and blockage of downslope drainage (Wilson Okamoto and Associates, Inc. 1993, p. 3–5). Presently the most significant threat to the remaining natural ponds and marshes in Hawaii, habitat for the orangeblack Hawaiian damselfly, is the nonnative grass species *Urochloa mutica* (*Brachiaria mutica*, California grass). This sprawling, perennial grass was first observed on Oahu in 1924, and now occurs on all the main Hawaiian islands (O'Connor 1999, p. 1504). This species forms dense, monotypic stands that can completely eliminate any open water by layering of its trailing stems (Smith 1985, p. 186). Similar to the loss of wetlands in Hawaii, the loss of streams has been significant and began with the early Hawaiians who modified stream systems by diverting water to irrigate taro. However, these Hawaiian-made diversions were closely regulated and were not permitted to take more than half the stream flow, and were typically used to flood taro loi only periodically (Handy and Handy 1972, pp. 58–59). The advent of sugarcane plantations in 1835 led to more extensive stream diversions. These systems were typically designed to tap water at upper elevation sources (above 980 ft (300 m)) by means of concrete

weirs. All or most of the stream flow was diverted into fields or reservoirs (Takasaki *et al.* 1969, p. 65; Harris *et al.* 1993, p. 10). By the 1930s, major water diversions had been developed on all the main islands, and currently one-third of Hawaii's perennial streams are diverted (Harris *et al.* 1993, p. 10). In addition to diverting water for agriculture and domestic water supply, streams have been diverted for use in producing hydroelectric power (Hawaii Stream Assessment 1990, p. 96). Surface flow has also been diverted into channels, and the perched aquifers which fed the streams have been tapped by means of tunnels (Stearns and Vaksvik 1935, pp. 365, 378–434; Stearns 1985, pp. 291, 301–303). Many of these aquifers are the sources of springs, which contribute flow to streams. The draining of these aquifers may cause springs to become dry (Stearns and Vaksvik 1935, pp. 380, 388). Most remaining streams that are not already diverted have been, and continue to be, degraded by the activities of feral ungulates and by nonnative plants. Channelization has not been restricted to lower reaches, and it results in the loss of riparian vegetation, increasing flow velocity, illumination, and water temperature (Parrish *et al.* 1984, pp. 83–84). These conditions make the channels unsuitable as habitat for the orangeblack Hawaiian damselfly.

#### Habitat Destruction and Modification by Climate Change

Climate change may have impacts to the habitat of the 49 species. Discussion of these impacts is included in our complete discussion of climate change in the section “E. Other Natural or Manmade Factors Affecting Their Continued Existence,” below.

#### Summary of Factor A

Destruction and modification of the habitat of each of the 49 species addressed in this proposed rule is occurring throughout the entire range of each of the species. These impacts include the effects of introduced ungulates, nonnative plants, fire, hurricanes, landslides, rockfalls, treefall, flooding, erosion, drought, water extraction, and the direct or cumulative effects of climate change.

The threat of habitat destruction and modification by agriculture and urban development is an ongoing threat to four plant species (*Nothoecstrum latifolium*, *Portulaca villosa*, *Pseudognaphalium sandwicensium* var. *molokaiense*, and *Solanum nelsonii*); the orangeblack Hawaiian damselfly; the anchialine pool shrimp *Procaris hawaiiiana*; and the yellow-faced bees *Hylaeus anthracinus*,

*H. assimulans*, *H. facilis*, *H. hilaris*, and *H. longiceps*, as the conversion of terrestrial and aquatic habitats for urban use modifies or permanently removes habitat, the host plants, and aquatic features required by these species for their life-history needs.

The threat of habitat destruction and modification by ungulates is ongoing as ungulates currently occur in all ecosystems on which these species depend except the anchialine pool system. Introduced ungulates pose a threat to the 37 of the 39 plants (all except for *Cyanea kauaulaensis* and *Hypolepis hawaiiensis* var. *mauiensis*), and 9 of the 10 animal species (all except for the anchialine pool shrimp), that are proposed for listing in this rule that occur in these 10 ecosystems (see Table 3) because ungulates: (1) Directly impact the species by trampling and grazing; (2) increase soil disturbance and erosion; (3) create open, disturbed areas conducive to nonnative plant invasion and establishment by dispersing fruits and seeds, which results in conversion of a native-dominated plant community to a nonnative-dominated plant community; and (4) increase marsh and stream disturbance and sedimentation, which affects the aquatic and anchialine pool habitats.

Habitat destruction and modification by nonnative plants represents an ongoing threat to 36 of the 39 plant species (all except for *Exocarpos menziesii*, *Huperzia stemmermanniae*, and *Joinvillea ascendens* ssp. *ascendens*), the orangeblack Hawaiian damselfly, and all seven yellow-faced bee species addressed in this proposed rule because they: (1) Adversely impact microhabitat by modifying the availability of light; (2) alter soil-water regimes; (3) modify nutrient cycling processes; (4) alter fire ecology, leading to incursions of fire-tolerant nonnative plant species into native habitat; and (5) outcompete, and possibly directly inhibit (through allelopathy) the growth of, native plant species. Each of these threats can convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35). This conversion has negative impacts on 44 of the 49 species addressed here.

The threat of habitat destruction and modification by fire to 15 plant species (*Exocarpos menziesii*, *Festuca hawaiiensis*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia lorenciana*, *Nothoecstrum latifolium*, *Ochrosia haleakalae*, *Phyllostegia stachyoides*, *Portulaca villosa*, *Ranunculus mauiensis*, *Sanicula sandwicensis*, *Santalum involutum*, *Schiedea*

*pubescens*, *Sicyos lanceoloideus*, *S. macrophyllus*, and *Solanum nelsonii*), the orangeblack Hawaiian damselfly, and all seven yellow-faced bee species in this proposed rule is ongoing because fires occur frequently, and damage and destroy native vegetation, including dormant seeds, seedlings, and juvenile and adult plants, and host plants. Many nonnative invasive plants, particularly fire-tolerant grasses, create more destructive fires, invade burned areas, and can outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122). Successive fires that burn farther and farther into native habitat destroy the ecosystem and its components upon which these 23 species depend.

Habitat destruction and modification by natural disasters such as hurricanes represent a threat to the plant *Pritchardia bakeri*, the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, and all seven yellow-faced bee species addressed in this proposed rule. Hurricanes open the forest canopy, modifying available light and creating disturbed areas that are conducive to invasion by nonnative plants (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 346–347). The discussion under “Habitat Destruction and Modification by Nonnative Plants,” above, provides additional information related to canopy gaps, light availability, and the establishment of nonnative plant species. In addition, hurricanes can alter and directly damage streams and wetlands used by the orangeblack Hawaiian damselfly (Polhemus 1993, pp. 86–87). The impacts from hurricanes can be particularly devastating to 10 species addressed in this proposed rule because they persist in low numbers in restricted ranges, and are therefore less resilient to such disturbances. A single destructive hurricane holds the potential of driving to extinction the species that persist as one or several small, isolated populations.

Landslides, rockfalls, treefall, flooding, and erosion adversely impact 20 plant species (*Cyanea kauaulaensis*, *Cyclosorus boydiae*, *Deparia kaalaana*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Kadua fluviatilis*, *K. haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Ochrosia haleakalae*, *Phyllostegia brevidens*, *P. helleri*, *P. stachyoides*, *Portulaca villosa*, *Pseudognaphalium sandwicense* var. *molokaiense*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Sanicula sandwicensis*, and *Schiedea pubescens*, and *Solanum nelsonii*), and the band-rumped storm-petrel, and the orangeblack Hawaiian

damselfly, which are proposed for listing in this rule, by destabilizing substrates, damaging and killing individuals, and altering hydrological patterns. These impacts result in habitat destruction or modification, and changes to native plant and animal communities. Drought threatens five nine plant species (*Deparia kaalaana*, *Huperzia stemmermanniae*, *Phyllostegia stachyoides*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Sanicula sandwicensis*, *Schiedea pubescens*, *Sicyos lanceoloideus*, and *Solanum nelsonii*), and the orangeblack Hawaiian damselfly, and all seven yellow-faced bee species addressed in this proposed rule, directly or by desiccation of streams and ponds, and the host plants upon which all seven yellow-faced bees depend.

Conversion of wetland and other aquatic habitat (*i.e.*, water extraction) for agriculture and urban development is an ongoing threat that is expected to continue into the future, and affects the orangeblack Hawaiian damselfly by removing habitat required for hunting and breeding. Water extraction impacts the orangeblack Hawaiian damselfly because it: (1) Reduces the amount and distribution of stream habitat; (2) reduces stream flow and habitat; and (3) leads to an increase in water temperature, negatively impacting the damselfly naiads by causing physiological stress. Loss of stream-course habitat affects *Cyclosorus boydiae* because this is the only habitat where this riparian species occurs. Water extraction may affect the delicate balance of the anchialine pool ecosystem, including salinity and biota, affecting habitat of the anchialine pool shrimp, *Procaris hawaiiiana*.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

We are not aware of any threats to 48 of the 49 species addressed in this proposed rule that would be attributed to overutilization for commercial, recreational, scientific, or educational purposes.

#### *Anchialine Pool Shrimp*

The Service has become aware of companies and private collectors using anchialine pool shrimp and related shrimp species for commercial sales of self-contained aquariums (Ecosphere Associates 2015, in litt.). One company located in Hawaii, Fuku Bonsai, has been using Hawaiian anchialine pool species for the aquarium hobby market for many years; however, they state they will soon be discontinuing sale of “micro-lobsters” (Fuku-Bonsai 2015, in



litt.). For commercial purposes, a Native Invertebrate Research and Collecting permit issued by DLNR-Division of Forestry and Wildlife is required to collect anchialine pool shrimp. All terrestrial and aquatic invertebrates (including anchialine pool shrimp) are protected under (1) the State of Hawaii Revised Statutes (1993) Chapter 195D–4-f License; and (2) DLNR Chapter 124 Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds. Collection is prohibited in State Natural Area Reserves (NARs) but not in State Parks or City and County property where some anchialine pools occur. Overcollection by the aquarium hobby market is a potential threat to the anchialine pool shrimp *Procaris hawaiiiana*. Collection is prohibited in the Ahihi-Kinau (Maui) and Manuka (Hawaii Island) NARs, but is not expressly prohibited at Lua O Palahemo (Hawaii Island). There is no regulatory protection of these shrimp at the remaining five anchialine pools outside of Manuka NAR that are known to contain *P. hawaiiiana*. We consider overcollection of this anchialine pool shrimp, *P. hawaiiiana*, to be an ongoing threat, because it can occur at any time.

#### C. Disease or Predation

##### Disease

We are not aware of any threats to the 49 species addressed in this proposed rule that would be attributable to disease.

##### Predation

Hawaii's plants and animals evolved in nearly complete isolation from continental influence. Successful, natural colonization of these remote volcanic islands is infrequent, and many organisms never succeeded in establishing populations. As an example, Hawaii lacks any native ants or conifers, has very few families of birds, and has only had two species of native land mammal, both insectivorous bats (Loope 1998, p. 748, Ziegler 2002, pp. 244–245). In the absence of grazing or browsing mammals, plants that became established did not need mechanical or chemical defenses against mammalian herbivory such as thorns, prickles, and toxins. As the evolutionary pressure to either produce or maintain such defenses was lacking, Hawaiian plants either lost or never developed these adaptations (Carlquist 1980, p. 173). Likewise, native Hawaiian birds and insects experienced no evolutionary pressure to develop antipredator mechanisms against mammals or invertebrates that were not historically present on the islands. The native flora

and fauna are thus particularly vulnerable to the impacts of introduced nonnative species, as discussed below.

##### Introduced Ungulates

In addition to the habitat impacts discussed above (see “Habitat Destruction and Modification by Introduced Ungulates,” under Factor A), grazing and browsing by introduced ungulates are a threat to the following 26 plant species in this proposal (see Table 3): *Asplenium diellaciniatum* (black-tailed deer); *Calamagrostis expansa* (pigs), *Cyclosorus boydiae* (pigs), *Exocarpos menziesii* (goats, sheep, mouflon), *Festuca hawaiiensis* (goats, sheep), *Gardenia remyi* (pigs, goats, deer), *Huperzia stemmermanniae* (cattle), *Joinvillea ascendens* ssp. *ascendens* (pigs, goats, deer), *Kadua fluviatilis* (pigs, goats), *Labordia lorenciana* (goats), *Microlepia strigosa* var. *mauiensis* (pigs), *Myrsine fosbergii* (pigs, goats), *Nothoecstrum latifolium* (pigs, goats, deer, black-tailed deer, sheep, mouflon), *Ochrosia haleakalae* (cattle), *Phyllostegia brevidens* (pigs, sheep), *P. stachyoides* (pigs, goats), *Portulaca villosa* (deer, mouflon), *Pseudognaphalium sandwicense* var. *molokaiense* (deer), *Ranunculus hawaiiensis* (pigs, cattle, mouflon), *R. mauiensis* (pigs, goats, deer, black-tailed deer, cattle), *Sanicula sandwicensis* (goats), *Santalum involutum* (black-tailed deer), *Schiedea pubescens* (deer, cattle), *Sicyos lanceoloideus* (goats), *S. macrophyllus* (mouflon, cattle), and *Solanum nelsonii* (deer, cattle).

##### Feral Pigs

We have direct evidence of ungulate damage to some of the plant species proposed for listing in this rule, but for many, due to their remote locations or lack of study, ungulate damage is presumed based on the known presence of these introduced ungulates in the areas where these species occur and the results of studies involving similar species or ecosystems conducted in Hawaii and elsewhere (Diong 1982, p. 160; Mueller-Dombois and Spatz, 1975, pp. 1–29; Hess 2008, 4 pp.; Weller *et al.* 2011, p. 8). For example, in a study conducted by Diong (1982, p. 160) on Maui, feral pigs were observed browsing on young shoots, leaves, and fronds of a wide variety of plants, of which over 75 percent were endemic species. A stomach-content analysis in this study showed that most of the pigs' food source consisted of the endemic *Cibotium* (hapuu, tree fern). Pigs were observed to fell native plants and remove the bark from standing plant of species in the genera *Cibotium*, *Clermontia*, *Coprosma*, *Hedyotis*

[*Kadua*], *Psychotria*, and *Scaevola*, resulting in larger trees and shrubs dying after a few months of repeated feeding (Diong 1982, p. 144). Beach (1997, pp. 3–4) found that feral pigs in Texas spread disease and parasites, and their rooting and wallowing behavior led to spoilage of watering holes and loss of soil through leaching and erosion. Rooting activity by pigs also decreased the survivability of some plant species through disruption at root level of mature plants and seedlings (Beach 1997, pp. 3–4; Anderson *et al.* 2007, in litt.). In Hawaii, pigs dig up forest ground cover consisting of delicate and rare species of orchids, ferns, mints, lobeliads, and other taxa, including their roots, tubers, and rhizomes (Stone and Anderson 1988, p. 137). The following plants are particularly at risk of herbivory by feral pigs: *Calamagrostis expansa* on Maui and Hawaii Island (HBMP 2010); *Cyclosorus boydiae* on Oahu (HBMP 2010); *Gardenia remyi* on Hawaii Island (PEPP 2011, pp. 113–114; PEPP 2012, p. 102), west Maui (HBMP 2010), Molokai (HBMP 2010), and Kauai (HBMP 2010); *Joinvillea ascendens* ssp. *ascendens* on Hawaii Island (PEPP 2011, pp. 120–121; PEPP 2012 p. 113; HBMP 2010), Kauai (PEPP 2014, p. 109; HBMP 2010), Maui (HBMP 2010), Molokai (HBMP 2010), and Oahu (HBMP 2010); *Kadua fluviatilis* on Kauai (HBMP 2010) and Oahu (HBMP 2010); *Microlepia strigosa* var. *mauiensis* on Maui (Bily 2009, in litt.; Oppenheimer 2007, in litt.); *Myrsine fosbergii* on Kauai (HBMP 2010); *Nothoecstrum latifolium* on Maui (PEPP 2011, p. 140; HBMP 2010) and Molokai (HBMP 2010); *Phyllostegia brevidens* on Maui and Hawaii Island (PEPP 2014, p. 36); *P. stachyoides* on Molokai (PEPP 2014, pp. 140–141); *Ranunculus hawaiiensis* on Hawaii Island (HBMP 2010); and *R. mauiensis* on Kauai (PEPP 2011, p. 161; PEPP 2013, p. 177; PEPP 2014, p. 156; HBMP 2010), Maui (PEPP 2011, p. 144; PEPP 2013, p. 177–178; PEPP 2014, p. 155; HBMP 2010), and Molokai (HBMP 2010). Feral pigs occur in 10 of the 11 ecosystems (all except anchialine pool) discussed in this proposal; the results of the studies described above suggest that foraging by pigs can directly damage and destroy these plants through herbivory. Feral pigs may also consume native host plants of the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, and *H. mana*.

##### Feral Goats

Feral goats are able to forage in extremely rugged terrain and are instrumental in the decline of native

vegetation in many areas of the Hawaiian Islands (Cuddihy and Stone 1990, p. 64; Clarke and Cuddihy 1980, p. C-20; van Riper and van Riper 1982, pp. 34–35; Tomich 1986, pp. 153–156). Feral goats consume a variety of plants for food and have been observed to browse on (but are not limited to) native plant species in the following genera: *Argyroxiphium*, *Canavalia*, *Chamaesyce*, *Erythrina*, *Plantago*, *Schiedea*, and *Stenogyne* (Cuddihy and Stone 1990, p. 64; Warren 2004, p. 462; Wood 2007, pers. comm.). A study conducted on the island of Hawaii demonstrated that native *Acacia koa* seedlings are unable to survive due to browsing and grazing by goats (Spatz and Mueller-Dombois 1973, p. 874). If goats remained in the area in high numbers, mature trees eventually died and with them the root systems that supported suckers and vegetative reproduction. When feral goats were excluded by fences for 3 years, there was a positive height-growth response of *A. koa* suckers (Spatz and Mueller-Dombois 1973, p. 873). Another study at Puuwaawaa on Hawaii Island demonstrated that prior to management actions in 1985, regeneration of endemic shrubs and trees in a goat-grazed area was almost totally lacking, contributing to the invasion of forest understory by exotic grasses and weeds. After the removal of goats, *A. koa* and native *Metrosideros* seedlings were observed germinating by the thousands (HDLNR 2002, p. 52). Based on these studies, and other comparisons of fenced and unfenced areas, it is clear that goats devastate native Hawaiian ecosystems (Loope *et al.* 1988, p. 277). Because feral goats occur in 10 of the 11 ecosystems (all except anchialine pool) discussed in this proposal, the results of the studies described above indicate that goats likely also alter these ecosystems and directly damage or destroy native plants. Browsing or grazing by feral goats poses a particular threat to the following plant species proposed for listing in this rule: *Exocarpos menziesii* on Hawaii Island (NTBG Herbarium Database 2014, in litt.), *Festuca hawaiiensis* on Hawaii Island (USFWS Rare Plant database 2010, in litt.), *Gardenia remyi* on Kauai (PEPP 2011, p. 114; PEPP 2013, p. 107; Kishida 2011, in litt.), *Joinvillea ascendens* ssp. *ascendens* on Kauai (PEPP 2010, p. 80), *Kadua fluviatilis* on Kauai (HBMP 2010), *Labordia lorenciana* on Kauai (PEPP 2011, p. 124; PEPP 2013, p. 126), *Myrsine fosbergii* on Kauai (HBMP 2010), *Nothoecstrum latifolium* on Maui (HBMP 2010), *Phyllostegia stachyoides* on Molokai (HBMP 2010), *Portulaca*

*villosa* on Hawaii Island (PEPP 2012, p. 140), *Ranunculus mauiensis* on Kauai and on Maui (PEPP 2011, p. 161; PEPP 2012, p. 144; PEPP 2013, pp. 177–178; PEPP 2014, p. 155–156; Kishida 2011, in litt.), *Sanicula sandwicensis* on Maui (PEPP 2011, p. 163), and *Sicyos lanceoloideus* on Kauai (PEPP 2012, p. 154; PEPP 2013, p. 189). In addition, feral goats may also damage or destroy native host plants of the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, and *H. kuakea*.

#### Axis Deer

Axis deer are known to consume a wide range of forage items throughout their native range and in areas where they have been introduced (Anderson 1999, p. 3). Although they prefer to graze on grass, axis deer have been documented to eat over 75 species of plants, including all plant parts (Anderson 1999, p. 3). They exhibit a high degree of opportunism regarding their choice of forage, and consume progressively less palatable plants until no edible vegetation remains (Dinerstein 1987, in Anderson 1999, p. 5; Medeiros 2010, pers. comm.). Axis deer on Maui follow a cycle of grazing and browsing in open lowland grasslands during the rainy season (November through March) and then migrating to the lava flows of montane mesic forest during the dry summer months to graze and browse on many native plant species, for example, *Abutilon menziesii* (kooloaula, listed endangered), *Erythrina sandwicensis* (wiliwili), and *Sida fallax* (Medeiros 2010, pers. comm.). During the El Niño drought cycles from 1988 through 2001, Maui experienced an 80 to 90 percent decline in native shrub species caused by axis deer browsing on and girdling young saplings (Medeiros 2010, pers. comm.). On Lanai, grazing by axis deer has been reported as a major threat to the endangered *Gardenia brighamii* (nau), and Swedberg and Walker (1978, in Anderson 2003, pp. 124–25) reported that the native plants *Osteomeles anthyllidifolia* (uulei) and *Leptecophylla tameiameia* (pukiawe) comprised more than 30 percent of axis deer rumen volume. During the driest summer months, axis deer are observed in coastal areas in search of food (Medeiros 2010, pers. comm.). Because axis deer occur in 10 of the 11 ecosystems on Molokai, Lanai, and Maui (all except anchialine pool), the results from the studies above, in addition to direct observations from field biologists, suggest that axis deer can also alter these ecosystems and directly damage or destroy native plants. Browsing or grazing by axis deer poses a particular

threat to the following plant species proposed for listing in this rule: *Gardenia remyi* on Molokai (HBMP 2010), *Huperzia stemmermanniae* on Maui (HBMP 2010), *Joinvillea ascendens* ssp. *ascendens* on Maui (PEPP 2014, pp. 108–109), *Nothoecstrum latifolium* on Lanai (PEPP 2012, p. 129), *Phyllostegia stachyoides* on Molokai (HBMP 2010), *Portulaca villosa* on Lanai (HBMP 2010), *Pseudognaphalium sandwicense* var. *molokaiense* on Molokai (Wood 2005, in litt.; Kallstrom 2008, in litt.; MNTF 2010), *Ranunculus mauiensis* on Maui (PEPP 2013, p. 178; PEPP 2014, pp. 154–155), *Schiedea pubescens* on Molokai and Lanai (Wood 2004, in litt.; Rowland 2006, in litt.; Oppenheimer 2001, in litt.), and *Solanum nelsonii* on Molokai (PEPP 2012, p. 156; PEPP 2013, pp. 190–191; PEPP 2014, p. 167). Axis deer may also damage or destroy habitat of the orangeblack Hawaiian damselfly and native host plants of the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, and *H. longiceps*.

#### Black-Tailed Deer

Black-tailed deer are extremely adaptable, and in their native range (U.S. Pacific coast) inhabit every principal ecosystem including open grasslands, agricultural land, shrubland, woodland, mountain forests, semi-deserts, and high mountain ecosystems (NRCS 2005, in litt.). Their home range size varies in the continental United States, but has been estimated to from 1 to 4 sq mi (2.5 to 10 km) and sometimes as large as 30 sq mi (78 sq km), with adults defending small areas when caring for fawns (NRCS 2005, in litt.). We do not know their home range size on Kauai; however, the island is only 562 sq mi (1,456 sq km) in size. Black-tailed deer are primarily browsers, but as they have a smaller rumen compared to other browsers in relation to their body size, they must select the most nutritious plants and parts of plants (Mule Deer Foundation 2011, in litt.). Their diet consist of a diversity of living, wilted, dry, or decaying vegetation, including leaves, needles, succulent stems, fruits, nuts, shrubs, herbaceous undergrowth, domestic crops, and grasses (NRCS 2005, in litt.). Black-tailed deer consume native vegetation on the island of Kauai (van Riper and van Riper 1982, pp. 42–43; Stone 1985, pp. 262–263; Tomich 1986, pp. 132–134, Cuddihy and Stone 1990, p. 67). In the 1990s, it was estimated there were about 350 animals in and near Waimea Canyon; however, in 2013 the population was estimated to be 1,000 to 1,200 animals in public

hunting areas (not including private lands), and was expanding into the southern and eastern sections of the island (Mule Deer Working Group 2013, in litt.). According to State records, black-tailed deer are feeding largely on the introduced species strawberry guava (*Psidium cattleianum*) and thimbleberry (*Rubus rosifolius*) as well as the native species *Alyxia stellata* (maile), *Dodonaea viscosa* (aalii), *Dianella sandwicensis* (ukiuki), *Coprosma* sp. (pilo), and *Acacia koa* (Cuddihy and Stone 1990, p. 67). Browsing by black-tailed deer poses a threat to the Kauai plant species *Asplenium diellaciniatum*, *Nothoecstrum latifolium*, *Ranunculus mauiensis*, and *Santalum involutum* proposed for listing here.

#### Mouflon and Sheep

Mouflon, feral domestic sheep, and mouflon-sheep hybrids browse native vegetation on Lanai and Hawaii Island. Domestic sheep have been raised on Kauai, Lanai, Kahoolawe, and Hawaii, but today sheep farming only occurs on Hawaii Island on Mauna Kea and Hualalai (Pratt and Jacobi in Pratt *et al.* 2009, p. 151). Sheep browse (eating shoots, leaves, flowers, and bark) on the native *Sophora chrysophylla* (mamane), the primary food source of the endangered forest bird, the palila (*Loxioides bailleui*) (Scowcroft and Sakai 1983, p. 495). Feral sheep reductions were initiated in palila habitat; however, even after most were removed, tree bark stripping continued and some mamane populations did not recover (Pratt and Jacobi in Pratt *et al.* 2009, p. 151). On Hawaii Island, vegetation browsing by mouflon led to the decline of the largest population of the endangered *Argyroxiphium kauense* (kau silversword, Mauna Loa silversword, or ahinahina), reducing it from a “magnificent population of several thousand” (Degener *et al.* 1976, pp. 173–174) to fewer than 2,000 individuals in a period of 10 years (unpublished data in Powell 1992, in litt.). Mamane is also preferred browse for mouflon, and according to Scowcroft and Sakai (1983, p. 495), mouflon eat the shoots, leaves, flowers, and bark of this species. Mouflon are also reported to strip bark from native koa trees and to seek out the native plants *Geranium cuneatum* (hinahina), *Sanicula sandwicensis*, and *Silene hawaiiensis*, as well as Lanai occurrences of *Gardenia brighamii* (Benitez *et al.* 2008, p. 57; Mehrhoff 1993, p. 11). While mouflon were introduced to Lanai and Hawaii Island as game mammals, a private game ranch on Maui has added mouflon to its stock, and it is likely that over time some individuals may escape

(Hess 2010, pers. comm.; Kessler 2010, pers. comm.). Browsing and grazing by mouflon, feral domestic sheep, and mouflon-sheep hybrids poses a particular threat to the following plant species proposed for listing in this rule: *Exocarpos menziesii* on Lanai and Hawaii Island (Keitt and Island Conservation 2008, pp. 90, 92; NPS 2013, pp. i, 124); *Festuca hawaiiensis* on Hawaii Island (Oppenheimer 2001, in litt.; HBMP 2007, in litt.); *Nothoecstrum latifolium* on Lanai (PEPP 2012, p. 129); *Phyllostegia brevidens* on Hawaii Island (PEPP 2014, p. 136); *Portulaca villosa* on Lanai (HBMP 2010); *Ranunculus hawaiiensis* on Hawaii Island (HBMP 2010); and *Sicyos macrophyllus* on Hawaii Island (HBMP 2010). As feral sheep and mouflon occur in all of the described ecosystems except for the anchialine pool ecosystem, the data from studies, cited above, suggest that herbivory by feral sheep and mouflon likely also pose a threat to the yellow-faced bees on Lanai (*Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, and *H. longiceps*), by eating their host plants.

#### Feral Cattle

Grazing by cattle is considered one of the most important factors in the destruction of Hawaiian forests (Baldwin and Fagerlund 1943, pp. 118–122). Feral cattle are currently found only on the islands of Molokai, Maui, and Hawaii (Tomich 1986, pp. 140–144; de Sa *et al.* 2013, 29 pp.). Cattle consume tree seedlings and browse saplings (Cuddihy 1984, p. 16). In Hawaii Volcanoes National Park (Hawaii Island), Cuddihy reported that there were twice as many native plant species as nonnatives in areas that had been fenced to exclude cattle (Cuddihy 1984, pp. 16, 34). Loss of the native sandalwood forest on Lanai is attributed to cattle (Skottsberg 1953 in Cuddihy 1984, p. 16). Browsing and grazing by feral cattle poses a particular threat to the following plant species proposed for listing: *Huperzia stemmermanniae* on Maui and Hawaii Island (Medeiros *et al.* 1996, p. 96); *Ochrosia haleakalae* on Maui (HBMP 2010); *Phyllostegia brevidens* on Hawaii Island (PEPP 2011, p. 144); *Ranunculus hawaiiensis* on Hawaii Island (HBMP 2010); *R. mauiensis* on Maui and Hawaii Island (PEPP 2012, p. 144; PEPP 2013, p. 178; PEPP 2014, pp. 154–155; HBMP 2010); *Schiedea pubescens* on Maui (Wood 2005, in litt.; HBMP 2010); *Sicyos macrophyllus* on Hawaii Island (PEPP 2010, p. 111; HBMP 2010); and *Solanum nelsonii* on Molokai (Wood 1999, in litt.; HBMP 2010). As feral cattle occur in six of the described

ecosystems (lowland dry, lowland mesic, lowland wet, montane wet, montane mesic, and subalpine) on Molokai, Maui, and Hawaii Island, the results from the studies cited above, in addition to direct observations from field biologists, suggest that grazing by feral cattle can directly damage or destroy these plants.

#### Blackbuck

The blackbuck antelope (*Antelope cervicapra*) is a species from India brought to a private game reserve on Molokai about 15 years ago from an Indian zoo (Kessler 2010, pers. comm.). According to Kessler (2010, pers. comm.), a few individuals escaped captivity and established a wild population of unknown size on the low, dry plains of western Molokai. Blackbuck primarily use grassland habitat for grazing. In India, foraging consumption and nutrient digestibility are high in the moist winter months and low in the dry summer months (Jhala 1997, pp. 1348, 1351). Although most plant species are grazed intensely when they are green, some are grazed only after they are dry (Jhala 1997, pp. 1348, 1351). While the possible habitat effects from the blackbuck antelope are unknown at this time, we consider this ungulate a potential threat to native plant species, including six plants that are known from dry areas on Molokai, and are proposed for listing in this rule (*Gardenia remyi*, *Nothoecstrum latifolium*, *Portulaca villosa*, *Pseudognaphalium sandwicense* var. *molokaiense*, *Ranunculus mauiensis*, and *Solanum nelsonii*). The blackbuck antelope may potentially threaten the yellow-faced bees *Hylaeus anthracinus*, *H. facilis*, *H. hilaris*, and *H. longiceps* proposed for listing in this rule by consuming their native host plants on Molokai.

#### Other Introduced Vertebrates

##### Rats

Three species of introduced rats occur in the Hawaiian Islands. Studies of Polynesian rat (*Rattus exulans*) DNA suggest they first appeared in the islands along with emigrants from the Marquesas Islands (French Polynesia) in about 400 A.D., with a second introduction around 1100 A.D. (Ziegler 2002, p. 315). The black rat (*R. rattus*) and the Norway rat (*R. norvegicus*) arrived in the islands more recently, as stowaways on ships sometime in the late 19th century (Atkinson and Atkinson 2000, p. 25). The Polynesian rat and the black rat are primarily found in rural and remote areas of Hawaii, in dry to wet habitats, while the Norway

rat is typically found in urban areas or agricultural fields (Tomich 1986, p. 41). The black rat is widely distributed throughout the main Hawaiian Islands and can be found in a range of ecosystems and as high as 9,000 ft (2,700 m), but it is most common at low- to mid-elevations (Tomich 1986, pp. 38–40). Sugihara (1997, p. 194) found both the black and Polynesian rats up to 7,000 ft (2,000 m) on Maui, but found the Norway rat only at lower elevations. Rats are omnivorous and eat almost any type of food (Nelson 2012, in litt.). Rats occur in seven of the described ecosystems (coastal, lowland mesic, lowland wet, montane wet, montane mesic, montane dry, and wet cliff), and predation by rats threatens 18 of the plants proposed for listing in this rule (*Calamagrostis expansa* (Maui and Hawaii Island; HBMP 2010), *Cyanea kauaulaensis* (Maui; PEPP 2012, pp. 71–72; PEPP 2014, p. 73), *Gardenia remyi* (Kauai; NTBG 2004), *Joinvillea ascendens* ssp. *ascendens* (Kauai, Oahu, Molokai, Maui, and Hawaii Island; PEPP 2014, p. 109), *Kadua haupuensis* (Kauai; Lorence *et al.* 2010, p. 140), *Labordia lorenciana* (Kauai; Wood *et al.* 2007, p. 198), *Phyllostegia helleri* (Kauai; HBMP 2010), *P. stachyoides* (Molokai, Maui, and Hawaii Island; PEPP 2012, p. 133; PEPP 2013, pp. 158–159; PEPP 2014, pp. 140–142), *Pritchardia bakeri* (Oahu; Hodel 2012, pp. 42, 73), *Ranunculus hawaiiensis* (Maui, Hawaii Island; HBMP 2010), *R. mauiensis* (Kauai, Oahu, Molokai, Maui, and Hawaii Island; HBMP 2010), *Sanicula sandwicensis* (Maui and Hawaii Island; PEPP 2012, p. 148), *Santalum involutum* (Kauai; Harbaugh *et al.* 2010, pp. 835–836), *Schiedea diffusa* ssp. *diffusa* (Molokai, Maui; HBMP 2010), *S. pubescens* (Molokai, Lanai, Maui; Wood 2010, in litt.; HBMP 2010), *Sicyos macrophyllus* (Maui and Hawaii Island; Pratt 2008, in litt.), *Solanum nelsonii* (NWHI, Niihau, Molokai, Maui, and Hawaii Island; PEPP 2012, p. 156; PEPP 2014, p. 167), and *Wikstroemia skottsbergiana* (Kauai; Mitchell *et al.* 2005, in litt.), and the band-rumped storm-petrel (Lehua, Niihau, Kauai, Maui, and Hawaii Island; Pyle and Pyle 2009, in litt.), proposed for listing in this rule.

Rat Impacts on Plants: Rats impact native plants by eating fleshy fruits, seeds, flowers, stems, leaves, roots, and other plant parts (Atkinson and Atkinson 2000, p. 23), and by stripping bark and cutting small branches (twig cutting) in search of moisture and nutrients, seriously affecting vigor and regeneration (Abe and Umeno 2011, pp. 27–39; Nelson 2012, in litt.). Studies in New Zealand have demonstrated that

differential regeneration as a consequence of rat predation alters species composition of forested areas (Cuddihy and Stone 1990, pp. 68–69). Rats have caused declines or even the total elimination of island plant species (Campbell and Atkinson 1999 in Atkinson and Atkinson 2000, p. 24). In the Hawaiian Islands, rats may consume as much as 90 percent of the seeds produced by some native plants, and in some cases prevent regeneration of forest species completely (Cuddihy and Stone 1990, pp. 68–69). Hawaiian plants with fleshy fruit, such as *Cyanea* and *Pritchardia*, are particularly susceptible to rat predation (Cuddihy and Stone 1990, pp. 67–69). Predation of seeds by rats poses an ongoing threat to all the Hawaiian *Pritchardia* palms, including *P. bakeri* proposed for listing in this rule, because rats are able to consume every seed in a fruiting stalk, preventing successful reproduction (Hodel 2012, pp. 42, 73). Fossil pollen records indicate that *Pritchardia* palms were once among the dominant species of coastal, lowland, and interior forests (Burney *et al.* 2001, pp. 630–631; Chapin *et al.* 2007, p. 21); today, complete coverage by all age classes of *Pritchardia* occurs only on small islets currently unoccupied by rats (Athens 2009, p. 1498). As rats occur in seven of the described ecosystems, the results from the studies cited above, in addition to direct observations by field biologists, suggest that predation by rats can directly damage or destroy native plants.

Rat Impacts on the Band-Rumped Storm-Petrel: Introduced predators are the most serious threat facing the band-rumped storm-petrel. Rats occur on all the main Hawaiian Islands, and populations are also high on Lehua; however, attempts to control rats on Lehua are ongoing (Parkes and Fisher 2011, 48 pp.). Ground-, crevice-, and burrow-nesting seabirds, as well as their eggs and young, are highly susceptible to predation by rats; storm-petrels are the most susceptible of seabirds to rat predation and have experienced population level impacts and extirpation as a result (Simons 1984, p. 1073; Jones *et al.* 2008, p. 20–21). Evidence from the islands of Hawaii and Maui show that the Hawaiian petrel, which nests in some of the same areas as the band-rumped storm-petrel, suffers huge losses to introduced predators (Johnston 1992, in litt.; Hodges and Nagata 2001, pp. 308–310; Hu *et al.* 2001, p. 234). The effects of introduced predators on the breeding success of the band-rumped storm-petrel are probably similar to the documented effects on the

breeding success of Hawaiian petrels because these birds are similarly vulnerable. Population modeling showed that consistent predation of Hawaiian petrels, where reproductive success was reduced to 35 percent and adult survival was 80 percent, could drive a population to extinction in 20 to 30 years (Simons 1984, pp. 1071–1073). Rat bones were collected from a band-rumped storm-petrel nest on a sheer cliff on Kauai, and two live rats were observed moving along small rock ledges in the same area (Wood *et al.* 2002, p. 8), demonstrating that even remote, and otherwise inaccessible nest sites are not safe from these predators. Because rats are present in all three ecosystems in which the band-rumped storm-petrel occurs (coastal, dry cliff, and wet cliff), predation by rats could further decrease the numbers and populations of the band-rumped storm-petrel, and we do not anticipate a reduction of this threat in the near future.

#### Barn Owl Impacts on the Band-Rumped Storm-Petrel

Two species of owls, the native pueo (*Asio flammeus sandwichensis*) and the introduced barn owl (*Tyto alba*), are known to prey on native birds. Between 1996 and 1998, 10 percent of nest failures of the endangered forest bird, the puaiohi (small Kauai thrush, *Myadestes palmeri*), on Kauai were attributed to owls (Snetsinger *et al.* 1994, p. 47; Snetsinger *et al.* 2005, pp. 72, 79). In the Galapagos, the short-eared owl (*Asio flammeus galapagoensis*), a close relative of the pueo, is the primary predator of juvenile and adult band-rumped storm-petrels, and took more storm-petrels than other seabirds in some months. Predation by owls (*Asio flammeus galapagoensis*) was greatest during the cold season and on non-breeders, which spend more time on the ground prospecting for nesting sites (Harris 1969 in Slotterback 2002, in litt.). Some predation avoidance behavior by band-rumped storm-petrels has been observed: Their nocturnal activity (feeding chicks only at night) and burrow-nesting habitat limit predation by gulls and frigatebirds, and non-reproductive birds decrease their activity (measured by fewer birds in flight and fewer vocalizations) around the period of the full moon to avoid predation (Bretagnolle 1990 in Slotterback 2002, in litt.); however, it is uncertain how effective this behavior is against predation by owls.

### Cat Impacts on the Band-Rumped Storm-Petrel

Cats (*Felis catus*) were introduced to Hawaii in the early 1800s and are present on all the main Hawaiian Islands (Tomich 1986, p. 101). Cats are notorious for their predation on birds (Tomich 1986, p. 102; Medina *et al.* 2011, pp. 3505–3507; Duffy and Capece 2012, pp. 176–177). Native mammalian carnivores are absent from oceanic islands because of their low dispersal ability, but once introduced, are significant predators on seabird colonies and terrestrial birds that are not adapted to predation by these animals (Nogales *et al.* 2013, p. 804; Ziegler 2002, p. 243; Scott *et al.* 1986, p. 363; Ainley *et al.* 1997, p. 24; Hess and Banko 2006, in litt.). Cats may have contributed to the extinction of the Hawaiian rail (*Porzana sandwichensis*) (Stone 1985 in Stone and Scott 1985, p. 266). Although cats are more common at lower elevations, there are populations in areas completely isolated from human presence, including montane forests and alpine areas of Maui and Hawaii Island (Lindsey *et al.* in Pratt *et al.* 2009, p. 277; Scott *et al.* 1986, p. 363). Examination of the stomach contents of feral cats at Hakalau Forest NWR (Hawaii Island) found native and introduced birds to be the most common prey item (Banko *et al.* 2004, p. 162). Cats are believed to prey on roosting or incubating adult band-rumped storm-petrels and young, as evidenced by carcasses found in Hawaii Volcanoes National Park depredated by cats (Hu, pers. comm. in Slotterback 2012, in litt.; Hess *et al.* 2008, pp. 11, 14). Causes of predation are better studied for the Hawaiian petrel, which is much larger in size but has nesting characteristics similar to those of the band-rumped storm-petrel. On Mauna Loa (Hawaii Island), feral cats were major predators of Hawaiian petrels (Hu *et al.* 2001, p. 234), and on Haleakala (Maui) almost half of the known mortalities of Hawaiian petrels between 1964 and 1996 were attributed to cats (Natividad Hodges and Nagata 2001, p. 312; Hu *et al.* 2001, p. 234). Population modeling of the Hawaiian petrel indicated that the petrel population would be unable to withstand any level of predation for long, and even with seemingly low levels of predation, the petrel population would be reduced by half in fewer than 30 years (Simon 1984, p. 1073). The band-rumped storm petrel is small in size, nests in burrows and rock-crevices, lacks co-evolved predator avoidance behavior, and has a lengthy incubation and fledgling period, making this species highly vulnerable to

predation by introduced mammals. Because feral cats occur in all three ecosystems in which the band-rumped storm petrel occurs, they are likely to be significant predators of these birds.

### Mongoose Impacts on the Band-Rumped Storm-Petrel

The small Indian mongoose (*Herpestes auropunctatus*) was introduced to Hawaii in 1883 to control rodents in sugar cane plantations (Tomich 1986, pp. 95–96). This species quickly became widespread on Oahu, Molokai, Maui, and Hawaii Island, from sea level to elevations as high as 7,000 ft (2,130 m) (Tomich 1986, pp. 93–94). Mongooses have been sighted, and two captured, on Kauai, but it is still uncertain if there are established populations or how large populations might be (Kauai Invasive Species Committee 2013, in litt.; The Garden Island 2012, in litt.; Hess *et al.* in Pratt *et al.* 2009, p. 429). Mongooses are omnivorous, are known to prey on Hawaiian birds and their eggs, and are considered a likely factor in the decline of the endangered Hawaiian goose (nene, *Branta sandvicensis*) (Tomich 1986, p. 97). They are known or suspected predators on other Hawaiian birds including the Hawaiian crow (alala, *Corvus hawaiiensis*), the Hawaiian duck (koloa, *Anas wyvilliana*), the Hawaiian coot (alae keokeo, *Fulica alai*), the Hawaiian stilt (aeo, *Himantopus mexicanus knudseni*), the Hawaiian gallinule (ula, *Gallinula chloropus sandvicensis*), the Hawaiian petrel, and the Newell's shearwater. Bird extinctions in other areas are attributed to mongooses, the loss of the barred-wing rail (*Nesoclopeus poecilopterus*) in Fiji, and the Jamaica petrel (*Pterodroma caribbaea*) (Hays and Conant 2007, p. 6). Birds extirpated from islands occupied by mongooses retain their populations on islands known to be mongoose-free (Hays and Conant 2007, p. 7). In Hawaii, mongooses are found in habitat that would have been unsuitable for it within its natural range, and they have no predators and few communicable diseases or parasites. Because mongooses occur in all three ecosystems in which the band-rumped storm-petrel occurs, they are likely to be significant predators of the band-rumped storm-petrel.

### Nonnative Fish Impacts on the Orangeblack Hawaiian Damsel

Predation by nonnative fishes on the orangeblack Hawaiian damselfly is a significant threat. Similar to the aquatic insects, Hawaii has a depauperate freshwater fish fauna, with only five

native species comprised of gobies (Gobiidae) and sleepers (Eleotridae) that occur on all the main islands (Devick 1991, p. 196). Information on these five species indicates that the Hawaiian damselflies probably experienced limited natural predation pressure from these native fishes (Kido 1997, p. 493; Englund 1999, p. 236). Conversely, fish predation has been an important factor in the evolution of behavior in damselfly naiads in continental systems (Johnson 1991, p. 13). Some species of damselflies, including the native Hawaiian species, are not adapted to coexist with some fish species, and are found only in bodies of water without fish (Henrikson 1988, pp. 179–180; McPeck 1990a, pp. 92–93). The naiads of these species tend to occupy more exposed positions and engage in conspicuous foraging behavior that makes them susceptible to predation by fishes (Macan 1977, p. 47; McPeck 1990b, p. 1722). The introduction of nonnative fishes has been implicated in the extirpation of a species related to the orangeblack Hawaiian damselfly, the Pacific Hawaiian damselfly (*Megalagrion pacificum*), from Oahu, Kauai, and Lanai, and from many streams on the remaining islands where it occurs (Moore and Gagne 1982, pp. 1–4). Over 70 species of fish have been introduced into Hawaiian freshwater habitats (Devick 1991, p. 189; Englund and Eldredge in Staples and Cowie 2001, p. 32; Englund 2004, in litt., p.27). The impact of fish introductions prior to 1900 cannot be assessed because this predates the initial collection of damselflies in Hawaii (Perkins 1913, p. clxxvi). In 1905, two species, the mosquito fish (*Gambusia affinis*) and the sailfin molly (*Poecilia latipinna*), were introduced for biological control of mosquitoes (Van Dine 1907, pp. 6–9). In 1922, three additional species were established for mosquito control, the green swordtail (*Xiphophorus helleri*), the moonfish (*Xiphophorus maculatus*), and the guppy (*Poecilia reticulata*). By 1935, the orangeblack Hawaiian damselfly was found only in waters without introduced fishes (Williams 1936, p. 289; Zimmerman 1948b, p. 341; Polhemus 1993, p. 591; Englund 1998, p. 235). Beginning about 1980, a large number of new fish introductions began in Hawaii, originating primarily from the aquarium fish trade (Devick 1991, p. 189). This recent wave of fish introductions on Oahu corresponded with the drastic decline and range reduction of other Hawaiian damselfly species: The endangered oceanic Hawaiian damselfly (*M. oceanicum*), the endangered crimson Hawaiian

damsselfly (*M. leptodemus*), and the endangered blackline Hawaiian damsselfly (*M. nigrohamatum nigrolineatum*). Currently, these damsselfies are found only in drainages or higher parts of stream systems where nonnative fish are not yet established (Englund and Polhemus 1994, pp. 8–9; Englund 2004, in litt., p. 27). In summary, Hawaiian damsselfies evolved with few, if any, predatory fishes and exposed behavior of most of the fully aquatic species, including the orangeblack Hawaiian damsselfly, makes them particularly vulnerable to predation by nonnative fish.

#### Nonnative Fish Impacts on the Anchialine Pool Shrimp

In Hawaii, the introduction of nonnative fishes, including bait-fish, into anchialine pools may have been a major contributor to the decline of native shrimp. Predation by nonnative fishes is considered the greatest threat to native shrimp within anchialine pool systems (Bailey-Brock and Brock 1993, p. 354). These impacts are discussed further in “E. Other Natural or Manmade Factors Affecting Their Continued Existence,” below.

#### Introduced Invertebrates

##### Slugs

Herbivory by nonnative slugs is reported to adversely impact 8 of the 39 plant species (*Cyanea kauaulaensis* (Maui); *Deparia kaalaana* (Kauai, Maui, Hawaii Island), *Labordia lorenciana* (Kauai), *Phyllostegia brevidens* (Maui), *P. stachyoides* (Molokai, Maui), *Ranunculus mauiensis* (Maui), *Schiedea diffusa* ssp. *diffusa* (Maui), and *S. pubescens* (Maui); see Table 3) proposed for listing in this rule, through mechanical damage, destruction of plant parts, and mortality (Joe 2006, p. 10; HBMP 2010; PEPP 2011, pp. 149, 170; PEPP 2012, pp. 71–72, 117–118, 133, 144–145, 153; PEPP 2013, pp. 54, 67, 91, 125–126, 158–159, 177–178, 185; Oppenheimer and Bustamente 2014, p. 106; PEPP 2014, pp. 73, 112–114, 136, 141–142, 154–156, 159, 162–163). Slugs are known to damage individuals of *Cyanea* and *Cyrtandra* species in the wild (Wood 2001, in litt.; Sailer and Kier 2002, in litt.; PEPP 2007, p. 38; PEPP 2008, pp. 23, 29, 52–53, 57). Information in the U.S. Army’s 2005 “Status Report for the Makua Implementation Plan” indicates that herbivory by slugs can be a threat to all species of *Cyanea*, and can result in up to 80 percent seedling mortality (U.S. Army Garrison 2005, p. 3–51). Slug damage has also been reported on other Hawaiian plants including

*Argyroxiphium grayanum* (greensword), *Alsinidendron* sp., *Hibiscus* sp., *Schiedea kaalae* (maolioli), *Solanum sandwicense* (popolo aiakeakua), and *Urera* sp. (Gagne 1983, p. 190–191; Sailer 2006, pers. comm. in Joe 2006, pp. 28–34). Joe and Daehler (2008, p. 252) found that native Hawaiian plants are more vulnerable to slug damage than nonnative plants. In particular, they found that individuals of the endangered plants *Cyanea superba* and *Schiedea obovata* had 50 percent higher mortality when exposed to slugs as compared to individuals that were within enclosures without slugs. As slugs are reported in 5 of the 11 ecosystems (lowland mesic, lowland wet, montane wet, montane mesic, and wet cliff), on all the main Hawaiian Islands, the data from the studies cited above, in addition to direct observations by field biologists, suggest that slugs can directly damage or destroy native plants.

##### Backswimmers

Predation by nonnative backswimmers (Heteroptera: Notonectidae) poses a threat to the orangeblack Hawaiian damsselfly. Backswimmers are aquatic true bugs (Heteroptera) in the family Notonectidae, so called because they swim upside down. Backswimmers are voracious predators and frequently feed on prey much larger than themselves, such as tadpoles, small fish, and other aquatic invertebrates including damsselfly naiads (Borror *et al.* 1989, p. 296; Zalom 1978, p. 617). Backswimmers (several species) were introduced in recent times. *Buena pallipes* (NCN) has been recorded from Hawaii Island, Oahu, Maui, and Kauai (Zimmerman 1948a, pp. 232–233; Larsen 1996, p. 40). This species is found in streams and can be abundant in lowland ponds and reservoirs. It feeds on any suitably sized insect, including damsselfly naiads (Zalom 1978, p. 617). Two additional species of backswimmers have become established in Hawaii, *Anisops kuroiwae* (NCN) on Maui and Lanai, and *Notonecta indica* (NCN) on Hawaii Island, Oahu, and Maui (Larsen 1996, pp. 39–40). The mere presence of backswimmers in the water can cause naiads to stop foraging, reducing their growth, development, and survival (Heads 1986, pp. 375–376). Because of these attributes, predation by backswimmers poses a threat to the orangeblack Hawaiian damsselfly.

##### Ants

At least 47 species of ants are known to be introduced and established in the Hawaiian Islands (Hawaii Ants 2008, 11

pp.). No native ants species occur in Hawaii, and the native yellow-faced bee species in Hawaii evolved in the absence of predation pressure from ants. Ants are known to prey upon Hawaiian yellow-faced bee (*Hylaeus*) species, with observations of drastic reductions in yellow-faced bee populations in ant-infested areas (Medeiros *et al.* 1986, pp. 45–46; Reimer 1994, p. 17; Stone and Loope 1987, p. 251; Cole *et al.* 1992, pp. 1313, 1317, 1320). The presence of ants in nearly all of the low-elevation habitat sites currently and historically occupied by yellow-faced bee species may preclude these species’ recovery in some of these areas (Reimer 1994, pp. 17–18; Daly and Magnacca 2003, pp. 9–10). Although the primary impact of ants on Hawaii’s native invertebrate fauna is via predation, they also compete for nectar (Reimer 1994, p. 17; Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155) and nest sites (Krushelnycky *et al.* 2005, pp. 6–7). Some ant species may impact yellow-faced bee species indirectly as well, by consuming seeds of native plants, thereby reducing the plants’ recruitment and fecundity (Bond and Slingsby 1984, p. 1031). The threat of ant predation on the yellow-faced bees is amplified by the fact that most ant species have winged reproductive adults and can quickly expand their range by establishing new colonies in suitable habitat (Staples and Cowie 2001, p. 55). In addition, these attributes allow some ants to destroy otherwise geographically isolated populations of native arthropods (Nafus 1993, pp. 19, 22–23). Several studies suggest a serious ecosystem-level effect of invasive ants on pollination (Krushelnycky 2005, p. 9; Lach 2008, p. 155). Where ranges overlap, ants compete with native pollinators such as yellow-faced bees and preclude them from pollinating native plants (Howarth 1985, p. 157). Lach (2008, p. 155) found that yellow-faced bees that regularly consume pollen from flowers of *Metrosideros polymorpha* (ohia) were entirely absent from trees with flowers visited by the ant *Pheidole megacephala*.

The four most aggressive ant species in Hawaii are: The big-headed ant (*Pheidole megacephala*), the yellow crazy ant (*Anoplolepis gracilipes*), the tropical fire ant (*Solenopsis geminata*), and *S. papuana* (NCN). The big-headed ant is native to central Africa and was first reported in Hawaii in 1879 (Krushelnycky *et al.* 2005, p. 24). This species occurs from coastal to mesic habitat up to 4,000 ft (1,220 m) in

elevation. With few exceptions, native insects have been eliminated in habitats where the big-headed ant is present (Perkins 1913, p. xxxix; Gagne 1979, p. 81; Gillespie and Reimer 1993, p. 22). Native habitat of the yellow crazy ant is not known, but it is speculated the species originated in West Africa (MacGown 2015, in litt.). It occurs in low- to mid-elevation (less than 2,000 ft (600 m)) in rocky areas of moderate rainfall (less than 100 in (250 cm) annually) (Reimer *et al.* 1990, p. 42). Although surveys have not been conducted to ascertain this species' presence in each of the known habitats occupied by the seven yellow-faced bees, we know that the yellow crazy ant occurs adjacent to some of the identified populations' sites based upon observations of their expanding range and their preference for coastal and dry forest habitat (as indicated where the species is most commonly collected) (Antweb 2015, in litt.; Magnacca and King 2013, pp. 13–14). Direct observations indicate that Hawaiian arthropods are susceptible to predation by this ant species. Gillespie and Reimer (1993, pp. 21, 26) and Hardy (1979, p. 37–38) documented the complete elimination of native spiders from mesic and dry forests after they were invaded by the big-headed ant and the yellow crazy ant. Lester and Tavite (2004, p. 291) found that the yellow crazy ant in the Tokelau Atolls (Central Polynesia) form very high densities in a relatively short period of time with locally serious consequences for invertebrate diversity. Densities of 3,600 individuals collected in pitfall traps within a 24-hour period were observed, as well as predation on invertebrates ranging from crabs to other ant species. Results from these and other studies (Reimer *et al.* 1990, p. 47) indicate that yellow crazy ants have the potential as predators to profoundly affect endemic insect fauna in areas they occupy. We believe that the yellow crazy ant is a threat to populations of the Hawaiian yellow-faced bees in areas within their range. *Solenopsis papuana*, native to the Pacific region but not to Hawaii, is the only abundant, aggressive ant that has invaded intact mesic and wet forest, as well as coastal and lowland dry ecosystems. First detected in 1967, this species occurs from sea level to over 3,600 ft (1,100 m) on all of the main Hawaiian Islands, and is still expanding its range (Reimer *et al.* 1990, p. 42; Reimer 1993, p. 14). Studies have been conducted that suggest a negative effect of this ant species on indigenous invertebrates (Gillespie and Reimer 1993, p. 21). Although surveys have not been conducted to ascertain the

presence of *S. papuana* in each of the known ecosystems occupied by the seven yellow-faced bees, because of the expanding range of this introduced ant species, and its widespread occurrence in coastal to wet habitats, it is a possible threat to all known populations of the seven yellow-faced bees proposed for listing in this rule. *Solenopsis geminata* is also considered a significant threat to native invertebrates in Hawaii (Wong and Wong 1988, p. 171). Found in drier areas of all the main Hawaiian Islands, it displaced *Pheidole megacephala megacephala* as the dominant ant in some localities more than 20 years ago (Wong and Wong 1988, p. 175). Known to be a voracious predator, *Solenopsis geminata* this ant species was documented to significantly increase native fruit fly mortality in field studies in Hawaii (Wong and Wong 1988, p. 175). *Solenopsis geminata* is included in among the eight species ranked as having the highest potential risk to New Zealand species in a detailed pest risk assessment for the country (GISD 2011, in litt.), and is included as one of the five ant species listed among the “100 of the World's Worst Invaders” (Manaaki Landcare Research 2015, in litt.). In addition to predation, *S. geminata* workers tend honeydew-producing members of the Homoptera suborder, especially mealybugs, which can impact plants directly and indirectly through the spread of disease (Manaaki Landcare Research 2015, in litt.). Although surveys have not been conducted to ascertain the presence of *S. geminata* in each of the known seven yellow-faced bees' habitat sites, because of its expanding range and widespread presence, *S. geminata* is a threat to all known populations of the seven yellow-faced bees.

Although we have no direct information that correlates the decrease in populations of the seven yellow-faced bees in this proposal directly to the establishment of nonnative ants, predation of and competition with other yellow-faced bee species by ants has been documented, resulting in clear reductions in or absence of populations (Magnacca and King 2013, p. 24). We expect similar predation impacts to the seven yellow-faced bees proposed for listing in this rule to continue as a result of the widespread presence of ants throughout the Hawaiian Islands, their highly efficient and non-specific predatory behavior, and their ability to quickly disperse and establish new colonies. Therefore, we conclude that predation by nonnative ants represents a threat to the continued existence of

the seven yellow-faced bees, now and into the future.

#### Wasps

Predation by the western yellow jacket wasp (*Vespula pensylvanica*) is an ongoing threat to the seven yellow-faced bees (Gambino *et al.* 1987, p. 170; Wilson *et al.* 2009, pp. 1–5). The western yellow jacket is a social wasp species native to mainland North America. It was first reported on Oahu in the 1930s (Sherley 2000, p. 121), and an aggressive race became established in 1977 (Gambino *et al.* 1987, p. 170). In temperate climates, the western yellow jacket wasp has an annual life cycle, but in Hawaii's tropical climate, colonies of this species persist year round, allowing growth of large populations (Gambino *et al.* 1987, p. 170) and thus a greater impact on prey populations. Most colonies occur between 2,000 and 3,500 ft (600 and 1050 m) in elevation (Gambino *et al.* 1990, p. 1088), although they can also occur at sea level. The western yellow jacket wasp is known to be an aggressive, generalist predator and has been documented preying upon Hawaiian yellow-faced bee species (Gambino *et al.* 1987, p. 170; Wilson *et al.* 2009, p. 2). It has been suggested that the western yellow jacket wasp may compete for nectar with native Hawaiian invertebrates, but we have no information to suggest this represents a threat to the seven yellow-faced bees. Predation by the western yellow jacket wasp is a significant threat to the seven yellow-faced bee species because of the wasps' presence in habitat combined with the small number of occurrences and small population sizes of the Hawaiian yellow-faced bees.

#### Summary of Factor C

We are unaware of any information that indicates that disease is a threat to the 39 plant species. We are also unaware of any information that indicates that disease is a threat to the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, or the anchialine pool shrimp, *Procaris hawaiiiana*, or the seven yellow-faced bees proposed for listing in this rule.

We consider predation and herbivory by one or more of the nonnative animal species (pigs, goats, axis deer, black-tailed deer, sheep, mouflon, cattle, rats, barn owls, cats, mongooses, fish, slugs, backswimmers, ants, and wasps) to pose an ongoing threat to 33 of the 39 plant species and to all 10 animal species proposed for listing throughout their ranges (see Table 3) for the following reasons:

(1) Observations and reports have documented that pigs, goats, axis deer,

black-tailed deer, sheep, mouflon, and cattle browse 26 of the 39 plant species (see Table 3), in addition to other studies demonstrating the negative impacts of ungulate browsing on native plant species of the islands. Browsing by blackbuck antelope is currently a potential threat to plants that occur in the dry areas of Molokai, including the host plants for the yellow-faced bees.

(2) Nonnative rats and slugs cause mechanical damage to plants and destruction of plant parts (branches, flowers, fruits, and seeds), and are considered a threat to 20 of the 39 plant species proposed for listing (see Table 3).

(3) Rats also prey upon adults, juveniles, and eggs of the band-rumped storm-petrel, and are linked with the dramatic decline of many closely related bird species. Because rats are found in all of the ecosystems in which the band-rumped storm-petrel occurs, we consider predation by rats to be an ongoing threat.

(4) Barn owls and cats have established populations in the wild on all the main Hawaiian islands, and mongooses have established populations on all the main islands except for Kauai. Predation by these animals is an ongoing threat to the band-rumped storm-petrel.

(5) The absence of Hawaiian damselflies (including the orangeblack Hawaiian damselfly) in streams and other aquatic habitat on the main Hawaiian Islands is strongly correlated with the presence of predatory nonnative fish; numerous observations and reports suggest nonnative predatory fishes eliminate native Hawaiian damselflies from these habitats. Accordingly, predation by nonnative fishes is an ongoing threat to the orangeblack Hawaiian damselfly.

(6) Once introduced to anchialine pools, nonnative fish, through predation and competition for food sources, directly impact anchialine pool shrimp, including *Procaris hawaiiiana*, and also disrupt anchialine pool ecology.

(7) Herbivory (leading to damage, destruction of reproductive parts, and mortality of seedlings) by slugs, is a known threat to 10 of the 39 plant species proposed for listing.

(8) The presence of backswimmers in aquatic habitat can cause damselfly naiads, including those of the orangeblack Hawaiian damselfly, to stop foraging, reducing their growth, development, and survivability. In addition, backswimmers can directly feed on damselfly naiads, posing a significant threat to the orangeblack Hawaiian damselfly.

(9) Predation by nonnative ants and wasps poses a threat to all seven yellow-faced bees.

These threats are serious and ongoing, act in concert with other threats to the species, and are expected to continue or increase in magnitude and intensity into the future without effective management actions to control or eradicate them. In addition, negative impacts to native Hawaiian plants on Molokai from grazing and browsing by blackbuck antelope are likely should this nonnative ungulate increase in numbers and range on the island. The effects of the combined threats suggest the need for immediate implementation of recovery and conservation methodologies.

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

Currently, there are no existing Federal, State, or local laws, treaties, or regulations that specifically conserve or protect 48 of the 49 species (except the band-rumped storm-petrel, as discussed below) proposed for listing, or adequately address the threats to all 49 species described in this proposed rule. There are a few small programs and organizations that conduct vegetation monitoring, and nonnative species and predator control, but these activities are not regulatory, and continuation of conservation efforts, or funding for them, is not guaranteed. Hawaii's Plant Extinction Prevention Program (PEPP) is a multi-agency (Federal, State, and private) program that identifies and supports the "rarest of the rare" Hawaiian plant species in need of immediate conservation efforts. The goal of PEPP is to prevent the extinction of plants species that have fewer than 50 individuals remaining in the wild in the Hawaiian Islands and Guam and the Commonwealth of the Northern Mariana Islands (GPEPP). Partnerships such as the Hawaii Invasive Species Council (HISC) and the Coordinating Group on Alien Pest Species (CGAPS) were formed in 2002 and 1995, respectively, but their conservation actions are also limited, as discussed below. The capacity of Federal and State agencies and their nongovernmental partners in Hawaii to mitigate the effects of nonnative species, such as ungulates and weeds, is limited due to the large number of taxa currently causing damage (CGAPS 2009). Many invasive nonnative plants established in the Hawaiian Islands have currently limited but expanding ranges and are of concern. Resources available to reduce the spread of these species and counter their negative effects are limited. Control efforts are largely focused on a

few invasive species that cause significant economic or environmental damage to public and private lands. Comprehensive control of an array of nonnative species and management to reduce disturbance regimes that favor them remains limited in scope. If current levels of funding and regulatory support for control of nonnative species are maintained, the Service expects existing programs to continue to exclude or, on a very limited basis, control these species only in the highest-priority areas. Threats from established nonnative ungulates and predators, plants, and invertebrates are ongoing and expected to continue into the future.

The Hawaiian population of band-rumped storm-petrel is currently protected under Federal law by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*). The MBTA is the domestic law that implements the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of shared migratory bird resources. The MBTA regulates most aspects of take, possession, transport, sale, purchase, barter, export, and import of migratory birds and prohibits the killing, capturing, and collecting of individuals, eggs, and nests, unless such action is authorized by permit. While the MBTA does prohibit actions that directly kill a covered species, unlike the Endangered Species Act it does not prohibit habitat modification that indirectly kills or injures a covered species, affords no habitat protection when the birds are not present, and provides only very limited mechanisms for addressing chronic threats to covered species. The Hawaiian population of the band-rumped storm-petrel is listed by the State of Hawaii as an endangered species under Hawaii State Endangered Species Act (Hawaii ESA) (HRS 195D-4(a)), which also prohibits take, possession, sale, transport, or export of adults, eggs, or young, except as authorized by law, license, or permit, but like the MBTA, the Hawaii ESA affords no protection of habitat.

#### Terrestrial Habitat and Feral Ungulates

Nonnative ungulates pose a major ongoing threat to 37 of the 39 plant species, and 9 of the 10 animals species (all except the anchialine pool shrimp, *Procaris hawaiiiana*) through destruction and modification of terrestrial habitat, and through direct predation of 26 of the 39 plant species (see "A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range" and "C. Disease and



Predation,” above; and Table 3). The State of Hawaii provides game mammal (feral pigs and goats; axis deer; black-tailed deer; and sheep, mouflon, and mouflon-sheep hybrids) hunting opportunities on 91 State-designated public hunting areas (within 45 units) on all the main Hawaiian Islands except Kahoolawe and Niihau (HAR 2003, 13–123, rev 2010; HDLNR 2009, pp. 25–30); however, there are private hunting opportunities on Niihau (Niihau Safaris Inc. 2015, in litt.). The State’s management objectives for game animals range from maximizing public hunting opportunities (e.g., “sustained yield”) in some areas to removal by State staff or their designees in other areas (HAR 2003, 13–123 rev 2010; HDLNR 2009, pp. 25–30). Thirty of the 39 plant species, the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, and three yellow-faced bees (*Hylaeus assimulans*, *H. facilis*, and *H. longiceps*) have populations in areas where terrestrial habitat may be manipulated for game enhancement and game populations are maintained at certain levels for public hunting (Holmes and Joyce 2009, 4 pp.; HAR 2003, 13–123, rev 2010; HBMP 2010). Public hunting areas are defined, but not fenced, and game mammals have unrestricted access to most areas across the landscape, regardless of underlying land-use designation. While fences are sometimes built to protect areas from game mammals, the current number and locations of fences are not adequate to prevent habitat destruction and modification for 37 of the 39 plant species, the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, or the seven yellow-faced bees on all the main Hawaiian islands (except Kahoolawe) (see Table 3). After an incident in 2012 of inter-island transport of axis deer to Hawaii Island, which until that time had been free of axis deer, a bill was enacted to prohibit inter-island transportation and possession of wild or feral deer under Hawaii Revised Statute Title 12, 183D–52 (2014), but there are no other regulations designed to address habitat protection from ungulates, including game mammals.

#### Aquatic Habitat

Existing regulations are inadequate to maintain stream flow, springs, ponds, and seeps year-round for the different life stages of the orangeblack Hawaiian damselfly, proposed for listing in this rule. In Hawaii, instream flow is regulated by establishing standards on a stream-by-stream basis. The standards currently in effect represent flow conditions in 1987 (status quo), the year

the administrative rules were adopted (State Water Code, HRS 174C–71, and HAR Title 13, Ch 169–44–49). The State of Hawaii considers all natural flowing surface water (streams, springs, and seeps) as State property (HRS 174C), and the HDLNR has management responsibility for the aquatic organisms in these waters (HRS Annotated 1988, Title 12; 1992 Cumulative Supplement). Accordingly, damselfly populations (including the orangeblack Hawaiian damselfly) in all natural flowing surface waters are under jurisdiction of the State of Hawaii, regardless of property ownership.

The State of Hawaii manages the use of surface and ground water resources through the Commission on Water Resource Management (Water Commission), as mandated by the 1987 State Water Code (HRS 174 and HAR Title 13, Ch 168 and 169). Because of the complexity of establishing instream flow standards (IFS) for approximately 376 perennial streams, the Water Commission established interim IFS at status quo levels in 1987 (Commission of Water Resource Management (CWRM) 2009). In the Waiahole Ditch Combined Contested Hearing on Oahu (1997–2006), the Hawaii Supreme Court determined that status quo interim IFS were not adequate, and required the Water Commission to reassess the IFS for Waiahole Ditch and other streams statewide (Case No. CCH–OA95–1; Maui Now.com, in litt.). The Water Commission has been gathering information to fulfill this requirement since 2006, but no IFS recommendations have been made to date (CWRM 2008, p. 3–153; CWRM 2014, in litt.).

In the Hawaii Stream Assessment Report (DLNR 1990), prepared in coordination with the National Park Service (NPS), the Water Commission identified high-quality rivers or streams (and portions thereof) that may be placed within a Wild and Scenic River system. This report ranked 70 out of 176 streams analyzed as outstanding high-quality habitat, and recommended that streams meeting certain criteria be protected from further development (DLNR 1990, pp. xxi–xxiv). However, there is no mechanism within the State’s Water Code to designate and set aside these streams, or to identify and protect stream habitat, for damselflies. The U.S. Army Corps of Engineers (COE) has regulatory jurisdiction under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) for activities that would result in a discharge of dredged or fill material into waters of the United States; however, in issuing these permits, the COE does not typically

establish IFS as a matter of policy (U.S. Army 1985, RGL 85–6).

There are no existing regulatory mechanisms that specifically protect Hawaii’s anchialine pools (habitat for the anchialine pool shrimp, *Procaris hawaiiiana*, and the orangeblack Hawaiian damselfly); however, 2 anchialine pools on Maui and 12 anchialine pools on Hawaii Island are located within State Natural Area Reserves (NARs) (Ahihi-Kinau and Manuka, respectively). Designation as a State NAR prohibits the removal of any native organism and the disturbance of pools (HAR 13–209–4). The State NARs were created to preserve and protect samples of Hawaii’s ecosystems and geological formations, and are actively managed and monitored. Though signs are posted at NARs to notify the public that pools are off-limits to bathers and other activities, the State NARs have no funding for proper enforcement of those restrictions.

Because there are currently no Federal, State, or local laws, treaties, or regulations that specifically or effectively conserve or protect the anchialine pool shrimp and the orangeblack Hawaiian damselfly, or adequately address inadequate maintenance and protection of instream flow, springs, seeps, and anchialine pools for the anchialine pool shrimp and the orangeblack Hawaiian damselfly habitat, these threats are ongoing and are expected to continue into the future.

#### Introduction of Nonnative Species

Under statutory authorities provided by Chapter 183D, HRS, the DLNR maintains HAR Ch 124 (2014), which defines “injurious wildlife” as “any species or subspecies of animal except game birds and game mammals which is known to be harmful to agriculture, aquaculture, indigenous wildlife or plants, or constitute a nuisance or health hazard and is listed in the exhibit entitled “Exhibit 5, Chapter 13–124, List of Species of Injurious Wildlife in Hawaii.” Under HAR 13–124–3–(d), “no person shall, or attempt to: (1) Release injurious wildlife into the wild; (2) Transport them to islands or locations within the State where they are not already established and living in a wild state; and (3) Export any such species or the dead body or parts thereof, from the State. Permits for these actions may be considered on a case-by-case basis.” As discussed in “Habitat Destruction and Modification by Introduced Ungulates,” and “Terrestrial Habitat and Feral Ungulates,” above, a bill was enacted to prohibit inter-island transportation and possession of wild or feral deer under Hawaii Revised Statute Title 12, 183D–

52 (2014), but no other game mammals are regulated by this statute.

Currently, four agencies are responsible for inspection of goods arriving in Hawaii (CGAPS 2009). The Hawaii Department of Agriculture (HDOA) inspects domestic cargo and vessels and focuses on nonnative pest species of concern to Hawaii, especially insects or plant diseases not yet known to be present in the State. The U.S. Department of Homeland Security—Customs and Border Protection (CBP) is responsible for inspecting commercial, private, and military vessels and aircraft and related cargo and passengers arriving from foreign locations. CBP focuses on a wide range of quarantine issues involving non-propagative plant materials, wooden packing materials, timber, and products; internationally regulated commercial species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and federally listed noxious plants and seeds, soil, and pests of concern to the greater United States, such as pests to mainland U.S. forests and agriculture. The U.S. Department of Agriculture—Animal and Plant Health Inspection Service—Plant Protection and Quarantine (USDA—APHIS—PPQ) inspects propagative plant material, provides identification services for arriving plants and animals, conducts pest risk assessments, and handles other related matters, but focuses on pests of wide concern across the United States (HDOA 2009, in litt.). The Service inspects arriving wildlife products, enforces the injurious wildlife provisions of the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371 *et seq.*), and prosecutes CITES violations.

The State of Hawaii's unique biosecurity needs are not recognized by Federal import regulations, as these regulations are based on species considered threats to the mainland United States, and not those species that could become threats to native Hawaiian species (Hawaii Legislative Reference Bureau (HLRB) 2002; USDA—APHIS—PPQ 2010; CGAPS 2009). Interstate commerce provides the pathway for new species to enter Hawaii. Pest species may be intercepted, but are not always acted on by Federal agents because these species are not regulated under Federal mandates. Hence, Federal protection against pest species of concern to Hawaii historically has been inadequate. It is possible for the USDA to grant Hawaii protective exemptions under the "Special Local Needs Rule," when clear and comprehensive arguments for both agricultural and conservation issues are provided; however, this exemption

procedure operates on a case-by-case basis and is extremely time-consuming to satisfy. Therefore, there is only minimal protection against a large diversity of nonnative species that arrive and may negatively impact Hawaii.

Inadequate staffing, facilities, and equipment for Federal and State inspectors devoted to invasive species interdiction are critical biosecurity gaps (HLRB 2002; USDA—APHIS—PPQ 2010; CGAPS 2009). In recognition of the gaps, State laws have recently been passed that allow the HDOA to collect fees for quarantine inspection of freight entering Hawaii (*e.g.*, Act 36 (2011) HRS 150A–5.3). Legislation enacted in 2011 (H.B. 1568) requires commercial harbors to provide biosecurity and inspection facilities to facilitate the movement of cargo through ports. This enactment is a significant step toward optimizing biosecurity capacity in the State; however, only time will determine the its effectiveness of this Act (Act 201(11)). From a Federal perspective, there is a need to ensure all civilian and military port and airport operations and construction are in compliance with the Act 201 (11) State of Hawaii's laws.

In 1995, a partnership, Coordinating Group on Alien Pest Species (CGAPS), comprised primarily of managers from every major Federal, State, county, and private agency and organization involved in invasive species work in Hawaii, was formed in an effort to influence policy and funding decisions, improve communication, increase collaboration, and promote public awareness (CGAPS 2009). This group facilitated the formation of the Hawaii Invasive Species Council (HISC), which was created by gubernatorial executive order in 2002, to coordinate local initiatives for the prevention of introduction and for control of invasive species by providing policy-level direction and planning for the State departments responsible for invasive species issues (CGAPS 2009). In 2003, the Governor signed into law State Act 85, which conveys statutory authority to the HISC to continue to coordinate approaches among the various State and Federal agencies, and international and local initiatives, for the prevention and control of invasive species (HDLNR 2003, p. 3–15; HISC 2009; HRS 194–2(a)). Some of the recent priorities for the HISC include interagency efforts to control nonnative species such as the plants *Miconia calvescens* (miconia) and *Cortaderia* sp. (pampas grass), coqui frogs (*Eleutherodactylus coqui*), the coconut rhinoceros beetle (*Oryctes rhinoceros*) (HISC 2013, in litt.; OISC 2015, in litt.), and ants (HISC 2009;

HISC 2015, <http://dlnr.hawaii.gov/hisc>). Budget cuts beginning in 2009 severely restricted State funding support of HISC, resulting in a serious setback of conservation efforts (HISC 2009; HISC 2015, <http://dlnr.hawaii.gov/hisc/projects/funding>). As an example of current and future challenges, a strain of the plant rust *Puccinia psidii*, also referred to as ohia rust, was first noticed affecting stands of rose apple and the native *Metrosideros* (ohia) seedlings (both in the plant family Myrtaceae) in nurseries in 2005. *Metrosideros* spp. are a dominant component of native forests in Hawaii, providing watershed protection and wildlife habitat. The Hawaii Board of Agriculture recommended a quarantine rule be passed against the introduction of all new strains of ohia rust (mostly through transmission on Myrtaceae species used in the horticulture trade), to prevent destruction of ohia forests and the danger to agriculture and horticulture industries (Environment Hawaii 2015, pp. 1, 8–9). However, this rule currently remains in draft form and under review (HDOA 2015, <http://hdoa.hawaii.gov/meetings-reports/proposedar>, accessed April 9, 2015).

#### Nonnative Aquatic Species

Existing State and Federal regulatory mechanisms do not adequately prevent the introduction of nonnative species to Hawaii via inter-State and international mechanisms, or intra-State movement of nonnative species between islands and watersheds in Hawaii. The importation of non-domestic animals, including aquatic species, is regulated by a permit system (HAR 4–71) managed through the HHDOA. The HDOA's Board of Agriculture maintains lists of non-domestic animals that are prohibited from entry, animals without entry restrictions, or those that require a permit for import and possession. The HDOA requires a permit to import animals, and conditionally approves entry for individual possession, businesses (*e.g.*, pet and resale trade, retail sales, and food consumption), or institutions. However, Hawaii's Division of Aquatic Resources recognizes that unwanted nonnative species, both aquatic and terrestrial, are still entering the State and moving between islands (DLNR 2003, p. 2–12).

The Division of Aquatic Resources (DAR), within the State's DLNR, manages Hawaii's aquatic resources (HDAR 2015, in litt.), and is responsible for conserving, protecting, and enhancing the State's renewable resources of aquatic life and habitat (HDLNR 2003, p. 3–13). The release of live nonnative fish or other live

nonnative aquatic life into any waters of the State is prohibited (HRS 187A–6.5). The DAR has the authority to seize, confiscate, or destroy as a public nuisance; any fish or other aquatic life found in any State waters whose importation is prohibited or restricted pursuant to rules of the HDOA (HRS 187A–2, HRS 187A–6.5). State (HAR 71C) and Federal regulations (Executive Order (E.O.) 13112, 1999 and 2005) are in place to prevent the unauthorized entry of nonnative aquatic animals such as fish and amphibians; however, their intentional or inadvertent introduction and movement between islands and between watersheds continues (HDAR 2003, pp. 2–12–2–14). There is insufficient agency capacity to adequately enforce such regulations or to provide for sufficient inspection services and monitoring, although this priority need is recognized (Cravalho 2009, in litt.).

#### Nonnative Vertebrate Species

The State of Hawaii's laws prohibit the importation of all animals unless they are specifically placed on a list of allowable species (HLRB 2002; CGAPS 2010). The importation and interstate transport of invasive vertebrates is federally regulated by the Service under the Lacey Act as "injurious wildlife" (Fowler *et al.* 2007, pp. 353–359; 18 U.S.C. 42 *et seq.*–43 2006); the current list of vertebrates considered as "injurious wildlife" is provided at 50 CFR part 16. This law also prohibits importation of species listed as endangered or threatened from other areas, or species from within protected areas such as parks or forest reserves. The law in its current form prohibits importation of a limited number of taxa (USFWS 2012, 50 CFR part 16) including fruit bats, mongoose, European rabbits and hares, wild dogs, rats or mice, raccoon dogs, brushtail possum (New Zealand species), starlings, house sparrows, mynas, dioch, Java sparrows, red whiskered bulbuls, walking catfish, mitten crabs, zebra mussels, snakehead family taxa, four species of carp, salmonids, brown tree snakes, and pythons. In 2008, the Lacey Act was expanded to include prohibition of importation of "any plant that was illegally harvested," such as illegally logged woods (USFWS 2012, 50 CFR 16). Mongoose, rabbits, rats, mice, house sparrows, mynas, Java sparrows, red whiskered bulbuls are already established in Hawaii, and are difficult and costly to control, or are not controlled at all. Additionally, a species may be imported or transported across State lines while it is being considered for addition to the list of "injurious

wildlife" (Fowler *et al.* 2007 pp. 357–358). The continued spread of injurious species nationwide indicates the limited effectiveness of this regulation in preventing vertebrate introductions into the State (Fowler *et al.* 2007, p. 357). The Lacey Act requires declarations of importation only for formal entries (*i.e.*, commercial shipments), but not for informal entries (*i.e.* personal shipments) (USDA–APHIS 2015, in litt.).

As a recent example in Hawaii, an opossum (*Didelphis virginiana*) was found in a trap set for feral cats near Sand Island, Oahu, in July 2015. Opossums are not included on the Lacey Act's list of prohibited species injurious wildlife. Opossums, native to North America, occupy a variety of habitat such as stream areas, forests, and agricultural lands (Oregon Department of Fish and Wildlife 2015, in litt.). They are omnivores and scavengers, and eat a wide variety of food items including insects, small vertebrates, bird eggs, slugs and snails, snakes, and fruits and berries (Claremont College 2015, in litt.). Opossums are known to hitchhike in shipping containers, and have been found previously in containers on Oahu in 2005 and 2011 (Star Advertiser 2015, in litt.). If opossums were to establish wild populations in Hawaii, their predation on ground-nesting seabirds could negatively impact species such as the band-rumped storm-petrel.

#### Nonnative Invertebrate Species

It is likely that the introduction of most nonnative invertebrate pests to the State has been and continues to be accidental and incidental to other intentional and permitted activities. The prevention and control of introduction of nonnative invertebrates to Hawaii is the responsibility of Hawaii State government and Federal agencies, and is voluntarily addressed by a few private organizations as well. Even though these agencies have regulations and some controls in place, as discussed in "Introduction of Nonnative Species" and "Nonnative Aquatic Species," above, the introduction and movement of nonnative invertebrate pest species between islands and from one watershed to the next continues. By the early 1990s, an average of 20 new alien invertebrate species was introduced to Hawaii per year, an increase of 25 percent over the previous totals between 1930 and 1970 (TNCH 1992, p. 8). As an example, the threat of introduction of nonnative invertebrate species is evidenced by the 2013 discovery of the presence of the nonnative coconut rhinoceros beetle (CRB, *Oryctes*

*rhinoceros*), which quickly spread from its known point of introduction across the island of Oahu in a few months (HISC 2014, + maps). The coconut rhinoceros beetle is considered one of the most damaging insects to coconut and African oil palm in southern and Southeast Asia, as well as the western Pacific Islands, and has the potential to devastate populations of native and nonnative palm species in Hawaii (Giblin-Davis 2001 in HISC 2014, in litt.). While a rapid response team headed by HDOA (with USDA, University of Hawaii, U.S. Navy, and other partners; 2014) has set up pheromone traps island-wide, and capture and range delineation efforts are ongoing, along with funding for support services to capture and control the CRB for fiscal year 2015 (HISC 2014, in litt.), existing regulatory mechanisms did not prevent its introduction into Hawaii. Existing regulatory mechanisms, such as HRS 187A–6.5 and HAR 71C (regarding release of nonnative aquatic species), and H.B. 1568 (pertaining to the State law to enforce biosecurity measures), therefore appear inadequate to prevent introductions of nonnative invertebrates. Efforts to ameliorate the threat of the beetle continue, but whether those efforts will be effective in controlling or eliminating this threat is unknown at this time.

#### Nonnative Plant Species

The State of Hawaii allows the importation of most plant taxa, with limited exceptions, if shipped from domestic ports (HLRB 2002; USDA–APHIS–PPQ 2010; CGAPS 2009). Hawaii's plant import rules (HAR 4–70) regulate the importation of 13 plant taxa of economic interest; regulated crops include pineapple, sugarcane, palms, and pines. Certain horticultural crops (*e.g.*, orchids) may require import permits and have pre-entry requirements that include treatment or quarantine or both either prior to or following entry into the State. The State Noxious Weed list (HAR 4–68) and USDA–APHIS–PPQ's Restricted Plants List restrict the import of a limited number of noxious weeds. If not specifically prohibited, current Federal regulations allow plants to be imported from international ports with some restrictions. The Federal Noxious Weed List (see 7 CFR 360.200) includes few of the many globally known invasive plants, and plants in general do not require a weed risk assessment prior to importation from international ports. The USDA–APHIS–PPQ is in the process of finalizing rules to include a weed risk assessment for newly imported plants. Although the State has

general guidelines for the importation of plants, and regulations are in place regarding the plant crops mentioned above, the intentional or inadvertent introduction of nonnative plants outside the regulatory process and movement of species between islands and from one watershed to the next continues, and represents a threat to native flora and fauna for the reasons mentioned above. In addition, government funding is inadequate to provide for sufficient inspection services and monitoring. One study concluded that the plant importation laws virtually ensure new invasive plants will be introduced via the nursery and ornamental trade, and that outreach efforts cannot keep up with the multitude of new invasive plants being distributed (Martin 2007, in litt.). The author states the only effective method to address this issue is to use public outreach to encourage consumers to purchase and use only noninvasive or native plants in landscaping (Martin 2007, in litt.).

On the basis of the above information, existing State and Federal regulatory mechanisms are not preventing the introduction of nonnative species into Hawaii via interstate and international pathways, or via intrastate movement of nonnative species between islands and watersheds. Therefore, State and Federal regulatory mechanisms do not adequately protect the 49 species, or their habitats, addressed in this rule from the threat of new introductions of nonnative species or the continued expansion of nonnative species populations on and between islands and watersheds. The impacts from these threats are ongoing and are expected to continue into the future.

#### Summary of Factor D

Existing State and Federal regulatory mechanisms are not preventing the introduction into Hawaii of nonnative species or controlling the spread of nonnative species between islands and watersheds. Habitat-altering nonnative plant species (Factor A) and predation by nonnative animal species (Factor C) pose major ongoing threats to all 49 species addressed in this rule. Thirty-seven of the 39 plant species, the orangeblack Hawaiian damselfly, and the yellow-faced bees (*Hylaeus anthracinus*, *H. assimulans*, *H. facialis*, *H. hilaris*, and *H. longiceps*) experience the threat of habitat destruction and modification by nonnative plants (Factor A), and 26 of the 39 plants, and all 10 animals, experience the threat of predation and herbivory by nonnative animals (Factor C). Therefore, we conclude the existing regulatory mechanisms discussed above are

inadequate to sufficiently reduce these threats to these species.

#### E. Other Natural or Manmade Factors Affecting Their Continued Existence

Other factors threatening some or all of the 49 species include artificial lighting and structures, ingestion of marine debris and plastics, dumping of trash and the introduction of nonnative fish into anchialine pools, recreational use of and sedimentation of anchialine pools, low numbers of individuals and populations, hybridization, lack of or declining regeneration, competition with nonnative invertebrates, and loss of host plants. Each threat is discussed in detail below, along with identification of which species are affected by these threats. The impacts of climate change to these species and their ecosystems have the potential to exacerbate all of the threats described above.

#### Artificial Lighting and Structures Effects on the Band-Rumped Storm-Petrel

Artificial lights are a well-documented threat to night-flying seabirds such as petrels, shearwaters, and storm-petrels (Croxall *et al.* 2012, p. 28). A significant impact to the band-rumped storm-petrel results from the effects of artificial (night) lighting on fledglings and, to a lesser degree, on adults. Lighting of roadways, resorts, ballparks, residences, and other development, as well as on cruise ships out at sea, both attracts and confuses night-flying storm-petrels and other seabirds (Harrison *et al.* 1990, p. 49; Reed *et al.* 1985, p. 377; Telfer *et al.* 1987, pp. 412–413; Banko *et al.* 1991, p. 651). Storm-petrels use the night sky to navigate and possibly to search for bioluminescent ocean prey (Telfer *et al.* 1987, p. 412). Artificial lights can cause confusion, exhaustion, and possible collision with structures, followed by fallout. The seabirds are then either too exhausted to fly or seriously injured, and, once grounded, are at risk of predation or being run over by cars (Reed *et al.* 1985, p. 377; Telfer *et al.* 1987, p. 410). Vulnerability to artificial lighting varies between species and age classes and according to the influence of season, lunar phase, and weather conditions. Young birds are more likely to become disoriented by manmade light sources (Montevecchi 2006, pp. 101–102). Over a 12-year period (1978 to 1990), Harrison *et al.* (1990, p. 49) reported that 15 band-rumped storm-petrels, 13 of which were young, were recovered on Kauai as a result of fallout. Between 1991 and 2008, another 21 band-rumped storm-petrels were collected on Kauai (Holmes and Joyce

2009, p. 2). Currently, fallout due to light pollution is recorded almost annually on Kauai (Kauai Island Utility Cooperative 2015, in litt.). However, the actual extent of such loss and its overall impact on the band-rumped storm-petrel population in Hawaii is not known because scavengers often prevent the detection or recovery of the dead or injured birds, but any loss in such a small population is significant.

A related threat to seabirds in Hawaii, including the band-rumped storm-petrel, is collision with structures such as communication towers and utility lines (Cooper and Day 1998, pp. 16–18; Podolsky *et al.* 1998, pp. 23–33). Several seabird species that nest in the Hawaiian Islands, including the Newell's shearwater (federally listed as threatened), the Hawaiian petrel (federally listed as endangered), and the band-rumped storm-petrel, regularly commute between inland nest sites and the ocean. These birds commute at night when manmade obstacles such as communication towers and utility lines are difficult to see. They strike these unseen obstacles, and often die or are injured as a result. An early study estimated that 340 Newell's shearwater fledglings die annually on the eastern and southern shores of Kauai as a result of collisions (Podolsky *et al.* 1998, p. 30); however, current analyses for all seabirds on Kauai indicate the number of collisions with utility lines is much higher, over 2,000 strikes per year (using site-specific strike rates), but numbers of birds that hit utility lines is very site-dependent (Travers *et al.* 2014, pp. 19, 29–37; Service 2015, in litt., Slide 21). The impact to the band-rumped storm-petrel from artificial lighting and collisions with structures is expected to increase as the human population grows and development continues on the Hawaiian Islands.

#### Other Human Effects on the Band-Rumped Storm-Petrel

Other factors that may negatively affect the band-rumped storm-petrel include commercial fisheries interactions and alteration of prey base upon which the band-rumped storm-petrel depends. Commercial fisheries are known to adversely affect certain species of seabirds (Furness 2003, pp. 33–35; Croxall *et al.* 2012, p. 24). Seabirds are caught in most types of fishing gear, notably in nets and on long-lines, where they suffer mortality by drowning. Seabirds attending fishing vessels also come into contact with and consume deep-water fish they would not normally have access to, and can become contaminated by high levels of heavy metals in these fish (Furness

2003, p. 34). Commercial fisheries also cause depletion of small pelagic schooling fish, a significant food source for seabirds (Furness 2003, p. 34). The potential effects of these activities have not been assessed for the band-rumped storm-petrel; however, we believe they can have the same effects as have been shown for other seabirds. In addition, pollution of the open ocean by plastics and other marine debris that can be mistaken for food by band-rumped storm-petrels may pose a threat to this species (Ryan 1989, p. 629). Although a study by Moser and Lee (1992, p. 85) found no evidence of plastic ingestion by band-rumped storm-petrels, the sample size was very small (4 individuals) and inadequate to conclusively determine whether this species suffers from ingestion of plastics. Many closely related seabirds do suffer ill effects from ingestion of plastics, including physical damage to the digestive tract, effects of toxins carried on the plastics, and resulting mortality (Ryan 1989, pp. 623–629).

#### Effects of Recreational Use, and Dumping of Trash and Nonnative Fish into Anchialine Pools

On Hawaii Island, it is estimated that up to 90 percent of the anchialine pools have been destroyed or altered by human activities (Brock 2004, p. i). The more recent human modification of anchialine pools includes bulldozing and filling of pools (Bailey-Brock and Brock 1993, p. 354). Trampling damage from use of anchialine pools for swimming and bathing has been documented (Brock 2004, pp. 13–17). Historically, pools were sometimes modified with stone walls and steps by Hawaiians who used them for bathing. There are no documented negative impacts to pond biota as a result of this activity; however, introduction of soaps and shampoos is of concern (Brock 2004, p. 15).

The depressional features of anchialine pools make them susceptible to dumping. Rubble found in degraded pools and pools that have been filled with rubble have been dated to about 100 years old, and the practice of dumping trash into pools continues today (Brock 2004, p. 15). For example, Lua O Palahemo (Hawaii Island) is located approximately 560 ft (170 m) from a sandy beach frequented by visitors who fish and swim. There are multiple dirt roads that surround the pool making it highly accessible. Plastic bags, paper, fishing line, water bottles, soda cans, radios, barbed wire, and a bicycle have been documented within the pool (Kensley and Williams 1986, pp. 417–418; Bozanic 2004, p. 1; Wada

2010, in litt.). Introduction of trash involving chemical contamination into anchialine pools, as has been observed elsewhere on Hawaii Island (Brock 2004, pp. 15–16), could more drastically affect water quality and result in local extirpation of anchialine pool shrimp species.

Anchialine pool habitats can gradually disappear when wind-blown materials accumulate through a process known as senescence (Maciolek and Brock 1974, p. 3; Brock 2004, pp. 11, 35–36). Conditions promoting rapid senescence include an increased amount of sediment deposition, good exposure to light, shallowness, and a weak connection with the water table, resulting in sediment and detritus accumulating within the pool instead of being flushed away with tidal exchanges and ground water flow (Maciolek and Brock 1974, p. 3; Brock 2004, pp. 11, 35–36). Sedimentation may be degrading the health of Hawaiian anchialine pool systems in which the anchialine pool shrimp, *Procaris hawaiiiana*, and the orangeblack Hawaiian damselfly, occur.

In general, the accidental or intentional introduction and spread of nonnative fishes (bait and aquarium fish) is considered the greatest threat to anchialine pools in Hawaii (Brock 2004, p. 16). Maciolek (1983, p. 612) found that the abundance of shrimp in a given population is indirectly related to predation by fish. Lua O Palahemo is vulnerable to the intentional dumping of nonnative bait and aquarium fishes because the area is accessible to vehicles and human traffic; however, due to its remote location, is not monitored regularly by State agency staff. The release of mosquito fish (*Gambusia affinis*) and tilapia (*Tilapia mossambica*) into the Waikoloa Anchialine Pond Preserve (WAAPA) at Waikoloa, North Kona, Hawaii, resulted in the infestation of all ponds within an approximately 3-ha (8-ac) area, which represented about two-thirds of the WAAPA. Within 6 months, all native hypogean (subterranean) shrimp species disappeared (Brock 2004, p. iii). Nonnative fishes drive anchialine species out of the lighted, higher productivity portion of the pools, into the surrounding water table bed rock, subsequently leading to the decimation of the benthic community structure of the pool (Brock 2004, p. iii). In addition, nonnative fishes prey on and exclude native hypogean shrimp that are usually a dominant and essential faunal component of anchialine pool ecosystems (Brock 2004, p. 16; Bailey-Brock and Brock 1993, pp. 338–355). The loss of the shrimp changes

ecological succession by reducing herbivory of macroalgae, allowing an overgrowth and change of pool flora. This overgrowth changes the system from clear, well-flushed basins to a system characterized by heavy sedimentation and poor water exchange, which increases the rate of pool senescence (Brock 2004, p. 16). Nonnative fishes, unlike native fishes, are able to complete their life cycles within anchialine pool habitats, and remain a permanent detrimental presence in all pools in which they are introduced (Brock 2004, p. 16). In Hawaii, the most frequently introduced fishes are those in the Poeciliidae family (freshwater fish which bear live young) and include mosquito fish, various mollies (*Poecilia* spp.), and tilapia, which prey on and exclude the herbivorous aquatic animals upon which *Procaris hawaiiiana* feed. More than 90 percent of the 600 to 700 anchialine habitats in the State of Hawaii were degraded between 1974 and 2004, due to the introduction of nonnative fishes, and we expect that this activity continues (Brock 2004, p. 24). According to Brock (2012, pers. comm.), sometime in the 1980s, nonnative fishes were introduced into Lua O Palahemo. It is our understanding that the fish were subsequently removed by illegal use of a fish poison (EPA 2007, pp. 22–23; Finlayson *et al.* 2010, p. 2), and to our knowledge the pool is currently free of nonnative fish; however, nonnative fish could be introduced into the pool at any time.

#### Low Numbers of Individuals and Populations

Species that undergo significant habitat loss and degradation and other threats resulting in population decline and range reduction and fragmentation are inherently highly vulnerable to extinction because of localized catastrophes such as hurricanes, floods, rockfalls, landslides, treefalls, and drought; climate change impacts; demographic stochasticity; and the increased risk of genetic bottlenecks and inbreeding depression (Gilpin and Soulé 1986, pp. 24–34). These conditions are easily reached by island species and especially by species endemic to single islands that face numerous threats such as those described in this proposal (Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607). Populations that have been diminished and isolated by habitat loss, predation, and other threats may exhibit reduced levels of genetic variability, which can diminish the species' capacity to adapt to environmental changes, thereby lessening the probability of long-term

persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Very small, isolated plant populations are also more susceptible to reduced reproductive vigor due to ineffective pollination, inbreeding depression, and hybridization. This is particularly true for functionally unisexual plants in this proposal like *Myrsine fosbergii* of which some individuals are functionally dioecious (staminate (male) and pistillate (female) flowers occur on separate individuals). Isolated individuals have difficulty in achieving natural pollen exchange, which decreases the production of viable seed. Populations are also impacted by demographic stochasticity, through which populations are skewed toward either male or female individuals by chance. The problems associated with small occurrence size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by interactions with other threats, such as those discussed above (see Factor A and Factor C, above).

#### Plants

The effects resulting from having a reduced number of individuals and occurrences poses a threat to all 39 plant species addressed in this proposal. We consider the following 19 species even more vulnerable to extinction due to threats associated with small occurrence size or small number of occurrences because:

- The only known occurrences of *Cyanea kauaulaensis*, *Labordia lorenciana*, *Lepidium orbiculare*, and *Phyllostegia helleri* are threatened either by landslides, rockfalls, treefalls, drought, or erosion, or a combination of these factors.

- *Cyanea kauaulaensis*, *Cyrtandra hematos*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia lorenciana*, and *Nothocestrum latifolium* are declining and they have not been observed regenerating in the wild.

- The only known wild individuals of *Cyperus neokunthianus*, *Kadua haupuensis*, and *Stenogyne kaalae* ssp. *sherffii* are extirpated; there is one remaining individual of *Deparia kaalaana*, and only two individuals of *Phyllostegia brevidens*. *Kadua haupuensis*, *Phyllostegia brevidens*, and *Stenogyne kaalae* ssp. *Sherffii* only exist in propagation.

- The following single-island endemic species are known from fewer than 250 individuals: *Asplenium diellaciniatum*, *Cyanea kauaulaensis*, *Cyperus neokunthianus*, *Cyrtandra hematos*, *Dryopteris glabra* var. *pusilla*, *Hypolepis hawaiiensis* var. *mauiensis*,

*Kadua haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Phyllostegia helleri*, *Pritchardia bakeri*, *Santalum involutum*, *Stenogyne kaalae* ssp. *sherffii*, and *Wikstroemia skottsbergiana*.

#### Animals

Like most native island biota, the Hawaiian population of band-rumped storm-petrel, the orangeblack Hawaiian damselfly, the anchialine pool shrimp (*Procaris hawaiiana*), and the seven yellow-faced bees are particularly sensitive to disturbances due to their diminished numbers of individuals and populations, and small geographic ranges.

The band-rumped storm-petrel is represented in Hawaii by very small numbers of populations, and perhaps not more than a few hundred individuals (Harrison *et al.* 1990, p. 49). A single human-caused action such as establishment of mongoose on Kauai, or a hurricane during breeding season, could cause reproductive failure and the mortality of a significant percentage of the extant individuals. Threats to this species include habitat destruction and modification, landslides and erosion, hurricanes, predation, injury and mortality from lights and structures, and other human factors (such as commercial fisheries). The effects of these threats are compounded by the current low number of individuals and populations of band-rumped storm-petrel.

We consider the orangeblack Hawaiian damselfly vulnerable to extinction due to impacts associated with low numbers of individuals and low numbers of populations because this species is known from only 5 of 8 Hawaiian Islands (Hawaii Island, Maui, Lanai, Molokai, and Oahu), where it occurred historically, and because of the current reduction in numbers on each of those five islands. Jordan *et al.* (2007, p. 247) conducted a genetic and comparative phylogeography analysis (a study of historical processes responsible for genetic divergence within a species) of four Hawaiian *Megalagrion* species, including the orangeblack Hawaiian damselfly. This analysis demonstrated *Megalagrion* populations with low genetic diversity are at greater risk of decline and extinction that those with high genetic diversity. The authors found that low genetic diversity was observed in populations known to be bottlenecked or relictual (groups of animals or plants that exist as a remnant of a formerly widely distributed group), including populations of the orangeblack Hawaiian damselfly. The following threats to this species have all

been documented: Habitat destruction and modification by agriculture and urban development, fire, droughts, floods, and hurricanes; predation by nonnative fish and backswimmers; and water extraction from streams and ponds. The effects of these threats are compounded by the current low number of individuals and populations of the orangeblack Hawaiian damselfly.

We consider the anchialine pool shrimp, *Procaris hawaiiana*, vulnerable to extinction due to impacts associated with low numbers of individuals and populations because this species is known from only 25 of over 500 assessed anchialine pools on Hawaii Island, and from only 2 anchialine pools on Maui. Threats to *P. hawaiiana* include: Habitat destruction and modification by agriculture and urban development; commercial trade; dumping of nonnative fish and trash into anchialine pools; and water extraction. The effects of these threats are compounded by the low number of individuals and populations of *P. hawaiiana*.

We consider the seven Hawaiian yellow-faced bees vulnerable to extinction due to impacts associated with low numbers of individuals and populations. The 7 yellow-faced bee species currently occur in only 22 locations (with some overlap) on 6 main Hawaiian Islands, and are likely more vulnerable to habitat change and stochastic events due to low numbers and occurrences (Daly and Magnacca 2003, p. 3; Magnacca 2007a, p. 173). *Hylaeus anthracinus* occurs in 15 total locations from Hawaii Island, Maui, Kahoolawe, Molokai, and Oahu, but has not been recently observed in its last known location on Lanai; *H. assimulans* is found in 5 total locations on Maui, Lanai, and Kahoolawe, but has not been observed recently on Oahu or Molokai; *H. facilis* is found in 2 total locations on Oahu and Molokai, but has not been observed recently from Lanai and Maui; *H. hilaris* is known from one population on Molokai and has not been observed recently from Lanai and Maui; *H. kuakea* is known from one small area on Oahu; *H. longiceps* is known from 6 total locations on Maui, Lanai, Molokai, and Oahu, but has not been collected from several historical locations on those islands; and *H. mana* is known from 3 locations on Oahu. Threats to these species include agriculture and urban development; habitat destruction and modification by nonnative ungulates, nonnative plants, fire, drought, and hurricanes; the effects of climate change on habitat; loss of host plants; and predation or competition by nonnative ants, wasps, and bees. The

effects of these threats are compounded by the low numbers of individuals and populations of the seven yellow-faced bees.

#### Hybridization

Natural hybridization is a frequent phenomenon in plants and can lead to the creation of new species (Orians 2000, p. 1949), or sometimes to the decline of species through genetic assimilation or “introgression” (Ellstrand 1992, pp. 77, 81; Levin *et al.* 1996, pp. 10–16; Rhymer and Simberloff 1996, p. 85). Hybridization, however, is especially problematic for rare species that come into contact with species that are abundant or more common (Rhymer and Simberloff 1996, p. 83). We consider hybridization to be a threat to *Microlepidia strigosa* var. *mauiensis* because it may lead to extinction of the original genotypically distinct variety, as noted by biologists’ observations of the Oahu occurrences (Kawelo 2009, in litt.). Only 15 to 20 individuals on Oahu express the true phenotype of the variety (Ching 2011, in litt.).

#### No Regeneration

Lack of, or low levels of, regeneration (reproduction and recruitment) in the wild has been observed, and is a threat to seven plants: *Cyrtandra hematos*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia lorenciana*, *Lepidium orbiculare*, and *Nothoestrum latifolium* (see “Low Numbers of Individuals and Populations,” “Plants,” above), proposed for listing in this rule. The reasons for this are not well understood; however, seed predation by rats and ungulates, inbreeding depression, and lack of pollinators are thought to play a role (Wagner *et al.* 1999, p. 1451; Wood *et al.* 2007, p. 198; HBMP 2010; Oppenheimer and Lorence 2010, pp. 20–21; PEPP 2010, p. 73; PEPP 2014, p. 34).

#### Competition With Nonnative Invertebrates

There are 15 known species of nonnative bees in Hawaii (Snelling 2003, p. 342), including two nonnative *Hylaeus* species (Magnacca 2007b, p. 188). Most nonnative bees inhabit areas dominated by nonnative vegetation and do not compete with Hawaiian bees for foraging resources (Daly and Magnacca 2003, p. 13); however, the European honey bee (*Apis mellifera*) is an exception. This social species is often very abundant in areas with native vegetation and aggressively competes with *Hylaeus* for nectar and pollen (Hopper *et al.* 1996, p. 9; Daly and Magnacca 2003, p. 13; Snelling 2003, p. 345). The European honey bee was first

introduced to the Hawaiian Islands in 1875, and currently inhabits areas from sea level to the upper tree line boundary (Howarth 1985, p. 156). Individuals of the European honey bee have been observed foraging on *Hylaeus* host plants such as *Scaevola* spp. and *Sesbania tomentosa* (ohai) (Hopper *et al.* 1996, p. 9; Daly and Magnacca 2003, p. 13; Snelling 2003, p. 345). Although we lack information indicating Hawaiian *Hylaeus* populations have declined because of competition with the European honey bee for nectar and pollen, it does forage in *Hylaeus* habitat and may exclude *Hylaeus* species (Magnacca 2007b, p. 188; Lach 2008, p. 155). *Hylaeus* species do not occur in native habitat where there are large numbers of European honey bee individuals, but the impact of smaller, more moderate populations is not known (Magnacca 2007b, p. 188). Nonnative, invasive bees are widely documented to decrease nectar volumes and usurp native pollinators (Lach 2008, p. 155). There are also indications that populations of the European honey bee are not as vulnerable as *Hylaeus* species to predation by nonnative ant species (see “C. Disease or Predation,” above). Lach (2008, p. 155) observed that *Hylaeus* bees that regularly collect pollen from flowers of the native tree *Metrosideros polymorpha* were entirely absent from trees with flowers visited by the big-headed ant (*Pheidole megacephala*), while visits by the European honey bee were not affected. As a result, Lach (2008, p. 155) concluded that the European honey bee may have a competitive advantage over *Hylaeus* species, as it is not excluded by the big-headed ant. Other nonnative bees found in areas of native vegetation and overlapping with native *Hylaeus* population sites include *Ceratina* species (carpenter bees), *Hylaeus albonitens* (Australian colletid bees), *H. strenuus* (NCN), and *Lasioglossum impavidum* (NCN) (Magnacca 2007b, p. 188; Magnacca and King 2013, pp. 19–22). While it has been suggested these nonnative bees may impact native *Hylaeus* bees through competition for pollen base on their similar size and flower preferences, there is no information that demonstrates these nonnative bees forage on *Hylaeus* host plants (Magnacca 2007b, p. 188; Magnacca and King 2013, pp. 19–22). It has also been suggested parasitoid wasps may compete for nectar with native *Hylaeus* species; however, information demonstrating nonnative parasitoid wasps forage on the same host plants as *H. anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H.*

*kuakea*, *H. longiceps*, and *H. mana* is unavailable (Daly and Magnacca 2003, p. 10).

#### Loss of Host Plants Through Competition

The seven yellow-faced bees are dependent upon native flowering plants for their food resources, pollen and nectar, and for nesting sites. Introduced invertebrates are a threat to yellow-faced bees, by outcompeting native *Hylaeus* for use of host plants for pollen, nectar, and nesting sites. This effect is compounded by the impacts of nonnative ungulates on native host plants for *Hylaeus* (see Factors A and C). Nonnative plants are a threat to the seven yellow-faced bees and their host plants because they: (1) Degrade habitat and outcompete native plants; (2) can increase the intensity, extent, and frequency of fire, converting native shrubland and forest to land dominated by nonnative grasses; and (3) may cause the loss of the native host plants upon which the yellow-faced bees depend (Factor A). Drought, fire, and water extraction may lead to loss of host plants within the known ranges of populations of yellow-faced bees, and are discussed in “A. The Present or Threatened Destruction, Modification, or Curtailed of Its Habitat or Range,” above.

#### Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). “Climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2013, p. 1450). The term “climate change” thus refers to a change in the mean or variability of one or more measures of climate (*e.g.*, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2013, p. 1450). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.*, habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including

uncertainty, in our consideration of various aspects of climate change.

Climate change will be a particular challenge for the conservation of biodiversity because the introduction and interaction of additional stressors may push species beyond their ability to survive (Lovejoy *et al.* 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facets of climate change for biodiversity (Hannah *et al.* 2005, p. 4). The magnitude and intensity of the impacts of global climate change and increasing temperatures on native Hawaiian ecosystems are the subjects of active research.

The average ambient air temperature (at sea level) is projected to increase globally by about 4.1 degrees Fahrenheit (°F) (2.3 °Celsius (C)) with a range of 2.7 °F to 6.7 °F (1.5 °C to 3.7 °C) by 2100 worldwide (IPCC 2007, in litt.). These changes would increase the monthly average temperature of the Hawaiian Islands from the current value of 74 °F (23.3 °C) to between 77 °F to 86 °F (25 °C to 30 °C). Temperature has been rising over the last 100 years, with the greatest increase occurring after 1975 (Alexander *et al.* 2006, pp. 1–22; Giambelluca *et al.* 2008, p. 1). On the main Hawaiian Islands, predicted changes associated with increases in temperature include a shift in vegetation zones upslope, a similar shift in animal species' ranges, changes in mean precipitation with unpredictable effects on local environments, increased occurrence of drought cycles, and increases in the intensity and numbers of hurricanes (Loope and Giambelluca 1998, pp. 514–515; U.S. Global Change Research Program (US–GCRP) 2009, pp. 10, 12, 17–18, 32–33).

The forecast of changes in precipitation is highly uncertain because it depends, in part, on how the El Niño-La Niña weather cycle (a disruption of the ocean atmospheric system in the tropical Pacific having important global consequences for weather and climate) might change (State of Hawaii 1998, pp. 2–10). However, over the past 100 years, the Hawaiian Islands have experienced an annual decline in precipitation of just over 9 percent (US–NSTC 2008, p. 61) and a steady decline of about 15 percent over the last 15 to 20 years (Chu and Chen 2005, pp. 4802–4803; Diaz *et al.* 2006, pp. 1–3). Models of future rainfall downscaled for Hawaii generally project increasingly wet windward slopes and mild to extreme drying of leeward areas in particular by the middle and end of the 21st century (Timm and Diaz 2009, p. 4262; Elison Timm *et al.* 2015, pp. 95,

103–105). Stream-gauge data provide evidence of a long-term decrease in precipitation and stream flow on the Hawaiian Islands (Oki 2004, p. 4). This long-term drying trend, coupled with existing ditch diversions and periodic El Niño-caused drying events, has created a pattern of severe and persistent stream dewatering events (Polhemus 2008, in litt., p. 26). Altered seasonal moisture regimes can have negative impacts on plant growth cycles and overall negative impacts on native ecosystems (US–GCRP 2009, pp. 32–33). Long periods of decline in annual precipitation result in a reduction of moisture availability, an increase in drought frequency and intensity, and a self-perpetuating cycle of nonnative plant invasion, fire, and erosion (US–GCRP 2009, pp. 32–33; Warren 2011, pp. 221–226) (see “Habitat Destruction and Modification by Fire,” above). Overall, the projected increase in variance of precipitation events will change patterns of water availability for the species (Parmesan and Matthews 2006, p. 340), changes that point to changes in plant communities as a consequence over the coming decades.

Tropical cyclone frequency and intensity are projected to change as a result of climate change over the next 100 to 200 years (Vecchi and Soden 2007, pp. 1068–1069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1371, Figure 14). In the central Pacific, modeling projects an increase of up to two additional tropical cyclones per year in the main Hawaiian Islands by 2100 (Murakami *et al.* 2013, p. 2, Figure 1d). In general, tropical cyclones with the intensities of hurricanes have been an uncommon occurrence in the Hawaiian Islands. From the 1800s until 1949, hurricanes were only rarely reported from ships in the area. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands, and 5 of these caused serious damage (Businger 1998). A recent study shows that, with a possible shift in the path of the subtropical jet stream northward, away from Hawaii, more storms will be able to approach and reach the Hawaiian Islands from an easterly direction, with Hurricane Iselle in 2014 being an example (Murakami *et al.* 2015, p. 751).

As described above (see “Climate change vulnerability assessment for Hawaiian plants,” above; Table 3), 28 of the 39 plant species in this proposal were included in the recent analysis of the vulnerability of Hawaiian plants to climate change conducted by Fortini *et al.* (2013, 134 pp.). All 28 species scored as moderately to highly vulnerable, as did most other species in the analysis that already are considered to be of

conservation concern (because they face multiple non-climate threats) (Fortini *et al.* 2013, pp. 25, 37). The specific impacts of climate change effects on the habitat, biology, and ecology of individual species are largely unknown and remain a subject of study. However, in the assessment of more than 1,000 Hawaiian plants, including 319 already listed as threatened or endangered, a strong relationship emerged between climate vulnerability scores and current threats and conservation status (Fortini *et al.* 2013, p. 5). Therefore, we anticipate that the other 11 plant species proposed for listing are likely to be similarly vulnerable to climate change effects. The projected landscape- or island-scale changes in temperature and precipitation, as well as the potentially catastrophic impacts of projected increases in storm frequency and severity, also point to likely adverse impacts of climate change on all 10 of the animal species considered in this proposal because they rely on abiotic conditions, such as water temperature, or habitat elements, such as host plants, likely to be substantively altered by climate change.

In summary, based on the best available information, we conclude that changes in environmental conditions that result from projected climate change are likely to negatively affect all 49 species we are proposing to list as endangered in this rule. Climate change effects, including increased inter-annual variability of ambient temperature, precipitation, and hurricanes, are likely to impose additional stresses on all 11 ecosystems and all 49 species, thus exacerbating current threats to these species. The probability of a species going extinct as a result of these effects increases when its range is restricted, its habitat decreases, and its abundance declines (IPCC 2014, pp. 14–15). These 49 species all persist with small population sizes and highly restricted or fragmented ranges. They thus face increased risk from stochastic events such as hurricanes, which can extinguish an important proportion of the remaining individuals, and from environmental changes because these species may lack ecological or genetic adaptive capacity (Fortini *et al.* 2013, pp. 3–5).

In addition to indirect impacts resulting from changes in habitat and disturbance regimes, these species may experience direct impacts of climate change, for example, physiological stress in the orangeblack Hawaiian damselfly caused by increased stream temperatures to which the species is not adapted (Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et*



al. 2002, pp. 14246, 14248). These aspects of climate change and their impacts on native species and ecosystems may be exacerbated by human demand on Hawaii's natural resources; for example, decreased availability of fresh water will magnify the impact of human water consumption on Hawaii's natural streams and reservoirs (Giambelluca et al. 1991, p. v). Although we do not consider climate change to be a current threat, we anticipate that climate change impacts are likely to contribute to the multiple stressors affecting the status of all of these species, and are likely to become a threat to most or all of them in the future.

#### Summary of Factor E

We consider the threat from artificial lighting and structures to be an ongoing threat to the band-rumped storm-petrel in Hawaii, proposed for listing in this rule, because these threats can cause injury and mortality, resulting in a loss of breeding individuals and juveniles, and this threat is expected to continue into the future. The potential threats of injury or mortality, or loss of food sources, caused by the activities of commercial fisheries, and injury or mortality from ingestion of plastics and marine debris, can contribute to further decline in the Hawaiian population of the band-rumped storm-petrel.

We consider the threats from recreational use of, and dumping of trash and introduction of nonnative fish into, the pools that support the anchialine pool shrimp *Procaris hawaiiensis* proposed for listing in this rule to be threats that have the potential to occur at any time, although their occurrence is not predictable. The use of anchialine pools for dumping of trash can lead to accelerated sedimentation in the pool, exacerbating conditions leading to its senescence. Nonnative fish prey on, or outcompete, native herbivorous anchialine pool shrimp that serve as the prey base for predatory species of anchialine pool shrimp, and may also prey on *Procaris hawaiiensis*. Changing the anchialine pool system by dumping of trash, introduction of nonnative fish, and sedimentation may also affect habitat for the orangeblack Hawaiian damselfly.

We consider the impacts from limited numbers of individuals and populations to be an ongoing threat to all 39 plant species proposed for listing in this rule, and especially the following 19 plants: *Asplenium diellaciniatum*, *Cyanea kauaulaensis*, *Cyperus neokunthianus*, *Cyrtandra hematos*, *Deparia kaalaana*, *Dryopteris glabra* var. *pusilla*, *Gardenia remyi*, *Hypolepis*

*hawaiiensis* var. *mauiensis*, *Joinvillea ascendens* ssp. *ascendens*, *Kadua haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Nothoctrum latifolium*, *Phyllostegia brevidens*, *P. helleri*, *Pritchardia bakeri*, *Santalum involutum*, *Stenogyne kaalae* ssp. *sherffii*, and *Wikstroemia skottsbergiana*. Low numbers and small occurrences of these plants result in greater vulnerability to stochastic events and can result in reduced levels of genetic variability leading to diminished capacity to adapt to environmental changes. Under these circumstances, the probability of long-term persistence is diminished, potentially resulting in extirpation and extinction. This threat applies to the entire range of each of these species.

We also consider the impacts from limited numbers of individuals and populations to be an ongoing threat to all 10 animal species proposed for listing in this rule.

The threat to the band-rumped storm-petrel from limited numbers and populations is ongoing and is expected to continue into the future.

We also consider the impacts from limited numbers of individuals and populations to be an ongoing threat to the orangeblack Hawaiian damselfly, the anchialine pool shrimp *Procaris hawaiiensis*, and to the yellow-faced bees *Hylaeus anthracinus*, *H. assimulans*, *H. facialis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*. The threat from limited numbers of individuals and populations is ongoing and is expected to continue into the future because: (1) A single catastrophic event may result in extirpation of remaining populations and extinction of these species; (2) species with few known occurrences are less resilient to threats that might otherwise have a relatively minor impact (on widely-distributed species); (3) these species may experience reduced reproductive vigor due to inbreeding depression; and (4) they may experience reduced levels of genetic variability leading to diminished capacity to adapt to environmental changes, thereby lessening the probability of its long-term persistence.

The threat from hybridization is an unpredictable but ongoing threat to *Microlepis strigosa* var. *mauiensis*, as has been observed at occurrences on Oahu.

We consider the threat to *Cyanea kauaulaensis*, *Cyrtandra hematos*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia lorenciana*, *Lepidium orbiculare*, and *Nothoctrum latifolium* from lack of regeneration to be ongoing to continue into the future because the reasons for the lack of

recruitment in the wild are unknown and uncontrolled, and any competition from nonnative plants or habitat modification by ungulates or fire, or other threats, could lead to the extirpation of these species.

We consider the threat of competition with invertebrates an ongoing threat to the yellow-faced bees, *Hylaeus anthracinus*, *H. assimulans*, *H. facialis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*, proposed for listing in this rule. Nonnative wasps and bees are aggressive and can prevent use of the native host plants required for food and nesting by all seven yellow-faced bees.

The projected effects of increasing temperature and other aspects of climate change on the 49 species may be direct, such as physiological stress caused by increased temperature or lack of moisture, or indirect, such as the modification or destruction of habitat, increased competition by nonnative species, and changes in disturbance regimes that lead to changes in habitat (e.g., fire, drought, flooding, and hurricanes). The specific and cumulative effects of climate change on each of these 49 species are presently unknown, but we anticipate that these effects, if realized, will exacerbate the current threats to these species and become a threat to most or all of them in the future.

#### Proposed Determination for 49 Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on: (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.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to each of the 49 species proposed for listing. We find that all of these species face threats that are ongoing and are expected to continue into the future throughout their ranges. Habitat destruction and modification by agriculture and urban development is a threat to four plants (*Nothoctrum latifolium*, *Portulaca villosa*, *Pseudognaphalium*

*sandwicensium* var. *molokaiense*, and *Solanum nelsonii*) and six animals (the orangeblack Hawaiian damselfly, the anchialine pool shrimp (*Procaris hawaiiiana*), *Hylaesus anthracinus*, *H. assimulans*, *H. hilaris*, and *H. longiceps*) (Factor A). Habitat destruction and modification by nonnative feral ungulates or nonnative plants poses a threat to 46 of the 49 species (all except for *Cyanea kauaulaensis*, *Hypolepis hawaiiensis* var. *mauiensis*, and the anchialine pool shrimp) (Factor A). Fifteen of the plant species (*Exocarpos menziesii*, *Festuca hawaiiensis*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia lorenciana*, *Nothoecstrum latifolium*, *Ochrosia haleakalae*, *Phyllostegia stachyoides*, *Portulaca villosa*, *Ranunculus mauiensis*, *Sanicula sandwicensis*, *Santalum involutum*, *Schiedea pubescens*, *Sicyos lanceoloideus*, *S. macrophyllus*, and *Solanum nelsonii*), the orangeblack Hawaiian damselfly, and all seven yellow-faced bees, are threatened by habitat destruction and modification from fire. Nineteen of the plant species (*Cyanea kauaulaensis*, *Cyclosorus boydiae*, *Deparia kaalaana*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Kadua fluviatilis*, *K. huapuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Ochrosia haleakalae*, *Phyllostegia brevidens*, *P. helleri*, *P. stachyoides*, *Portulaca villosa*, *Pseudognaphalium sandwicensium* var. *molokaiense*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Sanicula sandwicensis*, and *Schiedea pubescens*, and *Solanum nelsonii*) and the band-rumped storm-petrel are threatened by the destruction and modification of their habitats from either singly or in combination: landslides, rockfalls, treefalls, or flooding (Factor A). Habitat loss or degradation, or loss of host plants, or mortality, and water extraction, due to drought is a threat to *Deparia kaalaana*, *Huperzia stemmermanniae*, *Phyllostegia stachyoides*, *Ranunculus hawaiiensis*, *R. mauiensis*, *Sanicula sandwicensis*, *Schiedea pubescens*, *Sicyos lanceoloideus*, and *Solanum nelsonii*; and to the orangeblack Hawaiian damselfly; and all seven yellow-faced bees (Factor A and Factor E). Habitat loss and mortality resulting from hurricanes is a threat to the plant *Pritchardia bakeri*, the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, and all seven yellow-faced bees (Factor A). Overcollection for commercial purposes poses a threat to the anchialine pool shrimp, *Procaris hawaiiiana* (Factor B). Predation and herbivory is an ongoing threat to 33 of the 39 plant species (by feral pigs, goats,

axis deer, black-tailed deer, cattle, sheep and mouflon, rats, and slugs; see Table 3); to the band-rumped storm petrel (by owls, cats, rats, and mongoose); to the orangeblack Hawaiian damselfly (by backswimmers); and to the seven yellow-faced bees (by ants and wasps) (Factor C). Predation by nonnative fish is a potential threat to the orangeblack Hawaiian damselfly and the anchialine pool shrimp (Factor C). The inadequacy of existing regulatory mechanisms (*i.e.*, inadequate protection of habitat and inadequate protection from the introduction of nonnative species) poses an ongoing threat to all 49 species (Factor D). Injury and mortality caused by artificial lighting and structures are ongoing threats to the band-rumped storm-petrel (Factor E). There are ongoing threats to all 49 species due to factors associated with low numbers of individuals and populations (Factor E). The threat of low numbers to seven plants (*Cyanea kauaulaensis*, *Cyrtandra hematos*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Labordia lorenciana*, *Lepidium orbiculare*, and *Nothoecstrum latifolium*) is exacerbated by lack of regeneration in the wild (Factor E). Recreational use of, and dumping of trash and nonnative fish into, anchialine pools is a threat to the anchialine pool shrimp and also to the orangeblack Hawaiian damselfly that may use that habitat (Factor E). Competition by ants, wasps, and bees for the food and nesting resources, including loss of native host plants, is a threat to all seven yellow-faced bees (Factor E). These threats are exacerbated by these species' inherent vulnerability to extinction from stochastic events at any time because of their endemism, low numbers of individuals and populations, and restricted habitats. In addition, we are concerned about the projected effects of rising temperature and other aspects of climate change on all 49 species (Factor E). We recognize that limited information exists on the exact nature of impacts that these species may experience, but we anticipate that climate change effects are likely to exacerbate the current threats to these species and may become a threat to most of all of them in the future.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that each of the endemic Hawaiian species and the Hawaiian DPS

of band-rumped storm petrel is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial information, we propose to list the following 49 species as endangered in accordance with sections 3(6) and 4(a)(1) of the Act: the plants *Asplenium diellaciniatum*, *Calamagrostis expansa*, *Cyanea kauaulaensis*, *Cyclosorus boydiae*, *Cyperus neokunthianus*, *Cyrtandra hematos*, *Deparia kaalaana*, *Dryopteris glabra* var. *pusilla*, *Exocarpos menziesii*, *Festuca hawaiiensis*, *Gardenia remyi*, *Huperzia stemmermanniae*, *Hypolepis hawaiiensis* var. *mauiensis*, *Joinvillea ascendens* ssp. *ascendens*, *Kadua fluviatilis*, *Kadua haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Microlepis strigosa* var. *mauiensis*, *Myrsine fosbergii*, *Nothoecstrum latifolium*, *Ochrosia haleakalae*, *Phyllostegia brevidens*, *Phyllostegia helleri*, *Phyllostegia stachyoides*, *Portulaca villosa*, *Pritchardia bakeri*, *Pseudognaphalium sandwicensium* var. *molokaiense*, *Ranunculus hawaiiensis*, *Ranunculus mauiensis*, *Sanicula sandwicensis*, *Santalum involutum*, *Schiedea diffusa* ssp. *diffusa*, *Schiedea pubescens*, *Sicyos lanceoloideus*, *Sicyos macrophyllus*, *Solanum nelsonii*, *Stenogyne kaalae* ssp. *sherffii*, and *Wikstroemia skottsbergiana*; and the following animals: the band-rumped storm-petrel (*Oceanodroma castro*), the orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*), the anchialine pool shrimp (*Procaris hawaiiiana*), and the yellow-faced bees *Hylaesus anthracinus*, *Hylaesus assimulans*, *Hylaesus facilis*, *Hylaesus hilaris*, *Hylaesus kuakea*, *Hylaesus longiceps*, and *Hylaesus mana*.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range (SPR). Under our SPR policy (79 FR 37578, July 1, 2014), if a species is endangered or threatened throughout a significant portion of its range and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies. We have determined that the Hawaii population of the band-rumped storm-petrel is a valid DPS, and we proposed to list that DPS. Each of the other 48 species endemic to the Hawaiian Islands proposed for listing in this rule is highly restricted in its range, and the threats occur throughout its range. Therefore, we assessed the status of each species

throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular portion of that range. Accordingly, our assessment and proposed determination applies to each species throughout its entire range. Likewise, we assessed the status of the Hawaii DPS of the band-rumped storm petrel throughout the range of the DPS and have determined that the threats occur throughout the DPS and are not restricted to any particular portion of the DPS. Because we have determined that these 48 species and one DPS are endangered throughout all of their ranges, no portion of their ranges can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578, July 1, 2014).

#### 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 activities. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed animals and plants are discussed, in part, below.

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 calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline

shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, 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, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outlines, draft recovery plans, and the final recovery plans will be available on our Web site (<http://www.fws.gov/endangered>), or from our Pacific Islands Fish and Wildlife 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, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private and State lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Hawaii would be eligible for Federal funds to implement management actions that promote the protection or recovery of the 49 species. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although these species are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally,

we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

For the 49 plants and animals proposed for listing as endangered species in this rule, Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, actions within the jurisdiction of the Natural Resources Conservation Service (NRCS), the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and branches of the Department of Defense (DOD). Examples of these types of actions include activities funded or authorized under the Farm Bill Program, Environmental Quality Incentives Program, Ground and Surface Water Conservation Program, Clean Water Act (33 U.S.C. 1251 *et seq.*), Partners for Fish and Wildlife Program, and DOD construction activities related to training or other military missions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign

commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

With respect to endangered plants, prohibitions outlined at 50 CFR 17.61 make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Exceptions to these prohibitions are outlined in 50 CFR 17.62. The Hawaii ESA prohibits take of plants; however, the Hawaii ESA affords no protection of habitat (HRS 195D-4(a)).

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, the Service may issue a permit authorizing any activity otherwise prohibited by 50 CFR 17.61 for scientific purposes or for enhancing the propagation or survival of endangered plants.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of

section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. Based on the best available information, the following activities may 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) Activities that take or harm the band-rumped storm-petrel, the orangeblack Hawaiian damselfly, the anchialine pool shrimp (*Procaris hawaiiiana*), and the seven yellow-faced bees by causing significant habitat modification or degradation such that it causes actual injury by significantly impairing essential behavior patterns. This may include introduction of nonnative species that compete with or prey upon the 10 animal species or the unauthorized release of biological control agents that attack the life stage of any of these 10 species.

(3) Damaging or destroying any of the 39 plant species in violation of the Hawaii State law prohibiting the take of listed species.

(4) Introduction of nonnative species that compete with or prey upon the 29 49 species proposed for listing, such as the introduction of competing, nonnative plants or animals to the State of Hawaii.

(5) The unauthorized release of biological control agents that attack any life stage of these 49 species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed . . . 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 by the Secretary that such areas are essential for the conservation of the species. Section 3(3) of the Act defines

conservation 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.

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 will designate critical habitat at the time the 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 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.

Besides the unpermitted collection of the anchialine pool shrimp *Procaris hawaiiiana* for trade for the aquarium hobby market, we do not know of any imminent threat of take attributed to collection or vandalism under Factor B for these plant and animal species. The available information does not indicate that identification and mapping of critical habitat is likely to increase the threat of collection for the pool shrimp or initiate any threat of collection or vandalism for any of the other 48 species proposed for listing in this rule. Therefore, 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, a finding that designation is prudent is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to these species.

Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we determine that designation of critical habitat is prudent for all 49 species proposed for listing in this rule.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not

determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Delineation of critical habitat requires identification of the physical and biological features, within the geographical area occupied by the species and areas outside the geographical area occupied by the species, that are essential for their conservation. Information regarding these 49 species' life functions is complex, and complete data are lacking for many of them. We require additional time to analyze the best available scientific data in order to identify specific areas appropriate for critical habitat designation and to prepare and develop a proposed rule. Accordingly, we find designation of critical habitat to be "not determinable" at this time.

**Required Determinations**

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESSES section. To better help us revise this proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*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).

**References Cited**

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Pacific Islands Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

- 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

- a. By adding entries an entry for "Storm-petrel, band-rumped" (*Oceanodroma castro*) in alphabetical order under BIRDS; and
  - b. By adding entries for "Bee, yellow-faced" (*Hylaeus anthracinus*), "Bee, yellow-faced" (*Hylaeus assimulans*), "Bee, yellow-faced" (*Hylaeus facilis*), "Bee, yellow-faced" (*Hylaeus hiliaris*), "Bee, yellow-faced" (*Hylaeus kuakea*), "Bee, yellow-faced" (*Hylaeus longiceps*), and "Bee, yellow-faced" (*Hylaeus mana*), and "Damsel fly, orangeblack Hawaiian" (*Megalagrion xanthomelas*) in alphabetical order under INSECTS; and
    - c. By adding an entry for "Shrimp, anchialine pool" (*Procaris hawaiiiana*), in alphabetical order under CRUSTACEANS.

The additions 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							
* * * * *							
Storm-petrel, band-rumped.	<i>Oceanodroma castro</i> .	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA
* * * * *							
INSECTS							
Bee, yellow-faced ....	<i>Hylaeus anthracinus</i>	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA
Bee, yellow-faced ....	<i>Hylaeus assimulans</i>	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA
Bee, yellow-faced ....	<i>Hylaeus facilis</i> .....	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA
Bee, yellow-faced ....	<i>Hylaeus hiliaris</i> .....	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA
Bee, yellow-faced ....	<i>Hylaeus kuakea</i> .....	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA
Bee, yellow-faced ....	<i>Hylaeus longiceps</i> ..	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA
Bee, yellow-faced ....	<i>Hylaeus mana</i> .....	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Damselfly, orangeblack Hawaiian.	<i>Megalagrion xanthomelas</i> .	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA
CRUSTACEANS							
Shrimp, anchialine pool.	<i>Procaris hawaiiana</i> ..	U.S.A. (HI) .....	Entire .....	E	.....	NA	NA

■ 3. Amend § 17.12(h), the List of Endangered and Threatened Plants, as follows:

■ a. By adding entries for *Calamagrostis expansa*, *Cyanea kauaulaensis*, *Cyperus neokunthianus*, *Cyrtandra hematos*, *Exocarpos menziesii*, *Festuca hawaiiensis*, *Gardenia remyi*, *Joinvillea ascendens* ssp. *ascendens*, *Kadua fluviatilis*, *Kadua haupuensis*, *Labordia lorenciana*, *Lepidium orbiculare*, *Myrsine fosbergii*, *Nothoecstrum latifolium*, *Ochrosia haleakalae*, *Phyllostegia brevidens*, *Phyllostegia*

*helleri*, *Phyllostegia stachyoides*, *Portulaca villosa*, *Pritchardia bakeri*, *Pseudognaphalium sandwicensium* var. *molokaiense*, *Ranunculus hawaiiensis*, *Ranunculus mauiensis*, *Sanicula sandwicensis*, *Santalum involutum*, *Schiedea diffusa* ssp. *diffusa*, *Schiedea pubescens*, *Sicyos lanceoloideus*, *Sicyos macrophyllus*, *Solanum nelsonii*, *Stenogyne kaalae* ssp. *sherffii*, and *Wikstroemia skottsbergiana* in alphabetical order under FLOWERING PLANTS; and

■ b. By adding entries for *Asplenium diellaciniatum*, *Cyclosorus boydiae*, *Deparia kaalaana*, *Dryopteris glabra* var. *pusilla*, *Huperzia stemmermanniae*, *Hypolepis hawaiiensis* var. *mauiensis*, and *Microlepia strigosa* var. *mauiensis* in alphabetical order under FERNS AND ALLIES.

The additions read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
<i>Calamagrostis expansa</i> .	Maui reedgrass .....	U.S.A. (HI) .....	Poaceae .....	E	.....	NA	NA
<i>Cyanea kauaulaensis</i> .	None .....	U.S.A. (HI) .....	Campanulaceae .....	E	.....	NA	NA
<i>Cyperus neokunthianus</i> .	None .....	U.S.A. (HI) .....	Cyperaceae .....	E	.....	NA	NA
<i>Cyrtandra hematos</i> ..	Haiwale .....	U.S.A. (HI) .....	Gesneriaceae .....	E	.....	NA	NA
<i>Exocarpos menziesii</i>	Heau .....	U.S.A. (HI) .....	Santalaceae .....	E	.....	NA	NA
<i>Festuca hawaiiensis</i>	None .....	U.S.A. (HI) .....	Poaceae .....	E	.....	NA	NA
<i>Gardenia remyi</i> .....	Nanu .....	U.S.A. (HI) .....	Rubiaceae .....	E	.....	NA	NA
<i>Joinvillea ascendens</i> ssp. <i>ascendens</i> .	Ohe .....	U.S.A. (HI) .....	Joinvilleaceae .....	E	.....	NA	NA
<i>Kadua fluviatilis</i> .....	Kamapuaa .....	U.S.A. (HI) .....	Rubiaceae .....	E	.....	NA	NA
<i>Kadua haupuensis</i> ...	None .....	U.S.A. (HI) .....	Rubiaceae .....	E	.....	NA	NA
<i>Labordia lorenciana</i>	None .....	U.S.A. (HI) .....	Loganiaceae .....	E	.....	NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Lepidium orbiculare</i>	Anaunau	U.S.A. (HI)	Brassicaceae	E		NA	NA
<i>Myrsine fosbergii</i>	Kolea	U.S.A. (HI)	Myrsinaceae	E		NA	NA
<i>Nothoecstrum latifolium</i>	Aiea	U.S.A. (HI)	Solanaceae	E		NA	NA
<i>Ochrosia haleakalae</i>	Holei	U.S.A. (HI)	Apocynaceae	E		NA	NA
<i>Phyllostegia brevidens</i>	None	U.S.A. (HI)	Lamiaceae	E		NA	NA
<i>Phyllostegia helleri</i>	None	U.S.A. (HI)	Lamiaceae	E		NA	NA
<i>Phyllostegia stachyoides</i>	None	U.S.A. (HI)	Lamiaceae	E		NA	NA
<i>Portulaca villosa</i>	Ihi	U.S.A. (HI)	Portulacaceae	E		NA	NA
<i>Pritchardia bakeri</i>	Baker's loulu	U.S.A. (HI)	Arecaceae	E		NA	NA
<i>Pseudognaphalium sandwicensium</i> var. <i>molokaiense</i>	Enaena	U.S.A. (HI)	Asteraceae	E		NA	NA
<i>Ranunculus hawaiiensis</i>	Makou	U.S.A. (HI)	Ranunculaceae	E		NA	NA
<i>Ranunculus mauiensis</i>	Makou	U.S.A. (HI)	Ranunculaceae	E		NA	NA
<i>Sanicula sandwicensis</i>	None	U.S.A. (HI)	Apiaceae	E		NA	NA
<i>Santalum involutum</i>	Iliahi	U.S.A. (HI)	Santalaceae	E		NA	NA
<i>Schidea diffusa</i> ssp. <i>diffusa</i>	None	U.S.A. (HI)	Caryophyllaceae	E		NA	NA
<i>Schiedea pubescens</i>	Maolioli	U.S.A. (HI)	Caryophyllaceae	E		NA	NA
<i>Sicyos lanceoloideus</i>	Anunu	U.S.A. (HI)	Cucurbitaceae	E		NA	NA
<i>Sicyos macrophyllus</i>	Anunu	U.S.A. (HI)	Cucurbitaceae	E		NA	NA
<i>Solanum nelsonii</i>	Popolo	U.S.A. (HI)	Solanaceae	E		NA	NA
<i>Stenogyne kaalae</i> ssp. <i>sherffii</i>	None	U.S.A. (HI)	Lamiaceae	E		NA	NA
<i>Wikstroemia skottbergiana</i>	Akia	U.S.A. (HI)	Thymelaceae	E		NA	NA
FERNS AND ALLIES							

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Asplenium diellaciniatum</i> .	None	U.S.A. (HI)	Aspleniaceae	E		NA	NA
<i>Cyclosorus boydiae</i>	Kupukupu makalii	U.S.A. (HI)	Thelypteridaceae	E		NA	NA
<i>Deparia kaalaana</i>	None	U.S.A. (HI)	Athyraceae	E		NA	NA
<i>Dryopteris glabra</i> var. <i>pusilla</i> .	Hohiu	U.S.A. (HI)	Dryopteridaceae	E		NA	NA
<i>Huperzia stemmermanniae</i> .	None	U.S.A. (HI)	Lycopodiaceae	E		NA	NA
<i>Hypolepis hawaiiensis</i> var. <i>mauiensis</i> .	Olua	U.S.A. (HI)	Dennstaedtiaceae	E		NA	NA
<i>Microlepia strigosa</i> var. <i>mauiensis</i> .	None	U.S.A. (HI)	Dennstaedtiaceae	E		NA	NA

\* \* \* \* \*

Dated: August 25, 2015.

**James W. Kurth,**

Acting Director, U.S. Fish and Wildlife Service.

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Part III

Department of Transportation

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Federal Transit Administration

49 CFR Parts 625 and 630

Transit Asset Management; National Transit Database; Proposed Rule

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****49 CFR Parts 625 and 630**

[Docket No. FTA–2014–0020]

RIN 2132–AB07

**Transit Asset Management; National Transit Database**

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The proposed rule would establish a National Transit Asset Management System to monitor and manage public transportation capital assets to achieve and maintain a state of good repair, improve safety, and increase reliability and performance. In addition, this notice includes proposed amendments to the National Transit Database regulations to conform to the proposed reporting requirements for transit asset management.

**DATES:** Comments must be received by November 30, 2015. Any comments filed after this deadline will be considered to the extent practicable.

**ADDRESSES:** Please identify your submission by Docket Number (FTA–2014–0020) or RIN number (2132–AB07) through one of the following methods:

- *Federal eRulemaking Portal:* Submit electronic comments and other data to <http://www.regulations.gov>.
- *U.S. Mail:* Send comments to Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building, Ground Floor, at 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations, U.S. Department of Transportation, at (202) 493–2251.

**Instructions:** You must include the agency name (Federal Transit Administration) and Docket Number (FTA–2014–0020) for this notice or RIN (2132–AB07), at the beginning of your comments. If sent by mail, submit two copies of your comments. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail

firm to ensure their prompt filing of any submissions not filed electronically or by hand. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may review U.S. DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477 or <http://DocketsInfo.dot.gov>.

**Electronic Access and Filing:** This document and all comments received may be viewed online through the Federal eRulemaking portal at <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days a year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at <https://www.federalregister.gov>.

**FOR FURTHER INFORMATION CONTACT:** For program matters, Mshadoni Smith, Office of Budget and Policy, (202) 366–4050 or [Mshadoni.Smith@dot.gov](mailto:Mshadoni.Smith@dot.gov). For legal matters, Candace Key, Office of Chief Counsel, (202) 366–4011 or [Candace.Key@dot.gov](mailto:Candace.Key@dot.gov).

Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

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**I. Executive Summary****A. Purpose of Regulatory Action**

Critical to the safety and performance of a public transportation system is the condition of its capital assets—most notably, its equipment, rolling stock, infrastructure, and facilities. When transit assets are not in a state of good repair, the consequences include increased safety risks, decreased system reliability, higher maintenance costs, and overall lower system performance. While comprehensive quantitative information about the consequences of capital assets not being in a state of good repair is unavailable, insufficient funding combined with inadequate asset management practices have contributed to an estimated \$85.9 billion transit state of good repair (SGR) backlog—a value derived from FTA's Transit Economic Requirements Model (TERM) Scale.<sup>1</sup> The SGR backlog is representative of the reinvestment cost to replace any transit assets whose condition is below the midpoint of TERM's 1 (poor) to 5 (excellent) scale. Furthermore, FTA estimates that an additional \$2.5 billion per year above current funding levels from all levels of government is needed just to prevent the SGR backlog from growing; a figure that poses a significant challenge during these fiscally constrained times.

Calendar year 2013 marked the highest ridership level for transit since 1957, with the number of trips exceeding 10 billion for the 7th year in a row. There is reason to believe that this is just the beginning of a sustained

<sup>1</sup> Individual transit agencies were not involved in developing the assessment of the \$85.9 billion state of good repair backlog. This estimate was developed by feeding combined data into TERM. TERM produces national-level estimates of the national state of good repair backlog, based on an underlying set of models relating the expected average true condition of an asset to the asset's age. Currently, FTA does not collect the systematic data necessary to do a detailed time-series analysis on whether the SGR backlog is growing in real terms. The \$2.5 billion estimate is based on the 2013 Conditions and Performance Report, which uses a combination of National Transit Database, systematic, and ad hoc data collections in combination with estimates produced by FTA's Transit Economic Requirements Model. However, FTA is proposing to collect additional as part of this rule, which will improve these estimates in the future. The 2013 Conditions and Performance Report is available at <http://www.fhwa.dot.gov/policy/2013cpr/>.

period of growing demand for public transportation. Factors such as the migration of people to urban areas, an aging population that will rely heavily on public transportation, and a retiring transit maintenance workforce will further increase demands on existing public transportation systems. It is likely that growth in ridership would lead to additional fare revenues, at least for those transit systems that have substantially under-utilized transit capacity. However, on average, fare revenues cover only one-third of total operating expenses, and do not cover any capital expenses. Thus, the increased revenue generated from a growth in ridership is not likely to provide the revenues necessary to make a meaningful reduction in the SGR backlog. Given existing fiscal constraints, it is unlikely that the Nation's SGR backlog can be addressed through increased spending alone. Rather, a systematic approach is needed to ensure that existing funding resources are strategically managed to target the SGR backlog.

MAP-21 fundamentally shifted the focus of Federal investment in transit to emphasize the need to maintain, rehabilitate, and replace existing transit investments. The ability of FTA grant recipients, along with States and Metropolitan Planning Organizations (MPOs), to both set meaningful transit SGR performance targets and to achieve those targets is critically dependent upon the ability of all parties to work together to prioritize the funding of SGR projects from existing funding sources. Although the new SGR Grant Program for fixed-guideway systems and for fixed-route bus systems operating on high-occupancy vehicle (HOV) lanes will be an essential component of this process, the SGR grants alone will not be enough to address the backlog. In these financially constrained times, transit agencies will need to be more strategic in the use of all available funds. The various components of the National TAM System would work together to ensure that state of good repair becomes, and remains, a top priority for transit providers, as well as States and MPOs.

This NPRM proposes to establish a National Transit Asset Management System in accordance with section 20019 of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141 (2012) codified at 49 U.S.C. 5326). A transit asset management (TAM) system is "a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively through the life cycle of such assets." 49

U.S.C. 5326(a)(3). The proposed National TAM System is a scalable framework that establishes terms and concepts and allows for consistency and standardization of formats, without being prescriptive on methods or application. The proposed rule would set minimum Federal requirements for transit asset management to improve the condition of the Nation's transit capital assets by establishing a strategic and performance-based process for operating, maintaining, and replacing transit capital assets.

#### *B. Statutory Authority*

Section 20019 of MAP-21, amended Federal transit law by adding a new section 5326 to Chapter 53 of title 49 of the United States Code (section 5326). The provisions of section 5326 require the Secretary of Transportation to establish and implement a National TAM System, which defines the term "state of good repair"; requires that all recipients and subrecipients under Chapter 53 develop a TAM plan, to include an asset inventory, an assessment of the condition of those assets, decision support tools, and investment prioritization; establishes annual reporting requirements; and mandates that FTA provide technical assistance to Chapter 53 recipients and subrecipients, including an analytical process or decision support tool that allows for the estimation of capital asset needs and assists with investment prioritization. 49 U.S.C. 5326(b).

In addition, section 5326 requires the Secretary to establish SGR performance measures, and recipients are required to set performance targets based on the measures. 49 U.S.C. 5326(c)(1) and (2). Furthermore each designated recipient must submit two annual reports the Secretary—one on the condition of their recipients' public transportation systems, including a description of any change in condition since the last report, and one describing its recipients' progress towards meeting performance targets established during that fiscal year and a description of the recipients' performance targets for the subsequent fiscal year. 49 U.S.C. 5326 (b)(3) and 49 U.S.C. 5326(c)(3).<sup>2</sup>

<sup>2</sup>The term "designated recipient" is defined in statute as "(A) an entity designated, in accordance with the planning process under sections 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of \$200,000 or more in population; or (B) a State or regional authority, if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation." 49 U.S.C. 5302(4).

#### *C. Summary of Major Provisions*

##### *1. Transit Asset Management*

The proposed rule would add a new part 625, "Transit Asset Management," to title 49 of the Code of Federal Regulations (Part 625). The rule proposes to implement the several statutory requirements of sections 5326(b) and (c), referenced in the previous section, by coalescing them into a comprehensive National TAM System. The National TAM System would be comprised of the following five pillars: (1) The definition of "state of good repair," 49 U.S.C. 5326(b)(1); (2) a requirement that recipients and subrecipients develop TAM plans, 49 U.S.C. 5326(b)(2); (3) SGR performance measures, and a requirement that recipients and subrecipients set performance targets based on the measures, 49 U.S.C. 5326(c)(1) and (2); (4) annual reporting requirements for recipients and subrecipients, 49 U.S.C. 5326(c)(3); and (5) technical assistance from FTA. 49 U.S.C. 5326(b)(4) and (5). The proposed elements of the National TAM System are listed in section 625.15.

Section 625.17 proposes basic principles of transit asset management and would require a transit provider to balance competing needs when considering the life-cycle investment needs of its assets. The disrepair of any particular asset within a public transportation system does not necessarily mean that other assets are in disrepair; whether an asset has achieved a state of good repair is an independent determination that would be made by each transit provider.

Sections 625.25 through 625.33 propose specific requirements for TAM plans. Each transit provider that receives Chapter 53 funds as a recipient or subrecipient and either owns, operates, or manages capital assets used in the provision of public transportation, would be required to develop and carry out a TAM plan. A TAM plan would aide a transit provider in: (1) Assessing the current condition of its capital assets; (2) determining what the condition and performance of its assets should be (if they are not already in a state of good repair); (3) identifying the unacceptable risks, including safety risks, in continuing to use an asset that is not in a state of good repair; and (4) deciding how to best balance and prioritize reasonably anticipated funds (revenues from all sources) towards improving asset condition and achieving a sufficient level of performance within those means.

Section 625.27 would require States to develop a group TAM plan for all subrecipients under the Rural Area Formula Program, authorized under 49 U.S.C. 5311, and States and direct recipients to develop group TAM plans for their tier II provider subrecipients. Tier II providers are those transit operators with one hundred (100) or fewer vehicles in revenue service and that do not operate rail fixed-guideway public transportation systems. Conversely, tier I providers—those operators with one hundred and one (101) or more vehicles in revenue service or operators of rail fixed-guideway public transportation systems—must develop their own, individual TAM plan.

The proposed group TAM plan approach is intended to reduce the burden on smaller transit providers of developing their own TAM plans and reporting to FTA’s National Transit Database (NTD). A group TAM plan would be subject to the same requirements for individual TAM plans. Under a Group TAM plan, a tier II provider and any subrecipient of the Rural Area Formula Program would remain responsible for carrying out transit asset management practices for its own public transportation system.

Section 625.33 proposes requirements for investment prioritization. This section would require a transit provider to rate projects in order of priority to improve the state of good repair of all capital assets within its public transportation system. The investment prioritization requirements would aid a transit provider in making more informed investment decisions to improve the state of good repair of its capital assets.

Sections 625.41 through 625.45 propose specific performance management requirements. Section 625.41 lists the proposed objective standards for measuring the condition of capital assets. Proposed section 625.43 would establish SGR performance measures based on the proposed SGR

standards. Proposed section 625.45 would require recipients and subrecipients to set SGR performance targets based on the SGR measures and also would require transit providers to coordinate with States and with Metropolitan Planning Organizations (MPOs), to the maximum extent practicable, in the selection of State and MPO SGR performance targets.

Together, these requirements would allow transit providers to better assess their SGR needs, and in turn make more informed investment decisions. The coordination amongst transit providers, States and MPOs should influence MPO and State transportation funding investment decisions and is intended to increase the likelihood that transit SGR needs are programmed, committed to, and funded as part of the planning process.

Proposed section 625.55 would require transit providers to report their targets and the condition of their capital assets annually to FTA’s NTD. This data would both help FTA better estimate the Nation’s SGR backlog and support the need for additional funding at all levels of government to maintain, improve, and replace the Nation’s aging transit capital assets.

2. National Transit Database

This notice proposes to amend the regulations for FTA’s NTD at 49 CFR part 630, to conform with the proposed reporting requirements for the National TAM System. The proposed reporting requirements for transit asset management would apply to all recipients and subrecipients of Chapter 53 funds that own, operate, or manage capital assets used in the provision of public transportation. Currently, the NTD reporting requirements are limited, in some instances, to recipients and subrecipients of section 5307 urban formula funds and section 5311 rural formula funds.

D. Summary of Costs and Benefits

The costs and benefits analysis includes both qualitative and

quantitative components and is designed to provide information about the likely impacts of the proposed rule at the societal level. Costs and benefits were estimated by using FTA and Bureau of Labor Statistics studies and dialogue with transit providers. Due to limited quantitative resources, many of the estimated impacts are based on explicit assumptions that are outlined in section V of this notice, Regulatory Analyses and Notices. FTA is seeking comment on its assumptions.

According to Government Accountability Office (GAO) reports and other studies, existing practices in transit asset management vary widely from transit provider to transit provider, though most already perform at least some of the functions required under the proposed rule. Costs of the proposed rule were estimated based on the incremental transit provider staff time that would be required to fulfill each of the National TAM System requirements, deducting the costs of their current practices. Where relevant, the estimates were associated with the size of the transit provider’s asset portfolio in the NTD. The time requirements were then monetized using average wage rates from relevant job categories, as reported by the Bureau of Labor Statistics in 2013, and adjusted for employee fringe benefits.

Table 1 includes a summary of the estimated costs of the proposed National TAM System. The estimated costs are for transit providers to assess their assets, develop TAM plans, and report certain information to FTA. They do not include any costs from changes to asset replacement or maintenance. The analysis covers a period of twenty years following the adoption of the final TAM rule. The total undiscounted costs for the twenty years are \$370 million. Using a discount rate of 7% (with 3% sensitivity case) for future values, the proposed rule has annualized costs of \$18.9 million.

TABLE 1—SUMMARY OF TOTAL COSTS, TWENTY YEARS  
[\$ Millions]

	Undiscounted dollars	Discounted at 7% discount rate	Discounted at 3% discount rate
Total .....	\$370.0	\$199.4	\$276.8
Annualized .....	18.5	18.9	18.6

The initial costs for collecting data and developing new methodologies will be nearly \$46 million spread over the first two years, followed by reduced

amounts in subsequent years. Benefits of the proposed rule are expected to stem from improved maintenance practices and decision-making. By

identifying and prioritizing state of good repair needs, a transit provider, could, for example, reduce costs for mechanical breakdowns of transit

vehicles, reduce travel delays for passengers, and yield potential safety improvements. For some providers, this may be feasible by shifting priorities within their maintenance budgets, for others, increased funding may be needed to address maintenance issues effectively. To increase funding for maintenance, providers may need to reduce expenditures on expansion of the systems. It is difficult to predict accurately how each provider is likely to respond.

These benefits could not be quantified precisely due to the lack of published data on the impacts of asset management programs on transit systems. Instead, a breakeven analysis was conducted based on the incidence of transit vehicle mechanical breakdowns reported to NTD and their associated costs. For instance, in 2013, it cost transit providers \$2.2 billion to attend to 524,629 mechanical failures of vehicles in service. For the proposed rule to be cost-effective, 0.90% of the mechanical failure breakdowns in 2013 would need to be avoided per year through better transit asset management practices.

Current management practices may delay maintenance of vehicles due to various reasons. For instance, some providers may keep vehicles in operation to meet the current demand, delaying regular maintenance of vehicles, resulting in mechanical failure of vehicles in service. Others may shortchange maintenance budgets to expand the systems. In each case, providers struggle to meet system demands with limited resources. Implementing a TAM system would require a provider to collect and use asset condition data, set targets and develop strategies to prioritize investments to meet the provider's goals. One strategy may be to ensure that assets are maintained on a regular schedule to avoid failure of vehicles in service which are expensive to attend to and cause delays on the system. Based on limited findings on transit asset management-related cost savings from transit provider initiatives and from the literature in other transportation fields, notably highways, this level of improvement appears readily achievable. Additionally, there would be important non-quantifiable benefits in areas such as improved transparency and accountability. FTA seeks comment on the assumptions herein, and other sources of data that may be available.

## II. Background

### A. *The Moving Ahead for Progress in the 21st Century Act*

#### 1. Performance Management

MAP-21 ushered in a new era of performance management for surface transportation. Performance management requires the establishment of meaningful performance measures to link policies, goals and objectives, planning and programming, and project delivery to stated outcomes. The performance management requirements are intended to facilitate more effective investment of Federal transportation funds by refocusing attention on national, regional, and local transportation goals, increasing the accountability and transparency of the Federal transit and Federal-aid highway programs, and improving project decision-making through performance-based planning and programming. FHWA and FTA are undertaking a number of separate, but related rulemakings, to implement the performance management framework and establish national performance measures.<sup>3</sup> FTA must establish performance measures and performance criteria for transit asset management and safety, respectively. 49 U.S.C. 5326(c), 49 U.S.C. 5329(b)(2).

The SGR performance measures are an essential component of the National TAM System. Each transit provider would be accountable for setting annual performance targets based on the measures established by FTA. The process of setting performance targets would require each transit provider to think quantitatively about the size of its own SGR backlog, and to analyze what resources it could leverage to address its SGR needs. How a transit provider sets its performance targets would be an entirely local process and decision. However, FTA would strongly encourage transit providers, States, and MPOs to set meaningful progressive SGR targets, based on creative and strategic leveraging of all available financial resources. Although the law does not provide FTA with the authority to reward transit providers for meeting a SGR performance target, or impose penalties for missing an SGR performance target, the process of setting targets and measuring progress reflects the increased expectations for

maintaining and improving the condition of transit capital assets.

Pursuant to MAP-21, the SGR performance targets set by transit providers, along with other performance targets set pursuant to other statutes, are an essential component of the planning process. The planning provisions at 49 U.S.C. 5303 and 5304 require States and MPOs to establish performance targets for transit that are based on the national measures for state of good repair and safety established by FTA and to coordinate the selection of those performance targets, to the maximum extent practicable, with performance targets set by transit providers to ensure consistency. 5303(h)(2)(B)(ii), 5304(d)(2)(B)(ii).

Furthermore, the Long Range Statewide Transportation Plan should and the Metropolitan Transportation Plan shall include: (1) A description of the TAM performance measures and targets; and (2) a report evaluating the condition of the transit system(s) with respect to the State and MPO performance measures and targets, including the progress achieved in meeting performance targets compared with system performance recorded in previous years. 49 U.S.C. 5303(i)(2)(B) and (C), 5304(f)(7). In addition, transportation improvement programs (TIPs) and statewide transportation improvement programs (STIPs) must include, to the maximum extent practicable, a discussion of the anticipated effects of the TIP/STIP toward achieving the TAM performance targets in the Statewide and Metropolitan Transportation Plans by linking TAM investment priorities to those performance targets. 49 U.S.C. 5303(j)(2)(D), 5304(g)(4).

The integrated planning process mandated by MAP-21 should result in States and MPOs being able to identify investment and management strategies to improve or preserve the condition of transit capital assets in order to achieve and maintain a state of good repair. FTA and FHWA jointly issued an NPRM (79 FR 31784 (June 2, 2014)), that proposed new requirements for Metropolitan, Statewide and Non-metropolitan Planning. Soon, a final rule will be published to guide the new performance-based approach to planning.

#### 2. The Nexus Between State of Good Repair and Safety

MAP-21 amended Federal transit law by creating a Public Transportation Safety Program at 49 U.S.C. 5329, which authorizes FTA to oversee the safety of public transportation throughout the United States, including most notably,

<sup>3</sup> The FHWA rules include the Federal-aid Highway Performance Measure Rules [RIN 2125-AF49, 2125-AF53, 2125-AF54], updates to the Highway Safety Improvement Program Regulations [RIN 2125-AF56], and Federal-aid Highway Risk-Based Asset Management Plan Rule for the National Highway System (NHS) [RIN 2125-AF57].

fixed-guideway modes: Heavy rail, light rail, buses, bus rapid transit, ferries, and streetcars. As a part of safety program, FTA will create and implement a National Public Transportation Safety Plan which would include the definition state of good repair. 49 U.S.C. 5329(b)(2)(B). In addition, operators of public transportation systems that receive FTA funds would be required to establish a comprehensive public transportation agency safety plan which would include SGR performance targets. 49 U.S.C. 5329(d)(1)(E).

FTA has adopted the principles and methods of Safety Management Systems (SMS) to guide its development and implementation of the Public Transportation Safety Program. SMS is a formal, top-down, organization-wide data-driven approach to managing safety risk and assuring the effectiveness of safety risk mitigations. SMS includes policies, procedures, and practices for the management of safety risk. SMS encourages communication and collaboration between management and labor to control risk better, detect and correct safety problems earlier, share and analyze safety data more effectively, and measure safety performance more clearly. A fundamental aspect of transit asset management is the monitoring of asset condition as an indicator of system performance. The data derived from condition assessments would inform a transit provider's practice of SMS, to the extent that an asset's condition impacted the safety performance of a public transportation system.

A key challenge in connecting transit asset management to safety planning is that even when assets are not in a state of good repair, they can be operated safely, and, likewise, assets in a state of good repair can be operated unsafely. That is not to say that achieving a state of good repair is sufficient for safe transit operations, nor to say that safety is the only reason for implementing TAM plans. The proposed transit asset management and safety requirements are intended to support a transit provider in attaining a comprehensive understanding of the impact that the condition its capital assets may have on the safety of its public transportation system. As a result, a transit provider would rely on a combination of risk assessments and performance-based data to make informed decisions about how to mitigate safety risks related to asset condition and how to prioritize capital investment decisions.

Under the SMS approach, an identified accountable executive at each transit provider would be responsible both for the safety of the public transportation system and for ensuring

that the necessary resources are available to carry out the TAM plan and the public transportation agency safety plan. An accountable executive would be responsible for making decisions regarding the allocation of resources to address asset condition and improve the state of good repair based on the data derived from the transit provider's transit asset management and SMS practices.<sup>4</sup> These decisions would be reflected in the investment prioritization within the transit provider's TAM plan.

### 3. Grants for State of Good Repair and Transit Asset Management

Of the many changes to FTA's capital programs under MAP-21, two of the most important are the repeal of the formula Fixed-guideway Modernization (FGM) Program and the creation of the SGR Formula Program at 49 U.S.C. 5337.<sup>5</sup> The goal of the statutory change is to move "all systems towards a state of good repair and enabl[e] systems to maintain a state of good repair." H.R. Rep. No. 112-557 at 604 (2012) (Conf. Rep.). In one respect, the new SGR Formula Program is the successor to the FGM Program in that it will support many of the same types of projects that were funded under the old FGM Program. However, in MAP-21, Congress raised its expectations of both FTA and the transit industry—the formula capital funds for repair and replacement of assets must now be directed at the \$85.9 billion backlog in substandard asset condition identified in the biannual USDOT Conditions and Performance report. Once FTA issues a final TAM rule, projects eligible for funding under the SGR Formula Program must be identified within the investment prioritization of a transit provider's TAM plan.<sup>6</sup>

Readers should be aware that, in addition to the SGR formula funds, funds from other FTA grant programs may be used to cover costs related to TAM plans. In general, the software costs for an asset inventory system, for estimating capital investment needs over time, or for a decision support tool for investment prioritization are eligible capital costs. Similarly, costs related to assembling and maintaining an asset inventory, or related to condition

inspections, are generally eligible preventive maintenance costs that can be funded by capital assistance. Finally, costs related to creating a TAM plan itself are an eligible expense under the section 5307 Urbanized Area Formula Program and the section 5311 Rural Area Formula Program.

### B. Development of FTA's Approach to Transit Asset Management

Prior to MAP-21, FTA began researching transit asset management and developing TAM policies and best practices for the transit industry. Specifically, FTA sponsored several SGR roundtables, conducted an online dialogue, and issued a Transit Asset Management Guide. Both the SGR Roundtables and the Online Dialogue made clear to FTA that many transit providers have been applying asset management practices to their organizations in some form for years. However, many of the existing practices lacked a strategic approach to decision-making and investment prioritization. Each of the aforementioned efforts contributed to the development of the proposed rule.

#### SGR Roundtables

FTA held four SGR roundtables from 2008 through 2012 that covered topics related to TAM implementation and challenges. The roundtable participants represented a cross-section of transit providers and State DOTs from across the nation of varying sizes, modes, and asset management maturity. The second roundtable, held in Chicago, IL in 2010, specifically examined the issue of formulating a standard definition of state of good repair for a federal program. Several of the participants shared their working definitions of state of good repair, and although there was no consensus, most of the transit systems typically defined state of good repair as a condition where "assets are functioning normally (reliably) and within their useful life." In the proposed objective standards for measuring state of good repair, the rule adopts the concepts of "functioning normally" and "within its useful life."

#### Online Dialogue

FTA hosted an Online Dialogue from Dec. 12, 2012–Jan. 18, 2013 to learn from the transit industry about a number of topics of interest to development of a National TAM System. The dialogue had 739 users who posted 86 ideas for a total of 146 comments. Comments on defining state of good repair supported FTA's proposal in the rule to keep the definition simple, broad, and quantifiable, so that an

<sup>4</sup> For more information on safety management systems (SMS), please visit FTA's Web site at [http://www.fta.dot.gov/tso\\_15176.html](http://www.fta.dot.gov/tso_15176.html).

<sup>5</sup> Funding for the SGR Program was authorized in MAP-21 at approximately \$2.1 billion for fiscal years 2012 and 2013.

<sup>6</sup> For more guidance on the SGR Formula Program, please review the program guidance available on FTA's Web site at [http://www.fta.dot.gov/legislation\\_law/12349\\_16262.html](http://www.fta.dot.gov/legislation_law/12349_16262.html).

individual transit providers could assess the state of good repair of its own assets. Section III of this notice, Advance Notice of Proposed Rulemaking and Response to Relevant Comments, discusses the rationale behind FTA's proposed definition of state of good repair.

#### Transit Asset Management Guide

The 2012 TAM Guide, is FTA's primary guidance on transit asset management.<sup>7</sup> It combines previous research, case studies, lessons learned from other FTA SGR initiatives, the existing state of the practice in asset management from other fields, and the international asset management standard efforts by the International Standards Organization (ISO). A key concept of the TAM Guide is that TAM plans explicitly identify goals or policies that can be adopted throughout a transit provider's organization. This concept is supported by other research. For example, FHWA's 1999 Asset Management Primer suggests that asset management be recognized as an organization decision-making and policy tool, and not merely a maintenance tool, and organizations should set clearly defined goals and measures to assess the organization's priorities and investment decisions.

### III. Advance Notice of Proposed Rulemaking and Responses to Relevant Comments

On October 3, 2013, FTA introduced the transit industry to fundamental changes to the Federal transit program authorized by MAP-21 with a consolidated advance notice of proposed rulemaking (ANPRM). 78 FR 61251 (Oct. 3, 2013). FTA issued a consolidated ANPRM to provide the public with a better understating of FTA's proposed approach to implementing the requirements for transit asset management and safety. Throughout the ANPRM, FTA expressed its intention to adopt a comprehensive approach to transit asset management and safety that would be scalable and flexible enough for different types of transit modes and operating environments. In addition, the ANPRM highlighted the inherent linkages between asset condition and safety performance through the discussion of FTA's proposal to adopt SMS as the foundation for the development, implementation, oversight and enforcement of the new Public Transportation Safety Program.

The ANPRM posed 123 questions. FTA received and analyzed comments on the ANPRM from 167 responders. The universe of responders was comprised of 15% individuals, 46% transit providers (43% urban and 3% rural), 17% State DOTs, 7% MPOs, and 15% industry organizations. This section summarizes the comments related to transit asset management. FTA took these comments into consideration when developing the proposed rule. Below, the ANPRM comments and responses are subdivided by subject and corresponding question numbers.

- A. The Nexus Amongst Transit Asset Management, State of Good Repair and Safety (8–10, 88)
- B. Transit Asset Management Overview and Considerations for Small Operators (56–62)
- C. Defining State of Good Repair (63–66, 68–71, 73, 74)
- D. Transit Asset Management Plans (75–81, 83–90)
- E. State of Good Repair Performance Measures and Targets (63, 67, 72, 91–98)
- F. Technical Assistance and Tools (82, 99–106)
- G. Certification of Transit Asset Management Plans (107–111, 113–115)
- H. Coordination with Metropolitan, Statewide and Non-Statewide Planning Requirements (116–121)
- I. Estimating Costs and Benefits (122–123)

#### A. *The Nexus Amongst Transit Asset Management, State of Good Repair, and Safety (Questions 8–10, 88)*

Section II of the ANPRM discussed FTA's understanding of the relationship between transit asset management, state of good repair, and safety. Several questions requested public comment on FTA's proposed approach to implementing this relationship. These questions related to the integration of the definition of "state of good repair" and SGR performance measures into the new National Public Transportation Safety Plan and the requirements for public transportation agency safety plans. Additionally, FTA inquired whether safety SGR performance targets required for transit agency safety plans should be the same as SGR performance targets identified by transit providers under the National TAM System.

*Comments:* A number of commenters acknowledged the complexity of linking an asset's condition and state of good repair to safety. Commenters specifically suggested that safety should not be part of the TAM plan for smaller providers or, alternatively, FTA should develop a simplified template for smaller providers to use for developing their TAM plans. Some commenters suggested that links between transit safety and a transit system's TAM plan should exist only where the health and

safety of employees and/or the riding public is in imminent danger. Commenters also suggested that safety should not be linked to TAM requirements for bus systems and that FTA could assist with providing tool kits and other resources to assist bus operators.

Some commenters suggested that FTA should not require safety to be incorporated into the investment prioritizations required in the TAM plan, other than to indicate that safety considerations are explicitly required as a part of the decision-making process. Other commenters indicated that the TAM plan should identify which assets are critical to safety. Commenters noted that safety risk should be a heavy portion of a weighted score used to prioritize projects. Several commenters recommended that the level of detail in TAM plans need only be sufficient enough to identify and prioritize major capital reinvestment needs and focus on asset groups versus individual assets. Other commenters noted that FTA should only require a TAM plan to include a discussion of how the recipient incorporates safety into its condition assessment and investment prioritization.

Several commenters believed that although safety is linked to state of good repair, prioritization of funds is a local decision. They suggested that FTA provide best practices or guidance on the subject, instead of rules. Other commenters recommended that FTA not prescribe a specific approach for integrating these principles because each transit provider will integrate safety objectives and SGR targets into their investment and operational decisions.

Commenters also noted that such integration occurs during the STIP development process. Some commenters noted that FTA should build upon the existing NTD Safety Event Reporting data collection effort and leverage historical data collection to identify safety trends, rather than establishing a new data collection and reporting system. Other commenters suggested that FTA allow the industry discretion and time to develop best practices on how to prioritize SGR investments to support safety.

Some commenters suggested that FTA not include inactive assets when computing a transit provider's SGR needs. Other commenters suggested that the SGR program not be used to punish or reward agencies via funding decisions. Commenters stated that concentrating resources on underperforming properties could have the unintended impact of financially

<sup>7</sup> The TAM Guide is available on FTA's Web site at [www.fta.dot.gov/documents/FTA\\_Asset\\_Management\\_Guide\\_-\\_FINAL.pdf](http://www.fta.dot.gov/documents/FTA_Asset_Management_Guide_-_FINAL.pdf).

penalizing better performing agencies. Some commenters suggested that SGR funding should not be limited to repairing or replacing failed equipment or facilities.

Several commenters suggested that “state of good repair” be defined simply as, “an asset fit for its intended purpose.” Commenters recommended that FTA not attempt to establish a nexus between safety, state of good repair, and transit asset management. Commenters recommended also that FTA differentiate between safety and state of good repair. Several commenters disagreed with FTA’s proposal that state of good repair and safety were linked. Some commenters indicated that before FTA issues any new safety regulations, consideration should be given to those States that have already codified meaningful safety laws and regulations.

*Response:* Although FTA agrees that a transit asset in a state of good repair may be operated unsafely, and, conversely, that a transit asset not in a state of good repair may be operated safely through appropriate safety risk mitigation strategies, FTA notes that Congress recognizes a link between safety and state of good repair. Pursuant to 49 U.S.C. 5329(b)(2)(B), FTA must develop and implement a new National Public Transportation Safety Plan that includes the definition of state of good repair developed under this rulemaking. In addition, pursuant to 49 U.S.C. 5329(d)(1)(E), a transit agency safety plan must include performance measures based on the SGR standards developed under this rulemaking. Moreover, the legislative history of MAP–21 reinforces Congress’ belief that transit asset management and safety are linked. Congress intended for FTA to establish a National TAM System that not only increases the performance and reliability of capital assets, but also “improve[s] safety.”<sup>8</sup>

Accordingly, this proposed rule reflects FTA’s recognition of the nexus between transit asset management and safety. While asset condition may not always be a contributing factor in safety events, FTA believes that there is a relationship between condition

assessments and the identification of safety risks and hazards. As a result, FTA does not believe that it should define a “safety critical asset.” Each transit provider is in the best position to determine which assets may be critical to the safe operations of its transit system. Moreover, this determination is likely to change depending on the circumstances.

The proposed rule would make the consideration of asset condition, as it relates to safety, a standard for assessing state of good repair. The rule would also require that due consideration is given to identified safety risks when setting investment priorities under a TAM plan. FTA will issue additional rules to implement the requirements of the National Public Transportation Safety Program.

#### *B. Transit Asset Management Overview and Considerations for Small Operators (Questions 56–62)*

Section VII.A of the ANPRM posed questions on issues related to the scope and applicability of the TAM plan requirements for small operators, subrecipients, and Native American tribes.

*Comments:* Many of the commenters suggested that instead of creating separate requirements for small operators, FTA should establish a single set of high-level requirements that would be inherently scalable. Several commenters suggested that the burden on small operators could be lessened by using existing structures for reporting, such as using FTA’s NTD, and by letting recipients handle reporting requirements on behalf of subrecipients. One commenter suggested that a third tier of requirements should be established for medium-sized operators. FTA did not receive any comments from American Indian tribes, although several commenters argued that small transit systems operated by American Indian tribes should be subject to the same requirements as other small systems.

In terms of how to define the size of a small operator, many commenters suggested that the definition should be the same for both the asset management and safety rules, and should be the same as those used for some of FTA’s other programs. For example, many commenters pointed out that FTA’s Urbanized Area Formula Program already applies different rules and formula allocations to those recipients who operate in areas of more than 200,000 in population, as opposed to those who operate in areas of less than 200,000 in population. Some commenters pointed out that the NTD

provides reduced reporting requirements for those systems operating 30 or fewer vehicles and without fixed-guideway service, while others pointed out that the section 5307 Urbanized Area Formula Program provides operating-assistance eligibility to those systems operating bus service with fewer than 100 vehicles. Other commenters suggested a threshold of 200 vehicles.

Some commenters asked FTA to clarify whether the asset management requirements would apply to recipients that do not build, manage, or operate transit assets. Several commenters suggested that assets owned by a third party (such as a contractor) should not be included in a TAM plan. Other commenters suggested that each transit provider should be allowed to determine which assets to include in its TAM plan. Most commenters, however, said that any asset used in the provision of transit service should be included in a TAM plan.

Some commenters disagreed with the idea of allowing statewide TAM plans, stating that a successful TAM plan must be inherently unique to the individual transit provider. Other commenters generally agreed that States should be given the option of preparing a statewide TAM plan, at least for their smaller subrecipients.

*Response:* Pursuant to 49 U.S.C. 5326(b)(2), all recipients and subrecipients of chapter 53 funds must develop a TAM plan. FTA does not believe that the TAM plan requirements should apply to entities that receive funding only for planning, or do not otherwise own, operate or manage public transportation assets. FTA agrees, and has proposed in the rule, that the asset inventory should include all assets used in the provision of public transportation service by the transit provider. Accordingly, the proposed rule would apply to recipients and subrecipients who actually own, operate, or manage capital assets used in the provision of public transportation service.

To reduce the burden on small operators, the proposed rule offers a two-tiered approach for the TAM plan requirement. Small transit providers operating 100 or fewer vehicles in revenue service and no rail fixed-guideway service and all subrecipients under the Rural Area Formula Program would be allowed to participate in a group TAM plan that would be developed by a State or other direct recipient. The 100-vehicle threshold is similar to the operating assistance threshold in the Urbanized Area Formula Program. Larger transit

<sup>8</sup>H.R. Rep. No. 112–557 at 603 (2012) (Conf. Rep.). In addition, the text of the Public Transportation Safety Act of 2010 was incorporated into both the transit asset management and safety provisions of MAP–21. See S. 3638, 111th Cong. (2010). In the report accompanying the 2010 Act, Congress stated that “state of good repair directly relates to the safety of a public transportation system, as the likelihood of accidents increases as the condition of equipment and infrastructure worsens.” S. Rept. 112–232 at 10 (2010). The requirements proposed under the Act were intended to establish a “monitoring system for the safety and condition of the nation’s public transportation assets.” *Id.* at 1.



providers operating over 101 vehicles in revenue service or any size operator with rail fixed-guideway service would be required to develop their own individual TAM plan.

*C. Defining State of Good Repair (Questions 63–66, 68–71, 73, 74)*

Section VII.B of the ANPRM posed questions related to the definition of “state of good repair.” These questions sought comment on the impact of defining state of good repair using the following four approaches: (1) Age, (2) condition, (3) performance, or (4) a comprehensive approach based on age, condition, and performance. This section also asked a question about other proposed approaches to defining and measuring state of good repair and how the transit industry currently defines and measures state of good repair.

*Comments:* Many commenters suggested that FTA use a simple definition for state of good repair. For example, some commenters suggested that state of good repair be defined as an asset “fit for its intended purpose.” Other commenters suggested using a simple definition based on the age or mileage of the asset.

*Response:* The law requires that the definition of state of good repair include “objective standards for measuring the condition of capital assets of recipients, including equipment, rolling stock, infrastructure and facilities.” 49 U.S.C. 5326(b)(1). While FTA agrees that a simple definition of state of good repair is important, it may not meet the minimum requirements of the law for “objective standards.” FTA believes the suggested definition, “fit for its intended purpose,” is too subjective to meet the statutory requirement for “objective standards,” as both “fit” and “intended purpose” are highly subjective terms. Moreover, FTA believes that such a definition would not support the statutory requirement to develop performance measures based upon the objective standards in the definition.

FTA is proposing to define state of good repair as “the condition in which an asset is able to operate at a full level of performance.” “Full level of performance” is an aspirational condition state that would be measured by the objective standards in the proposed rule in section 625.41. FTA chose to incorporate performance into the proposed definition because it is the ultimate indicator of the impact of transit asset management and improvements in state of good repair on many aspects of a transit provider’s operations, including safety, reliability,

efficiency, and quality of service. FTA believes that this proposed definition and the proposed objective performance standards would satisfy both the minimum statutory requirements and could be easily applied in any operational environment.

FTA also chose the aspirational approach of “full level of performance” based on findings from the TCRP Research Report 157, which suggested a straight forward approach to defining state of good repair as “the point at which all of a transit agency’s assets are in a good condition.” This is an ideal condition, which can be measured by objective standards. The transit industry has been able to deliver more than 10 billion annual trips despite the SGR backlog. Therefore, the definition of state of good repair should reflect an aspirational condition beyond the current status quo.

The objective standards used to determine state of good repair ask whether (1) an asset is able to perform its manufactured design function; (2) whether the asset is able to operate without posing a known unacceptable safety risk; and (3) whether the asset’s life-cycle maintenance needs have been met or recovered. These high-level standards are broad enough to be applied to existing transit asset management practices at transit providers of varying sizes, modes, and operating environments.

*D. Transit Asset Management Plans (Questions 75–81, 83–90)*

Section VII.C of the ANPRM posed questions related to TAM plans, including: (1) The applicability of the requirement to develop a TAM plan; (2) specific requirements for asset inventories, condition assessments, investment prioritization, and technical assistance from FTA; and (3) the extent to which safety and other risk-based processes should be incorporated into or reflected in a TAM plan. Section VIII of the ANPRM related to certification of TAM plans. Related to the questions under section VII.C, question 113 sought comment on how often TAM plans should be updated. Question 82, related to technical assistance, is addressed below in section E.

*Applicability*

*Comments:* Some commenters suggested that FTA should not require TAM plans for transit providers that own capital assets which have only a “residual” Federal interest. Similarly, other commenters suggested that TAM plans should be required for all capital assets, including those with a residual Federal interest, but only if new FTA

funding is being sought. Conversely, some commenters supported FTA’s suggestion that all capital assets be included in a transit provider’s TAM plan, and stated that it would be impractical to subdivide a TAM plan based on funding source.

With respect to contractors and other third-party operators of public transportation services, some commenters stated that the TAM plan requirements should not extend to lessees or contractors. Conversely, other commenters suggested that Federally-funded assets should be included in a TAM plan whether or not they are leased to a third party.

*Response:* One purpose of the transit asset management requirements is to tackle the Nation’s growing SGR backlog. FTA agrees that it would be impractical for a transit provider to develop a TAM plan that only included those assets that were originally purchased with Federal funds. Indeed, many of the assets in the SGR backlog are legacy assets that predate the Federal assistance program for transit. Accordingly, the proposed rule would require each recipient or subrecipient of Federal funds that owns, operates, or manages capital assets used in the provision of public transportation to develop and carry out a TAM plan. TAM plans would be required to account for all assets used in the provision of public transportation service for the recipient or subrecipient, regardless of funding source, and whether used by the recipient or subrecipient directly, or leased by a third party.

*Asset Inventory*

*Comments:* Many commenters suggested that the asset inventory incorporate a minimal amount of detail such as the number of assets in the class, the percentage of those assets that are fit for their intended purpose, and a general description of the types of assets in the class. Other commenters suggested that the asset inventory should include inventory of capital assets at their highest level to give transit providers more flexibility. Other commenters suggested that the inventory only need to include detail needed to sufficiently identify capital investment needs. Some commenters suggested that the asset inventory only include vehicles used in revenue service.

*Response:* One of the purposes of the transit asset management requirements is to tackle the Nation’s growing SGR backlog. As stated earlier in this notice, the SGR backlog is not solely composed of vehicles in need of repair, but also

includes the Nation's infrastructure, facilities, and systems. In addition, MAP-21 requires FTA to develop objective standards for measuring the condition of equipment, rolling stock, infrastructure and facilities and then develop performance measures based on those standards. Transit providers would be required to set performance targets based on the measures.

The proposed rule would require transit providers to develop asset inventories for each asset class within the equipment, rolling stock, infrastructure, and facilities asset categories. For example, asset classes within the rolling stock asset category include buses, vans, trolleys, and rail cars. FTA believes that this proposed approach accommodates transit providers of all sizes and capabilities, as the fewer assets a provider has, the fewer assets the provider will have to include in the inventory.

#### Condition Assessments

*Comments:* For revenue vehicles, many commenters suggested using age and mileage, along with standard replacement and maintenance schedules, as the parameters for assessing condition. Many commenters stated that condition assessment is asset and provider specific and should not be prescribed by regulation. Other commenters suggested that the requirements for condition assessment should be based on a three-point scale and apply at the highest level of asset categorization.

*Response:* FTA agrees that multiple factors will impact how a transit provider will decide to conduct condition assessments. These factors include, but are not limited to, mode, sophistication of operations, and operating environment. FTA recognizes that transit providers may include additional detail in their asset inventories in order to carry out investment prioritization processes and other data manipulation.

FTA believes that the practice of conducting condition assessments will significantly improve the effectiveness of investment decision-making. Accordingly, the proposed rule would only require that a transit provider choose a method for conducting a condition assessment that "generates information in a level of detail sufficient to monitor and predict the performance of each capital asset identified in the asset inventory." See section 625.25(b)(2) of the proposed rule.

#### Investment Prioritization

*Comments:* Commenters suggested that investment prioritization occur

either at the individual asset level (e.g., 40-foot bus), asset class level (e.g., buses), or project level (e.g., replace brakes on ten 40-foot buses). Many commenters stated that the most important aspect of investment prioritization is to demonstrate that funds will be directed towards effective mitigation of safety and financial risks, and service reliability. Many commenters suggested that decisions concerning prioritization of operating, maintenance, expansion, and rehabilitation needs should be left up to the transit provider, while other commenters stated that investments related to safety-related critical assets should be a top priority. Many commenters suggested that investment prioritization be based on a strategic, organization-wide approach. Accordingly, commenters suggested that FTA refrain from prescribing processes or procedures to ensure that investments are prioritized according to an organizational approach. Some commenters suggested that investment prioritization time periods should reflect a provider's short-range capital plans and be closely coordinated with TIP and STIP processes. Some commenters suggested time periods of two years, while others suggested time periods as long as ten years.

*Response:* FTA agrees that investment prioritization should be done at the project level. The law requires that projects eligible to receive funding under the section 5337 SGR Formula Program be identified in a TAM plan. 49 U.S.C. 5337(b)(2). Moreover, FTA funds are awarded through grants for projects. Therefore, a project-based investment prioritization would be consistent with current practice and meet the requirements of the law. Accordingly, the proposed rule would require a TAM plan to include an investment prioritization at the project level.

Investment prioritization is an essential step in instituting TAM principles for transit providers. TAM policies and strategies can assist transit providers in identifying priorities that address their goals or desired outcomes. FTA agrees that balancing needs for operations, maintenance, and expansion projects is a local determination and recognizes that the methodologies and analysis used to make these decisions will vary. However, FTA believes that describing decision criteria for investments and the resultant ranked list of projects are important steps in investment prioritization. This is consistent with the statutory requirement for a TAM plan to include decision support tools.

FTA does believe that sufficient investment must be directed to those projects that pose safety risks. Therefore, although the proposed rule does not prescribe a method for making investment decisions, it would require that due consideration is given to those projects for state of good repair that pose an unacceptable safety risk identified through the transit provider's Safety Management System, or the relevant safety program as it applies to railroad operators that are recipients of FTA formula funds and subject to Federal Railroad Administration (FRA) Jurisdiction.

The proposed rule would require the time period for the investment prioritization be four years, in order to be consistent with existing requirements under the TIP and STIP processes.

#### *E. State of Good Repair Performance Measures and Targets (Questions 63, 67, 72, 91-98)*

Section VII.D of the ANPRM and questions 63, 67, and 72 from section VII.B relate to SGR performance measures and targets. These questions sought comment on the four proposed approaches to defining and measuring state of good repair based on the following: (1) Age; (2) condition; (3) performance; and (4) a combination of all three approaches. The questions also sought comment on other approaches to measuring state of good repair and whether different approaches should apply to agencies based on provider-size. The questions sought comment also on how SGR performance targets should be set and where they should be reported.

#### Performance Measures

*Comments:* Some commenters suggested that FTA limit the number of performance measures and allow providers to use their existing transit asset management programs to develop their own performance measures to address local conditions. Other commenters suggested that all providers should use the same performance measures, with consistent measurement, collection, and application. Some commenters suggested using percentage of useful life and customer satisfaction/dissatisfaction as performance measures. Some commenters suggested that FTA employ different approaches for setting performance measures based on the type of asset. However, they stated that FTA should also allow more complex asset management practices as determined by the transit provider. Some commenters stated that the time allocated to implementing the national performance measures was too short

and suggested that FTA develop an approach to provide time for implementation.

*Response:* Pursuant to 49 U.S.C. 5326(c)(1), FTA must develop performance measures based on objective SGR standards. Establishing a limited number of assorted performance measures for different asset categories best captures the nature of an asset category and how it impacts an SGR determination. Moreover, FTA recognizes that the transit industry is comprised of thousands of different operators with diverse operating environments and limited resources.

FTA published a State of Good Repair White Paper with the ANPRM which discussed four proposed approaches to measuring state of good repair based on an asset's (1) age, (2) condition, (3) performance, (4) or a comprehensive approach of age, condition and performance.<sup>9</sup> None of the approaches represented a perfect means of measuring state of good repair. In particular, the approaches all made various trade-offs between precision and burden. As a result, FTA is proposing a performance measure for each asset category that is the least burdensome measure possible, but operable enough to measure effectively the progress towards reducing the SGR backlog.

- *Rolling Stock and Equipment:* FTA is proposing an age-based approach for measuring the condition of rolling stock and equipment. Most transit providers already measure the condition of these assets based on age. This approach is objective and relatively easy to implement as the age of most assets can be determined from maintenance or procurement records.

- *Facilities:* FTA is proposing a condition-based approach for measuring the condition of facilities. Many larger transit providers already conduct periodic condition assessments of their facilities. FTA believes that this approach is more accurate for measuring the condition of a facility than age-based or performance-based approaches because an age-based approach does not reflect quality or local conditions and the impact they can have on facilities, while a performance-based approach does not provide advance notice of failure because a facility's performance can stay relatively constant as its condition degrades.

- *Infrastructure:* FTA is proposing a performance-based approach for measuring the condition of infrastructure. This approach is the

most complex and relates to the most operationally complex assets. Track and signal condition is critical to the successful and efficient operation of rail fixed-guideway. The performance of infrastructure assets are what determine the operational capacity and service quality, and thus a performance-based measure provides a transit provider with useful information the transit provider can use in balancing its financial resources.

FTA is aware that more advanced performance measures exist, and supports transit providers that elect to use them.<sup>10</sup> However, FTA does not believe that the state of the practice supports Federal adoption of more advanced performance measures. Although asset management is not new to many of the larger transit providers, FTA has found a lack of consistency in how each provider implements TAM practices. Therefore, FTA is proposing a mix of performance measure approaches, which are intended to address the various experiences and capabilities of the entire transit industry.

#### SGR Performance Targets and Reporting

*Comments:* Some commenters suggested that performance targets be reported to FTA's NTD, while others suggested reporting to an alternative source. Some commenters stated that performance targets need to be developed and maintained locally if they are to have any value to transit providers. Additionally, some commenters believe that transit providers should have discretion in determining how the targets should be set. Commenters also stated that the transit industry should be given more time to set targets. Commenters stated that without sufficient legal protections, data that is collected by FTA could be used against them in court.

Some commenters stated that using FTA's NTD might be cumbersome for small urban and rural operators. Commenters recommended setting targets by operator type and also adopting approaches that effectively reduce the burden on small urban and rural transit operators by setting a long target horizon period. Several commenters recommended setting a target horizon of five or more years, whichever would be consistent with the regional Long (or Short) Range Plan, State Transportation Improvement Program, or equivalent.

*Response:* The rule proposes that a transit provider that develops its own TAM plan would be responsible for reporting its targets and performance results annually to FTA's NTD. If a transit provider participates in a group TAM plan, then the group TAM plan sponsor would be responsible for reporting targets and performance results for the group to the NTD. FTA believes this approach is consistent with the law's requirement that all recipients report targets and performance results annually to FTA. FTA agrees that the NTD is a sufficient source for collecting this data and that using the familiar reporting infrastructure of the NTD will reduce the burden to the entire transit industry.

FTA believes that annual performance targets are an important mechanism to gauge the performance of a TAM system. FTA agrees that setting annual and long-term targets would provide a larger set of indicators to assess improvements in performance. FTA also agrees a shorter target will allow transit providers to correct and address obstacles to achieving SGR goals. The proposed rule would require only that targets be set annually for the following fiscal year.

Pursuant to 49 U.S.C. 5326(c)(2), targets must be set within 3 months after the effective date of a final rule is issued to establish performance measures. FTA believes that three months is sufficient time to complete initial target-setting. Group TAM plan sponsors would be responsible for setting initial and subsequent targets for small and rural operators that are eligible to participate in a group TAM plan.

#### F. Technical Assistance and Tools (Questions 82, 99–106)

Section VII.E of the ANPRM posed questions related to technical assistance and tools from FTA. This section asked questions about tools used by the transit industry for its transit asset management practices. These questions sought comments also on what tools and resources the transit industry would like from FTA to ease the implementation of the TAM requirements. There were other questions related to gaps in existing technical assistance and tools.

*Comments:* Some commenters suggested that FTA should issue regulations before publishing any guidance. Commenters stated that private industry will likely develop tools to support the TAM regulations and that FTA should set general parameters and not get involved in creating tools and products.

Some commenters suggested that FTA should create flexible and simple TAM

<sup>9</sup> The State of Good Repair White Paper is available on FTA's Web site at <http://www.fta.dot.gov/13248.html>.

<sup>10</sup> For more information on additional performance measures, please review the 2012 Asset Management Guide which is available on FTA's Web site at [www.fta.dot.gov/documents/FTA\\_Asset\\_Management\\_Guide\\_-\\_FINAL.pdf](http://www.fta.dot.gov/documents/FTA_Asset_Management_Guide_-_FINAL.pdf).

plan templates for transit providers. Commenters suggested that FTA establish a self-assessment tool or other tool that transit providers could utilize to assist them in TAM compliance. Commenters also suggested that FTA develop scalable training courses with no certification requirement.

*Response:* Pursuant to 49 U.S.C. 5326(b)(5), FTA must provide technical assistance to the transit industry on transit asset management and has already provided guidebooks and related information to help transit providers. While the final rule is likely to prompt private industry development of tools and products, FTA believes that technical assistance is important for effective implementation of the National TAM System. After issuing a final rule, FTA will continue to develop technical assistance to support the transit industry's practice of transit asset management.

#### G. Certification of Transit Asset Management Plans (Questions 107–111, 113–115)

Section VIII of the ANPRM posed questions related to certification of TAM plans. These questions sought comment on how certification should occur, including certification for subrecipients, and the role of a transit provider's officials in the certification process.

##### Certification Process

*Comments:* Some commenters stated that certification of TAM plans should be done through the annual certifications and assurances process. Other commenters stated that certification should not be done through a requirement to receive a grant. Some commenters stated that FTA should review plans prior to grant approval. Other commenters indicated that FTA should review plans as part of the Triennial/State Management Review.

Some commenters indicated that they do not support FTA review of certification of public transportation agency safety plans and TAM plans on the basis of a weighted random sample. Many commenters expressed concern that random sampling in addition to triennial and State management review is redundant. Other commenters expressed concerns that random sampling would not be suitable for all agencies because of differing populations, geographical locations, and types of service among agencies. Some commenters also indicated that, although a weighted random sample could be appropriate, it is important that the system is not overly burdensome.

Some commenters suggested that FTA establish self-assessment procedures, but only one commenter indicated that FTA should establish procedures for providers to follow before certifying transit agency safety plans TAM plan. Other commenters stated that it would be helpful for FTA to create a checklist or other guidance to facilitate self-assessment procedures. Of these commenters, a few suggested that a self-assessment tool should differentiate between mandatory and voluntary aspects of the tool so that transit agencies with substantial differences could utilize the self-assessment tool flexibly. A few commenters indicated that an FTA self-assessment tool would not be helpful because agencies differ substantially in their plans and practices.

*Response:* FTA agrees that sample-based oversight of TAM plans would be redundant. The proposed rule would focus on oversight of self-certifications of TAM plans through the existing Triennial Review and State Management Review (SMR) processes. FTA, however, reserves the right to conduct additional oversight of TAM plans outside of the standing Triennial Review and SMR processes. FTA will consider developing a self-assessment tool as part of its technical assistance efforts.

##### Subrecipient Certification

*Comments:* Some commenters suggested that subrecipients should be allowed to self-certify their TAM plans. Some commenters suggested that FTA establish a requirement that States and urbanized area designated recipients should review the TAM plans of their subrecipients annually as part of the annual certifications and assurances process. Some commenters stated that FTA should not dictate that States or MPOs approve recipient or subrecipient TAM plans or the particular methods for States and other designated recipients to review their subrecipients' TAM plans. These commenters suggested also that FTA incorporate oversight of TAM requirements into the existing FTA triennial review process. Some commenters suggested that FTA should not establish procedures for States and urbanized area designated recipients to review the TAM plans of their subrecipients before certification.

*Response:* The proposed rule would tie the self-certification requirements to the development of the TAM plan itself, which would require some subrecipients to self-certify. Any transit provider, recipient, or subrecipient that develops its own TAM plan would be responsible for certifying that plan. On the other hand, any transit provider that

participates in a group TAM plan would have the TAM plan certified by the group TAM plan sponsor. FTA would reserve the right to examine the certification status of recipients and subrecipients as part of the grant-approval process.

##### Role of Transit Providers' Officials

*Comments:* A few commenters stated that designating a single individual to certify TAM plans would present difficulties for States and larger agencies. Other commenters suggested that a transit provider's chief executive officer, chief operating officer, and chief financial officer should all be required to sign the certification. One commenter suggested that in addition to using the existing certification process, a letter from the general manager certifying compliance with the System Safety Program Plan should accompany the annual Internal Safety and Security Audit Report submitted to the state safety oversight agency. Some commenters suggested that the signature requirement should match that of the annual grant certification and assurances process, while another commenter suggested that the signature requirement should be a part of the Triennial Review.

Some commenters stated that they did not want the certification of the TAM plan to be signed by the chief executive officer of transit operations and/or the chief executive officer of the legal entity receiving grants from FTA. On the other hand, some commenters stated that they would like the certification of the TAM plan to be signed by the chief executive officer of transit operations and several indicated that the chief executive officer of the legal entity receiving the grant from FTA should sign the certification. Other commenters did not indicate a preference, but responded positively to the idea of the chief executive officer signing the certification of the TAM plan.

Some commenters suggested that approval by a transit provider's board of directors should be optional. Another commenter stated that if the TAM plan is a technical document, then it should be approved by only the chief executive officer, but if it is a high level non-technical document, then it should be approved by the board of directors.

*Response:* FTA believes that an accountable executive should approve the TAM plan and balance it with its public transportation agency safety plan. An accountable executive may hold various titles at different transit providers but should have the responsibility and authority to approve financial and operational decisions that

arise from TAM and safety analyses. FTA recognizes that some transit providers have a board of directors that approves financial decisions and that the Board may or may not be technically inclined to balance the TAM and safety aspects. In this case, FTA believes the transit provider's accountable executive, as defined in this part and the forthcoming transit agency safety plan regulation, has the responsibility to provide his/her recommendations to the board of directors and account for any discrepancies in the TAM and transit agency safety plans.

#### H. Coordination With Metropolitan, Statewide and Non-Metropolitan Planning Requirements (Questions 116–121)

Section IX of the ANPRM posed questions about the coordination and integration of TAM plans and performance targets with the metropolitan, statewide and non-metropolitan planning requirements.

*Comments:* Some commenters stated that SGR needs should be addressed alongside other investment goals through the performance-based planning approach to the development of long-range transportation plans and TIPs. Commenters stated also that FTA should not or did not need to establish new requirements or procedures for integration with the planning process because the existing process already includes extensive coordination, cooperation, and collaborative opportunities aimed at integration. Additionally, some commenters stated that creating new procedures for TAM may prohibit integration with planning processes.

A few commenters stated that targets must be established at the transit provider level because consolidating targets at the regional/MPO level would create unnecessary limitations to funding allocations and unreliable measurement criteria. Many commenters suggested that MPOs should not be required to set a region-wide target for transit state of good repair and that MPOs should not be required to incorporate both the safety and transit SGR targets from each transit system within their jurisdictions into the performance-based planning process. Conversely, other commenters suggested that MPOs should be required to set a region-wide target for transit state of good repair or that MPOs should be required to incorporate both the safety and transit SGR targets from each transit system within their jurisdictions into the performance-based planning process. Some commenters suggested that MPOs should coordinate with

transit agencies and should incorporate performance measures/targets into existing processes with operators. Other commenters suggested that MPOs and partner transit agencies should have the flexibility to choose an approach that meets their particular needs.

Some commenters suggested that FTA directly monitor and oversee performance factors and planning requirements for direct recipients of FTA funds. Some suggested that MPOs collaborate with States and transit agencies to establish safety plan and TAM performance requirements.

Some commenters stated that the existing framework is sufficient and no additional steps are needed for integration into the planning process. Some commenters suggested that the process should reflect the variety in the structures of the States. Specifically, in some cases, the State would be the incorrect entity to incorporate the safety and TAM plan elements because in a region that includes an MPO, the MPO may serve as the regional transportation planning organization (RTPO).

*Response:* MAP–21 transformed the Federal transit program and Federal-aid highway program by requiring a transition to performance-driven, outcome-based approaches in key areas. With respect to planning, although MAP–21 leaves the basic framework of the planning process largely untouched, the statute introduces critical changes to the planning process itself by requiring States, MPOs, and transit providers to link investment priorities (the transportation improvement program of projects) to achieving performance targets related to performance measures.

Pursuant to the requirements at 49 U.S.C. 5303 and 5304, States and MPOs must coordinate with transit providers to the maximum extent practicable in selecting State and MPO TAM performance targets.<sup>11</sup> FTA recognizes that a specific target-setting approach and methodology is a local decision. Transit providers should work with their planning partners to integrate their TAM plans into the statewide and metropolitan transportation planning processes. See 49 U.S.C. 5303(h)(2)(D), 5304(d)(2)(B)(ii). To support this integration, transit providers should share information regarding transit system condition, targets, investment priorities and strategies.

FTA believes that together with the requirements of a final rule to implement 49 U.S.C. 5326, the new performance-based planning framework will ensure that investment decisions

for state of good repair are adequately considered alongside other regional investment needs, such as “increased consideration of resilience to impacts of climate change and extreme weather-related hazards.” For more information on these planning requirements under the new performance-based approach, please refer to the joint planning NPRM issued by FTA and FHWA. 79 FR 31784 (June 2, 2014).

#### I. Estimating Costs and Benefits (Questions 122 and 123)

Section X of the ANPRM sought information from the public regarding the costs and benefits related to alternative regulatory approaches for implementing the National TAM System.

*Comments:* Commenters generally indicated that they believe it was difficult or impossible to answer these questions without seeing details regarding the National TAM System that would be included in a Notice of Proposed Rulemaking. One commenter provided specific details regarding the costs of their existing asset management efforts. No commenters provided specific alternative approaches to the proposed rulemaking.

*Response:* FTA considered the costs of the commenter's existing transit asset management activities and researched other relevant information sources in developing the regulatory impact analysis for this proposed rule.

## IV. Section-by-Section Analysis

### A. Transit Asset Management

FTA is proposing to amend chapter 49 of the Code of Federal Regulations by adding a new part 625. The following is a section-by-section analysis of each proposal in this rulemaking:

#### 625.1 Purpose

This section explains that the purpose of these regulations would be to carry out the mandate of 49 U.S.C. 5326 for transit asset management.

#### 625.3 Applicability

This section explains that the regulations would apply to all transit providers that: (1) Are recipients or subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53; and (2) own, operate, or manage transit capital assets. The statute broadly applies to all recipients and subrecipients of FTA financial assistance, including rail fixed-guideway operators otherwise regulated

<sup>11</sup> See 49 U.S.C. 5303(h)(2)(B)(ii), 49 U.S.C. 5304(d)(2)(B)(ii).

by FRA.<sup>12</sup> However, FTA proposes that recipients and subrecipients of planning or research grants and cooperative agreements would not be required to develop TAM plans unless they own, operate, or manage transit capital assets.

#### 625.5 Definitions

This section includes proposed definitions for terms that would be applicable to this part. Some of these terms are familiar to the transit industry, but may be defined slightly differently for purposes of this rule. For example, readers should refer to “capital asset,” “direct recipient,” “equipment,” “facility,” “infrastructure,” “public transportation system,” “recipient,” “rolling stock,” and “subrecipient.” The definitions for “performance measure” and “performance target” are products of the new performance management framework. Other new terms are specific to transit asset management, including “asset category,” “asset class,” “asset inventory,” “full level of performance,” “group TAM plan participant,” “group TAM plan sponsor,” “horizon period,” “transit asset management,” and “transit asset management system.” The following definitions warrant further explanation or clarification.

FTA proposes to include a definition for *accountable executive* that identifies the person at a transit provider that has the responsibility and authority to approve the TAM plan as well as the transit agency safety plan. The accountable executive’s role throughout the proposed rule is primarily focused on carrying out transit asset management practices. However, on an organization-wide level, the accountable executive is responsible for controlling financial risks, safety risks, and risks related to the condition of capital assets. For example, when setting investment priorities, the accountable executive would be responsible for ensuring that sufficient consideration is given to assets whose condition negatively impacts safety. The accountable executive’s role will be further defined under the SMS approach and FTA’s forthcoming safety rules.

FTA proposes to include a definition for *decision support tool*. A decision support tool is a process or repeatable methodology that assists in organizing data in a way that supports decision-making. For example, the FTA Transit Economic Requirements Model for local agencies (referred to as TERM-Lite) uses a transit provider’s asset inventory condition data to predict future SGR

needs based on input or default rehabilitation and replacement policies. A decision support tool does not have to be software-based.

FTA proposes to include a definition for *equipment*. The minimum level of granularity required in the asset inventory is the level at which a project would be identified in a transit provider’s program of capital projects. For example, if an asset with a useful life of more than one year would appear in the transit provider’s program of capital projects when it is due for replacement, then the asset must be included as equipment in the asset inventory.

FTA proposes to include a definition for *group TAM plan*. A group TAM plan is an amalgamation of the TAM plans of individual transit providers. Smaller (tier II) transit providers may not have the resources or expertise to develop a TAM plan. The Group TAM plan provides a less burdensome option for developing a TAM plan by requiring a State or direct recipient to coordinate development of the plan for multiple transit providers. State and other direct recipients are required to sponsor a group TAM plan for their tier II provider subrecipients, but they may also allow other small transit operators to join the group. Larger, tier I transit providers would be required to develop their own individual TAM plan.

FTA proposes to include a definition for *implementation strategy*. An implementation strategy is comprised of the actions that a transit provider decides to take in order to achieve its TAM policy and goals. The implementation strategy can include activities such as defining the implementation schedule, assigning roles and responsibilities to individuals or departments, identifying accountable parties, and delegating tasks to offices or branches of the transit provider.

FTA proposes to include a definition for *investment prioritization*. Investment prioritization is both the analytical process used to prioritize investments and the resulting list of capital projects. Investment prioritization is temporally and fiscally constrained, and should be based on reasonably anticipated funding levels from all revenue sources.

FTA proposes to include a definition for *key asset management activities*. Key asset management activities are the actions that a transit provider determines are necessary for implementing TAM practices within the organization and are critical to achieving the provider’s transit asset management goals. These activities are not limited to outputs of transit asset management, but may include activities

that support asset management, such as the purchase of decision-support software or a training program for key personnel.

FTA proposes to include a definition for *safety management system (SMS)*. SMS means the formal, top-down, organization-wide data-driven approach to managing safety risk and assuring the effectiveness of safety risk mitigations. It includes policies, procedures, and practices for the management of safety risk.

FTA proposes a definition of *state of good repair* for public transportation capital assets. State of good repair means “the condition in which a capital asset is able to operate at a full level of performance.” This asset-based definition, as opposed to system-based, is consistent with the law which requires FTA to define this term to include objective standards for measuring the condition of capital assets.

FTA proposes to define *tier I and tier II provider* to establish separate requirements for smaller (tier II) and larger (tier I) transit providers. FTA determined that the delineation point of 100 revenue vehicles consistent with a threshold in the FTA Urbanized Area Formula program. Likewise, the exclusion of rail fixed-guideway<sup>13</sup> operation from the tier II category serves as recognition that the tier II providers operate less complex transit system. FTA has found that a majority of the SGR backlog is attributable to transit providers with the characteristics of a tier I provider.

FTA proposes to include a definition for *transit asset management plan*, consistent with the definition of that term at 49 U.S.C. 5326(a)(2).

FTA proposes to include a definition for *TAM policy*. The TAM policy is the executive-level direction regarding expectations for transit asset management within an organization. For example, a TAM policy may include statement on asset-replacement which articulates a provider’s commitment to prolonging the life of an asset or a prioritization criterion that favors maintenance over expansion.

FTA proposes to include a definition for *TAM strategy*. The TAM strategy consists of actions that support the implementation of a TAM policy. An effective strategy would be specific, measurable, attainable, relevant and temporally constrained.

FTA proposes to include a definition for *transit asset management system*

<sup>12</sup> To the contrary, FTA does not intend to apply its safety rules to recipient rail fixed-guideway operators who are otherwise regulated by FRA.

<sup>13</sup> The term “fixed-guideway” is defined at 49 U.S.C. 5302(7) and includes rail transit, passenger ferries, bus rapid transit, and any transit operated on a fixed catenary system.

consistent with how that term is defined at 49 U.S.C. 5326(b)(2).

FTA proposes to include a definition for *useful life benchmark (ULB)*. A ULB takes into consideration both the age of an asset and its operating environment. Consideration of the asset's operating environment allows transit providers to develop performance targets that reflect their specific operating environments. Transit providers operate their assets in diverse environments, where the geography, frequency of service, passenger loads, etc. may vary. Therefore, a general national standard may not adequately address asset condition. For example, a transit provider that operates for only four hours per day would have different vehicle conditions than a transit provider that offers 24-hour service, even if the vehicles for both providers are the same age. As a result, the estimate of a vehicle's useful life may also be different. The ULB framework enables a transit provider to report its performance and set targets for its performance on a scale that is tailored to it.

A transit provider should establish a ULB by taking into consideration the operating environment of its assets, historical evidence, manufacturer guidelines, and any other relevant factors. Transit providers may elect to use the default ULB for assets, which is derived from FTA's TERM.<sup>14</sup>

A useful life benchmark is distinct from the term "useful life" or "minimum useful life" that applies to FTA's grant programs. Under FTA's grant programs, "useful life" refers to the federal financial interest in a capital asset which is based on the length of time in service or accumulated miles. Generally, assets are not eligible for replacement with FTA funds until they have met or exceeded their minimum useful lives. A ULB, however, takes into consideration operational factors, discussed above, that may impact the condition of a capital asset.

#### 625.15 Elements of the National Transit Asset Management System

This section identifies the elements of the National TAM System as set forth at 49 U.S.C. 5326(b). FTA proposes that the National TAM System include a requirement that FTA establish

<sup>14</sup> The TERM model consists of a database of transit assets and deterioration schedules that express asset conditions principally as a function of an asset's age. Vehicle condition is based on an estimate of vehicle maintenance history and major rehabilitation expenditures in addition to vehicle age; the conditions of wayside control systems and track are based on an estimate of use (revenue miles per mile of track) in addition to age.

performance measures and that transit providers set targets and that transit providers report their targets to FTA's NTD. The performance management and reporting components of the National TAM System are important for assessing both the benefits of transit asset management on a National level and the transit industry's current SGR needs.

#### 625.17 State of Good Repair Principles

FTA proposes SGR principles intended both to highlight the relationship of state of good repair to other transit priorities and to guide a transit provider's practice of transit asset management. State of good repair is related to, but not synonymous with, transit asset management. State of good repair is a condition that can be achieved through good transit asset management practices. Transit asset management practices inform the capital investment planning and programming processes by producing data that informs investment prioritization. Transit asset management allows a transit provider to realistically predict the impact of its policies and investment decisions on the condition of its assets throughout an asset's life cycle. Transit asset management enhances a transit provider's ability to maintain a state of good repair and proactively invest in its assets before the asset condition deteriorates to an unacceptable level.

A key connection of state of good repair to transit asset management is performance management. Asset management is a business model that uses the condition of assets to determine the finances needed in order to achieve predetermined outcomes. In the case of transit asset management, and this rulemaking, the goal is to achieve and maintain a state of good repair. A key focus of asset management is cost-risk balancing to achieve performance goals through a transparent, organization-wide process of decision-making.

Transit asset management provides a framework for how to maintain a state of good repair by considering the condition of assets in the transit provider's inventory and the transit provider's local operating environment, along with the policies that a transit provider establishes for prevention, preservation, rehabilitation and replacement. Transit asset management allows a transit provider to realistically predict the impact of their transit asset management and maintenance policies on the condition of their assets and how much it would cost to improve asset condition at various stages of an asset's life cycle, while balancing prioritization

of capital, operating and expansion needs.

#### 625.25 Transit Asset Management Plan Requirements

Pursuant to 49 U.S.C. 5326(b)(2), all recipients and subrecipients of Chapter 53 funds must develop a TAM plan. FTA has interpreted this requirement to apply only to those recipients and subrecipients that actually operate public transportation systems and own, operate, or manage capital assets for that system. Therefore, the TAM plan requirements would not apply to an MPO that merely receives funds from FTA and passes the funds along to transit operators. Accordingly, section 625.25(a) would require each transit provider that owns, operates, or manages public transportation capital assets to develop and carry out a TAM plan.

In order to address the SGR backlog in a meaningful way, FTA believes that a recipient or subrecipient of FTA funds must account not only for assets that it operates directly, but also assets that it leases or assets that are operated under a service contract with the recipient. A transit provider would be responsible for the development and implementation of a TAM plan (along with all related recordkeeping requirements). However, a provider would be responsible also for ensuring that, any entity providing service on behalf of the provider, is complying with the provider's TAM plan. Accounting for all assets would allow a transit provider to make more informed investment decisions.

In meeting these requirements, tier II providers would have the option to participate in a group TAM plan. The group TAM plan concept is intended to reduce the burden on smaller operators of having to develop individual TAM plans. Under a group TAM plan, a group TAM plan sponsor, State, or direct recipient would develop a single group TAM plan on behalf of one or more tier II providers. Each tier I provider, including group TAM plan sponsors, must develop its own individual TAM plan. Under all circumstances, it is the responsibility of the relevant State or MPO to integrate the TAM plans (group or individual) into the statewide and metropolitan transportation planning process.

It would be the responsibility of the transit provider's accountable executive to ensure that the TAM plan is carried out at his or her organization. For those transit providers that develop an individual TAM plan, the accountable executive would be responsible for making informed investment decisions

and ensuring that meaningful SGR targets are set. The accountable executive for a group TAM plan participant would be responsible for coordinating development of the group TAM plan with the sponsor. This coordination may involve providing accurate asset inventory data, maintenance and repair records, or other relevant data. It may also involve participating in development of targets for the group and negotiations about investment priorities.

Subsection 625.25(b) lists proposed elements of a TAM plan, including:

1. An asset inventory, which is a list of the transit provider's capital assets;
2. A condition assessment, which is a rating (*e.g.*, good/fair/poor or percentage of residual life) of the condition of assets in the inventory. This NPRM does not speak to the condition rating scale or process a transit provider should use;
3. An identification of which decision support tool or tools were used to create the TAM plan. A decision support tool is a methodology to help transit providers make decisions, such as prioritizing projects based on condition data and objective criteria. A decision support tool can be software, but is not exclusively software; this NPRM does not speak to the decision support tool a transit provider should use;
4. An investment prioritization. The investment prioritization is a list of the proposed projects and programs that a transit provider estimates would achieve its SGR goals, and a ranking of the projects and programs based on priority;
5. An identification of the transit provider's policies and strategies for developing an effective TAM plan, including a transit provider's executive-level directions to set or support the goals for its TAM plan;
6. A strategy for implementation of the TAM plan, which is the process a transit provider identifies to follow in order to achieve its TAM plan. This strategy differs from the strategies identified in element (5) in that this is an operation-level decision;
7. A list of the key activities or actions that are critically important to achieving the transit provider's asset management goals for the year—*e.g.*, management-supported activities such as purchasing software or training;
8. An identification of the financial resources that a transit provider estimates are necessary for implementing its TAM plan and achieving its asset management goals. This might include internal staff time, technology requirements, etc.; and
9. A continuous improvement plan that sets timelines and milestones that

can be revisited to track the transit provider's progress towards meeting its asset management goals.

The first four elements relate to identifying performance goals, while elements 5 through 9 relate to the implementation of TAM concepts. To reduce the burden, FTA is proposing that a TAM plan for a tier II provider or other eligible group TAM plan participant would be required to include only elements 1 through 4. The majority of the SGR backlog exists in capital assets at larger transit systems, particularly those with rail fixed-gateway public transportation systems. As a result, FTA believes that these larger, complex operations require a more holistic and strategic process, addressed through elements 5 through 9, for consideration of asset conditions throughout the asset's life cycle, as well as institutionalization of TAM principles. FTA highly recommends that tier II providers incorporate elements 5 through 9 as best practices. FTA requests comment on these additional, non-statutory criteria, including whether these are appropriate for tier I providers, whether other criteria should be included, and whether these (or other criteria) should be extended to tier II providers.

Subsection 625.25(b)(1) would require that each TAM plan include an inventory of the transit provider's capital assets. The asset inventory is expected to cover the capital assets that a transit provider owns, operates or manages, including leased assets and those assets operated under contract by an external entity. This asset inventory may be a combination of other inventories a transit provider may have on hand. For example, the grant management guidance circular 5010.1D requires grantees to collect, maintain, and report records for rolling stock and equipment. This existing inventory could be used to initiate or refresh the capital asset inventory to satisfy the requirements of the proposed rule.

Subsection 625.25(b)(2) would require that each TAM plan include a condition assessment of capital assets that generates information in a level of detail sufficient to monitor and predict the performance of each capital asset identified in the asset inventory. This subsection would not prescribe how a condition assessment must be conducted, but merely what the result of the assessment would need to be. It would be up to the transit provider or group TAM plan sponsor to decide whether to conduct condition assessments at the individual or asset-class level.

Condition assessments link the practice of asset management to the transit provider's practice of SMS. Therefore, when a transit provider identifies a safety hazard related to the use of a capital asset or an asset class, it would need to evaluate the safety risk to its passengers, employees, and general public in accordance with its transit agency safety plan and the forthcoming regulation. If a capital asset or asset class is identified as a candidate for accelerated repair, replacement, reconstruction, or rehabilitation as the result of the safety evaluation, this should be duly reflected in the investment prioritization. The accountable executive would need to ensure that the financial decision-makers of the transit provider are informed of any need for risk mitigation identified in the provider's SMS.

#### 625.27 Group Plans for Transit Asset Management

The statute provides that all recipients and subrecipients of Chapter 53 financial assistance must develop a TAM plan. Under the proposed rule, this requirement is met either through an individual TAM Plan or through a group TAM plan. The statute includes other requirements for the National TAM System, which are proposed in the rule, specifically those identified in section 625.15, as well as NTD data reporting requirements from 49 U.S.C. 5335(c). The rule proposes to tie these requirements to the sponsorship of the TAM plan.

This section proposes that States and direct recipients of sections 5307 and 5311 funds, or the designated recipients of section 5310 funds would be required to sponsor a group TAM plan for their tier II provider subrecipients, including all subrecipients under the Rural Area Formula Program. Sponsors would not be permitted to reject requests from a tier II provider to participate in a group TAM plan and must develop a group TAM plan for all eligible tier II providers. However, a group TAM plan participant may choose to "opt-out" of a group TAM plan and create its own TAM plan. In addition, an eligible participant may select which group TAM plan it would like to participate in if it is a subrecipient to more than one sponsor. For example, a Rural Area formula Program subrecipient that operates in a multi-state location may be eligible to participate in more than one group TAM plan. The subrecipient would need to select which group TAM plan it wanted to participate in, and formally opt out of the plan that it chose not to participate in. In the absence of explicit notification from a tier II



provider of its intent to opt-out, the sponsor must include that provider in the group TAM plan. A State or direct recipient that is also transit provider would be permitted to participate in a group TAM plan only as the sponsor and would be required to develop a separate, individual TAM plan for its own transit system.

Each transit provider's accountable executive would be required to coordinate, to the extent practicable, with a group TAM plan sponsor in the development of the group TAM plan. Accordingly, a group TAM plan sponsor would be required to coordinate the development of the plan with each of the plan participants' accountable executive.

The group TAM plan concept was derived from the statewide TAM plan concept discussed in the ANPRM. Previously, FTA interpreted the language in the law to exclude a statewide plan option. This interpretation was based on the fact that there was explicit authority provided under 49 U.S.C. 5329(d)(3) for a state plan concept, but similar language was nonexistent under 49 U.S.C. 5326. However, as the implementing agency, FTA has some flexibility in how it chooses to apply these requirements. Accordingly, because of the potential burden on smaller transit providers, FTA proposes a group TAM plan option to alleviate some of the burden on small transit providers when developing a TAM plan.

The feasibility of the group TAM plan assumes that the funding relationship between recipients and subrecipients naturally lends itself to this type of arrangement because the process of prioritizing investments is already occurring at the State and direct recipient level. As a result, it seems logical to require States and direct recipients (or designated recipients of 5310 funds) to take a leadership role in developing group TAM plans for their subrecipients. However, if this relationship is not conducive for the tier II provider, the tier II provider can opt out of the Group TAM plan and develop its own TAM plan.

FTA requests comment on the proposed group TAM plan requirements.

#### 625.29 Transit Asset Management Plan: Horizon Period, Amendments and Updates

This section proposes timeframes for developing and updating a TAM plan. A TAM plan would be required to forecast projects, targets, and activities for at least four fiscal years. Ideally, the TAM plan cycle should coincide, to the extent

practicable, with the State and metropolitan planning cycle for STIP and TIP development. This time horizon would require that the TAM plan be forward-looking. This forecasting is necessary because the ability to measure improvements in performance, based on investments to improve asset condition, is dependent on sufficient collection and analysis of data over time.

This section proposes that a TAM plan should be updated in its entirety at least every four years. Essentially, a transit provider would need to revisit every element of its TAM plan every four years and make any necessary changes for a subsequent version. Some transit providers may desire a longer analysis period; however, the provider would still be required to identify the investment prioritization and performance targets in their 4-year TAM plan horizon period, even if they are a subset of the longer analysis period. During the course of the horizon period, a transit provider may choose to amend its TAM plan to reflect changes to investment priorities, targets, or other unforeseen occurrences (like a natural disaster) that impact the relevance of the TAM plan.

Transit providers should consider current and future climate and weather-related hazards as part of their prioritization of investments. The frequency of and severity of potential hazards such as heavy rainfalls, coastal and riverine flooding, heat waves, extreme cold, and wind events may directly impact assets located in vulnerable areas, and may affect how a provider identifies and prioritizes necessary hazard mitigations, asset-replacement schedules, or the expected useful service duration of capital assets.

#### 625.31 Implementation Deadline

This section proposes that all TAM plan development should be completed no more than two years after the final rule is published. If the rule becomes effective at any time after the first day of the transit provider's or sponsor's fiscal year, the initial TAM plan should cover the remaining portion of that year plus a four-year time horizon. FTA requests comment on these proposed deadlines. FTA is proposing to allow transit providers to extend the TAM plan implementation deadline by submitting a written request. A written request would need to include documentation which shows that the transit provider has made a good faith effort to meet the deadline, an explanation of why the transit provider could not meet the deadline, and a proposed new deadline subject to FTA

approval. FTA would reserve the right to deny a request to extend the deadline.

#### 625.33 Investment Prioritization

This section proposes requirements for investment prioritization. The investment prioritization requirements provide strategic guidance for improving the condition of assets through both consideration of life-cycle costs and itemization of the actions necessary to achieve desired asset conditions. Each transit provider would determine its own approach to investment prioritization and project selection. However, the transit provider would be required to base its approach on the policies, goals, objectives, and strategies identified in their TAM plan and ensure that safety is given due consideration. A transit provider's approach to investment prioritization would need to reflect the balancing of competing priorities in order to maximize a return on investment and achieve a desired state of good repair.

The investment prioritization would need to reflect adequate consideration of safety concerns previously identified within a public transportation system. Moreover, when a transit provider plans for the replacement of an asset, it should ensure that it is complying with all relevant regulatory requirements, including the Americans with Disabilities Act (ADA), which requires that accessibility features be maintained in operating order and are promptly repaired if they are out of service. Certain SGR projects may also be regarded as "alterations" under DOT ADA regulations, and may require additional resources. *See* 49 CFR part 37.

Safety and minimizing life-cycle costs are the most common objectives in prioritizing projects. However, a transit provider may identify additional criteria and factors and weigh them according to local needs. Another criterion that a transit provider may consider is the resiliency of its assets and systems to natural disasters, as described in the NIST National Disaster Resilience Framework.<sup>15</sup> The impact that local concerns may have on condition-improvement costs should be reflected in the investment-prioritization list.

Investment prioritization uses the transit provider's selected prioritization approach and predetermined importance factors to determine project rankings. The ability of a project to meet the objectives established by the transit

<sup>15</sup> For more information on the NIST National Disaster Resilience Framework, please visit [http://www.nist.gov/el/building\\_materials/resilience/framework.cfm](http://www.nist.gov/el/building_materials/resilience/framework.cfm).

provider in its TAM plan should be reflected by a rating. Based on the relative weight a transit provider assigns to each objective, a transit provider can establish a prioritized list of projects. For example, a transit provider may identify track maintenance as the highest priority based on the condition of the track or its maintenance approach as part of its TAM policy. This may result in assigning a higher score to track-asset projects over facility-maintenance projects, even if the facility is in a worse condition, objectively. The costs associated with each project can be assessed and then compared with the transit provider's estimated funding (from all revenue sources) over the TAM plan horizon for each year. The output of the process would be a list of ranked projects that identify assets from the asset inventory required under 625.25(b)(1) that would be funded over the TAM plan horizon period. A provider should only include projects in its ranked list that it expects to undertake during the time horizon and identify the project year.

#### 625.41 Standards for Measuring the Condition of Capital Assets

Pursuant to 49 U.S.C. 5326(b)(1), the definition of state of good repair must contain objective standards for measuring the condition of capital assets. FTA proposes to define state of good repair for public transportation capital assets as "the condition in which an asset is able to operate at a full level of performance." This section proposes objective standards for equipment, rolling stock, facilities and infrastructure that are intended to further define "full level of performance," and clearly indicate when an asset is in a state of good repair.

The objective standards allow transit providers to operationalize and quantify state of good repair to audit their SGR performance. To accomplish this, FTA is proposing three objective standards, detailed in section 625.41. The proposed objective standards are: (1) The asset is able to perform its manufactured design function; (2) the use of the asset in its current condition does not pose a known unacceptable safety risk; and (3) the asset's life-cycle investment needs have been met or recovered, including all scheduled maintenance, rehabilitation and replacements. The objective standards allow for an auditable SGR definition that is high-level and broad enough to incorporate existing transit asset management practices at transit providers of different modes, different

sizes, and different operating environments.

An asset is in a state of good repair when each objective standard is met. The first objective standard proposed in subsection 625.41(b)(1) would require that an asset is able to perform its manufactured design function. This objective standard takes into consideration that an asset may be in poor condition, but still able to operate. For example, a transit provider may institute a slow zone to allow a rail car to operate on deteriorated track that can no longer support rail cars traveling over it at the most optimized speed, but can support rail cars traveling at slower speeds. In this case, the infrastructure track segment would not meet this SGR standard because it was designed to carry railcars at a speed which its condition will not currently support.

The next objective standard proposed in subsection 625.41(b)(2) would require that an asset not pose an unacceptable identified safety risk. Going back to the previous example, track deterioration can lead to derailments and other safety hazards and, depending on the condition, may not meet this standard. If the asset is operating in its designed function but is introducing a safety risk to the system, it is not in a state of good repair. A safety risk may be identified through a number of ways, including through a transit provider's practice of SMS as proposed under FTA's forthcoming rulemaking for public transportation agency safety plans.

Lastly, the third objective standard proposed in 625.41(b)(3) would require that the life-cycle investment needs of the asset be met. This means that inspection, maintenance, rehabilitation, and replacement schedules have been met or recovered for the asset. For example, if a slow zone was established on an infrastructure track segment to conduct scheduled maintenance and did not result from deteriorated condition or unsafe performance at design speeds, the infrastructure track segment might be in a state of good repair. It is not reasonable to claim that the track is not meeting its manufactured design function because it is being operated for scheduled maintenance. This example highlights the difficulty of assessing state of good repair when conducting routine maintenance.

An asset that meets all three objective standards would be in a state of good repair.

#### 625.43 Performance Measures for Capital Assets

Pursuant to 49 U.S.C. 5326(c)(1), this section proposes four SGR performance

measures based on the SGR objective standards proposed in section 625.41. FTA is proposing one measure for each asset class. Each SGR performance measure is based on using calculable quantities of asset conditions to assess state of good repair. In other words, each measure serves as a proxy for measuring state of good repair. This scalable approach allows each transit provider to measure state of good repair and assess progress towards improving state of good repair without requiring the measurement of exact values. Although FTA is only proposing four performance measures in this rule, one per asset category, a transit provider would still be required to apply its asset management systems to its entire inventory of capital assets. FTA believes that the performance measures proposed in this rule have the most potential for use by transit providers in estimating the performance of their system with the least burden for extensive data collection and calculation of measures.

Subsection 625.43(a) proposes an age-based measure for equipment based on the percentage of vehicles that have met or exceeded their useful life benchmark (ULB). Due to the volume of equipment that a transit provider may have, FTA is proposing only one performance measure for equipment for non-revenue support service and maintenance vehicles. FTA believes that maintenance vehicles are the most common class of equipment across types of transit providers and services.

Subsection 625.43(b) proposes a measure for rolling stock that is based on the percentage of rolling stock that have met or exceeded their ULB. This performance measure would be applicable to all asset categories that include revenue vehicles. For example, a transit provider operating buses, trolleys, and rail vehicles would have a performance measure for each asset class. Each performance measure would quantify the percentage of rolling stock in each class that is over the transit provider's ULB for that asset class.

Both the equipment and rolling stock measure assume that most vehicles provide reliable service for a predictable period of time (adjusted by level of usage for some types of assets) after which they should be replaced. Although assets may continue to function safely and effectively at ages beyond this point, FTA has assumed that failure to replace assets at the end of this period leads to decreased performance, increased risk of in-service failure, and higher maintenance costs.

Readers should not confuse a ULB with the minimum useful life requirement under FTA's grant

programs. The minimum useful life represents the minimum age for capital assets that may be eligible for FTA funding for replacement. FTA does not anticipate that a ULB would be less than the minimum useful life used in FTA's formula programs, because the ULB definition estimates the service life of a vehicle in its operating conditions. To ease the burden on smaller transit providers, FTA anticipates publishing a default ULB, based on TERM data that may be used in lieu of a local condition-based calculation of ULB.

Subsection 625.43(c) proposes a measure for infrastructure based on the percentage of guideway directional route miles with performance restrictions. This performance measure would be applicable to all rail fixed-guideway infrastructure, including signal and wayside systems. Each transit provider would determine the most appropriate track segment length to apply to the measurement. Transit providers already collect data on slow zones—this performance measure would standardize their reporting.

The performance-based approach is based on a regular, comprehensive assessment of a system's performance and relies upon the assumption that as assets age, they become less durable and reliable, resulting in decreased operational performance. The ability of an asset to safely and reliably perform its assigned function at a full-performance level is at the heart of state of good repair. The performance-based approach requires integration of operations and capital maintenance activities and is particularly beneficial because it focuses on the actual outcomes of capital assets being in a state of good repair.

Subsection 625.43(d) proposes a condition-based performance measure for facilities based on the percentage of facilities with a condition rating of less than 3.0 on the TERM). The TERM Scale rates asset condition on a 1 (poor) to 5 (excellent) scale. This condition-based approach would require a transit provider to conduct periodic condition assessments of its assets using a set of standardized procedures and criteria. This approach directly identifies the condition of each asset based upon its actual usage and maintenance history.

#### 625.45 Setting Performance Targets for Capital Assets

Pursuant to 49 U.S.C. 5326(c)(2), this section would require transit providers to establish quantifiable targets for each performance measure identified in section 625.43. FTA recognizes that in its determination of targets, a transit provider would need to consider a wide

range of factors that may either constrain its ability to impact outcomes or may adversely impact outcomes (such as the population growth of an area). Transit providers should consider these factors along with the expected revenue sources from all sources in establishing targets and should explain in the annual report to FTA how the factors were addressed in reporting their targets.

Under this section, group TAM plan sponsors would be required to set one unified performance target for each asset class in the group TAM plan asset inventory. FTA recognizes that the condition of assets may vary significantly among group TAM plan participants. Therefore, each unified target should reflect the anticipated progress in asset performance for a fiscal year for the entire group. For example, group TAM plan participants are responsible for meeting a target, each transit provider's asset inventory and condition assessment results would be combined or unified to determine the targets.

The group TAM plan sponsor would be responsible for coordinating development of the targets with participating transit providers' accountable executives, to the extent practicable. In addition, transit providers would be required to coordinate with States and MPOs, to the maximum extent practicable, in the selection of State and MPO TAM performance targets to ensure consistency.

#### 625.53 Recordkeeping for Transit Asset Management

This section proposes that a transit provider keep records of the documents it develops to meet the requirements of this part for at least four years. Excel spreadsheets, agreements, or policies that were used to develop a TAM plan may prove useful in the next iteration, as well as assist in certification and review. This section proposes also that a transit provider or group TAM sponsor share its records with its State and MPO to aid in the planning process.

#### 625.55 Annual Reporting for Transit Asset Management

This section proposes a description of the annual report a transit provider or group TAM plan sponsor would have to submit to NTD. The annual report would include a data report and a narrative report. The data report would need to include performance targets for the next fiscal year and the condition of the system, at minimum. In the case of a group TAM plan, the report would need to include the uniform

performance targets and the condition of the amalgamated system. The narrative report would include a description of the change in condition of the transit system, and the progress toward achieving the performance targets set for the previous fiscal year. A report for group TAM plan participants should include the amalgamated system and progress toward the uniform performance targets.

Both reports would allow FTA to customize triennial reviews to the transit provider. In addition, the data would be used by FTA to estimate and predict the national SGR backlog and the default ULB for rolling stock assets.

#### B. National Transit Database

FTA proposes to revise sections 630.3, 630.4, and 630.5 of subpart A of 49 CFR part 630 to conform with the reporting requirements set forth in proposed part 625. The proposed reporting requirements for National TAM System apply to all chapter 53 recipients or subrecipients who own, operate, or manage public transportation capital assets. FTA's NTD currently requires reports from recipients or beneficiaries of the Urbanized Area Formula Program (section 5307) and the Rural Area Formula Program (section 5311). FTA proposes to replace references to section 5307 and 5311 recipients with references to recipients and subrecipients of chapter 53 funds. This proposed change would require recipients and subrecipients of other FTA grant programs, such as the section 5310 formula program for the enhanced mobility of seniors and individuals with disabilities who are not also receiving section 5307 and 5311 funds, to start reporting to the NTD. FTA is not proposing to apply existing NTD reporting requirements to all recipients of chapter 53 funds. FTA intends to apply the reporting requirements proposed under the National TAM System to those transit providers that do not currently report.

#### V. Regulatory Analyses and Notices

##### *Executive Order 12866 and 13563; USDOT Regulatory Policies and Procedures*

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits—including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Also, Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

FTA has examined the potential economic impacts of this rulemaking and has determined that this rulemaking is likely to be economically significant, in that it may lead to transit agencies making investment and prioritization decisions that would result in economic impacts that could exceed \$100 million in a year. However, as discussed in greater detail below, FTA was unable to quantify the potential impacts of this rule beyond the costs for transit agencies to assess their assets, develop TAM plans, and report certain information to FTA. FTA requests comment on any information that could assist in quantifying the costs, benefits, and transfers associated with this rulemaking.

#### *The Need for Federal Regulatory Action*

In 2013, the number of trips exceeded 10 billion for the 7th year in a row, the highest ridership level for transit since 1957. There is reason to believe that this is just the beginning of a sustained period of growing demand for public transportation. Moreover, factors such as the migration of people to urban areas, an aging population that will rely heavily on public transportation, and a retiring transit maintenance workforce will further increase demands on existing public transportation systems. While this will increase revenues for the transit agencies, there will be an increase in need for funds for maintenance and expansion of the system to meet the growth in demand. Given existing fiscal constraints, it is unlikely that the Nation's SGR backlog can be addressed through increased spending alone. Rather, a systematic approach is needed to ensure that existing funding resources are strategically managed to target the SGR backlog and meet the increased demand for transit.

MAP-21 fundamentally shifted the focus of Federal investment in transit to emphasize the need to maintain, rehabilitate, and replace existing transit investments. The ability of FTA grant recipients, along with States and MPOs, to both set meaningful transit SGR performance targets and to achieve those targets is critically dependent upon the ability of all parties to work together to prioritize the funding of SGR projects from existing funding sources. Although the new SGR Grant Program for fixed-guideway systems and for fixed-route bus systems operating on high-occupancy vehicle (HOV) lanes will also be an essential component of this process, the SGR grants alone will

not be enough to address the backlog. In these financially constrained times, transit agencies will need to be more strategic in the use of all available funds. The various components of this new National TAM System would work together to ensure that state of good repair becomes and remains a top priority for transit providers, as well as States and MPOs. Together, these elements will assist FTA and the transit industry in justifying SGR investments, both for securing new funding resources and for prioritizing SGR investments with existing funding sources.

#### *Congressional Mandate and Legal Authority*

Section 20019 of MAP-21, amended Federal transit law by adding a new section 5326 to Chapter 53 of title 49 of the United States Code (section 5326). The provisions of section 5326 require the Secretary of Transportation to establish and implement a National TAM System which defines the term "state of good repair;" requires that all recipients and subrecipients under Chapter 53 develop a TAM plan, which would include an asset inventory, an assessment of the condition of those assets, decision support tools, and investment prioritization; establishes annual reporting requirements; and mandates that FTA provide technical assistance to Chapter 53 recipients and sub-recipients, including an analytical process or decision support tool that allows for the estimation of capital asset needs and assists with investment prioritization. 49 U.S.C. 5326(b). In addition, section 5326 requires the Secretary to establish SGR performance measures, and recipients are required to set performance targets based on the measures. 49 U.S.C. 5326(c)(1) and (2). Furthermore, each designated recipient must submit an annual report to the Secretary on the condition of their recipients' public transportation systems and include a description of any change in condition since the last report. (49 U.S.C. 5326 (b)(3)). Each designated recipient must submit also an annual report to the Secretary which describes its recipients' progress towards meeting performance targets established during that fiscal year and a description of the recipients' performance targets for the subsequent fiscal year. (49 U.S.C. 5326(c)(3)).<sup>16</sup>

<sup>16</sup> The term "designated recipient" is defined in statute as "(A) an entity designated, in accordance with the planning process under sections 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of \$200,000 or more in population; or (B) a State or regional

#### *Identification of Available Alternative Approaches*

For the purposes of the analysis below, the costs and benefits of the proposed rule are compared against the base case of existing practice. During the development of the rule, FTA considered various alternative approaches to ensure that the proposed rule remained scalable and flexible enough for different types of transit modes and operating environments. As detailed in Section III of this document, FTA issued an advance notice of proposed rulemaking (ANPRM) to get feedback from the transit industry and other stakeholders on specific questions relevant to developing the NPRM.

For instance, transit providers are classified into two tiers, based on the number of vehicles operated in revenue service and the mode. A tier I provider owns more than one hundred vehicles or operates a rail fixed-guideway and tier II providers have less than one hundred vehicles and no rail fixed-guideway. A tier II provider's TAM plan would be required to include only elements 1 through 4 outlined in subsection 625.25(b), instead of all nine elements required for tier I providers. Moreover, a tier II provider is eligible to participate in a group TAM plan which would reduce the burden on the provider of developing an individual TAM plan.

FTA considered several definitions for state of good repair before selecting the definition in the proposed rule. The final selection was based on industry input. FTA believes that the proposed performance measures have the most potential for use by transit providers in estimating the performance of their system, while imposing the least burden for extensive data collection and calculation of measures. Transit providers have the option of using additional measures, in particular, for assets that FTA does not collect data for.

#### *Estimated Costs and Benefits*

FTA's estimate of the costs and benefits of the proposed rule are based on current industry practice industry. There is no data on the cost of the current practice in the industry. The section below outlines the current practice based on studies available. FTA used information from the studies to estimate the incremental costs that transit providers likely would incur to implement the proposed rule.

authority, if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation." 49 U.S.C. 5302(4).

### State of the Practice

There is no single comprehensive source of information on existing transit asset management practices. Most of the roughly two dozen transit providers that have been profiled in existing reports already conduct some or all of the transit asset management activities that would be required under the proposed rule, and this analysis attempts to consider that baseline as the starting point for identifying the incremental costs and benefits of the proposed rule. The transit providers that were profiled in the reports are not a representative sample of the whole transit industry. In general, they represent the large and medium sized urban transit agencies that would fall into tier I. While, several existing reports provide some information on this baseline, particularly for larger transit providers:

- The Government Accountability Office (GAO), Transit Asset Management (GAO-13-571)<sup>17</sup> studied nine agencies, which had transit asset management practices with varying levels of sophistication, along with a group of “leaders” in asset management. Overall, GAO found that all agencies had at least some process for tracking assets and making investment decisions, but many faced challenges with collecting asset-condition data, analyzing performance, and making prioritization decisions in a systematic way. These challenges included a lack of funding, managing staff resources and change in general, and integrating processes such as ranking capital projects with established criteria. In addition, only two of these nine agencies specifically tracked the impact of their capital investment projects on their assets’ conditions. However, at least four agencies did track the impacts on service reliability and on-time performance.

- FTA’s 2009 Report to Congress, Rail Modernization Study<sup>18</sup> examined seven of the nation’s largest rail systems. The study found that of the seven agencies examined, all had asset inventory data, but only three had comprehensively updated asset condition data (*i.e.*, New York City Transit, Metro-North Railroad, and Long Island Rail Road). Experience with using decision support tools and objective investment prioritization was limited. Only one transit provider, the Massachusetts Bay Transportation Authority, used a decision tool. Prioritization decisions were based on mission critical, safety, coordination on line segment maintenance and

maintenance of historical funding levels.

- A 2010 report from FTA, “Transit Asset Management Practices: A National and International Review,”<sup>19</sup> presents case studies from around the United States. In this report, FTA found that fourteen of the US agencies studied had asset inventory data and an inspection program, although this was not always systematic; for example, information on asset condition or defects was not typically rolled up into an overall asset condition metric. Vehicles and track tended to have the best coverage. Most agencies had at least some strategies, performance measures, and maintenance policies, though agencies’ project selection and other decision support tools were often separate from the system used to track asset inventory and condition.

- Transit Cooperative Research Project 92, Transit Asset Condition Report: A Synthesis of Transit Practice,<sup>20</sup> notes that large agencies generally have asset-tracking databases, but that many agencies maintain separate equipment rosters that are independent from the mainstream planning, programming and budgeting processes. Most large agencies determine asset condition through age and inspection, and generally do not use asset-condition data to set investment priorities for capital programming.

- FTA’s Report to Congress on the State of Good Repair Initiative (2011)<sup>21</sup> stated that only two of the twenty-three agencies contacted were using an objective, multi-factor project-scoring process to help rank and prioritize their investment needs. The report also provided information on FTA’s programs in this area, including SGR grants made to transit agencies to implement or enhance a transit asset management system.

Overall, the available literature on current practices suggests that there is room for improvement in transit providers’ asset management practices. A handful of leaders in the field, including roughly a dozen agencies that have been profiled by FTA or GAO reports, have implemented sophisticated decision-support systems and integrated transit asset management principles into their planning and operations, with associated “agency culture” changes to encourage collaboration across departments.

<sup>19</sup> [http://www.fta.dot.gov/documents/TAM\\_A\\_National\\_and\\_International\\_Review\\_-\\_6.10\\_FINAL.pdf](http://www.fta.dot.gov/documents/TAM_A_National_and_International_Review_-_6.10_FINAL.pdf).

<sup>20</sup> [http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp\\_syn\\_92.pdf](http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_syn_92.pdf).

<sup>21</sup> [http://www.fta.dot.gov/documents/SGR\\_Report\\_to\\_Congress\\_12-12-11\\_Final.pdf](http://www.fta.dot.gov/documents/SGR_Report_to_Congress_12-12-11_Final.pdf).

However, at most other agencies, both large and small, some elements of transit asset management are in place, such as asset inventories, periodic condition assessments, and/or performance measures, but they have not been integrated into a comprehensive system to support data-driven decision-making and project prioritization, much less to trace impacts on ridership, service quality, life-cycle costs, safety and other outcomes. This rulemaking attempts to address that gap by establishing a framework for a National TAM System.

### Definition and Evaluation of the Benefits and Costs

For estimating the incremental costs, the underlying assumption is that most agencies have already incorporated some elements of asset management into their practice, in particular, asset inventory. In other cases, as agencies adopt new practices, they will move away from their old practices and adopt new ones, so the incremental cost is likely to be minimal.

The costs and benefits are estimated for an average transit provider or asset-type. This is a challenge since it is hard to define an average for an industry that is very diverse, ranging from agencies with thousands of vehicles, multiple modes and many facilities to an operator with a few buses. Some of this has been addressed by estimating costs by Tiers defined above. In addition, agencies may be at different stages of asset management practice. The estimates presented below would therefore be very difficult to apply to any particular provider.

Costs and benefits are estimated using both FTA and Bureau of Labor wage data as detailed more specifically in the sections below. To supplement the information available from existing studies, follow-up telephone interviews were conducted with four agencies that received funding through FTA-sponsored pilot programs for TAM initiatives.<sup>22</sup> Although the interviews did not directly address the proposed rule, interviewees’ experiences with transit asset management programs provided background on transit provider impacts and helped to gauge the reasonableness of FTA’s assumptions for development of a TAM plan and related activities. This very limited set must be regarded as a non-representative sample and merely illustrative of the types of impacts that

<sup>22</sup> North Dakota DOT, Long Beach Transit (CA), Sound Transit (WA), and Valley Regional Transit (ID).

<sup>17</sup> <http://www.gao.gov/assets/660/655837.pdf>.

<sup>18</sup> [http://www.fta.dot.gov/documents/Rail\\_Mod\\_Final\\_Report\\_4-27-09.pdf](http://www.fta.dot.gov/documents/Rail_Mod_Final_Report_4-27-09.pdf).

transit asset management programs can have.

Transit asset management is a relatively new practice and requirement for transit agencies, so FTA has limited data on current practices and the costs associated with asset management activities, such as condition assessment. FTA made assumptions in order to estimate costs and benefits based on the information available to FTA. There is also little in the academic literature on quantified benefits or costs for asset management programs for transit agencies. Accordingly, FTA seeks comment on the accuracy of the assumptions used and suggestions for other potential sources of relevant data.

The analysis takes a societal perspective, including benefits and costs regardless of to whom they accrue. It estimates the initial costs (*i.e.* “upfront” or “non-recurring”) and recurring costs at different intervals. Future benefits and costs are estimated to reflect the time value of money, using a 7% discount rate (with 3% sensitivity case) and a base year of 2015.

**Costs to Transit Providers To Implement the Requirements of the National TAM System**

An incremental approach is used to estimate the costs of the proposed rule. The costs of the proposed rule are defined as the costs of the required asset management activities *over and above* the baseline of current industry

practices. Cost items include the development and implementation of the TAM plan; coordination with group TAM plan sponsors; and documentation, recordkeeping and reporting. These costs are estimated primarily in the form of staff labor hours. The costs of the TAM plan are estimated based on the costs of each component, including asset inventories, condition assessments, project lists, performance metrics, and targets.

Based on the evidence available to FTA now, most transit agencies already perform at least some transit asset management activities, and estimates are based on the assumption that work is performed in-house. Moreover, the proposed rule does not require transit providers to use any particular technology or software system. FTA has emphasized that transit agencies could use something as simple as an Excel spreadsheet to comply with the requirement for a multi-factor prioritization process. Some transit agencies may choose to engage consultants, purchase commercial software, or pursue other approaches that they find more cost-effective than the in-house approach, in which case the estimates here could be considered conservative. In addition, some commercial software packages provide more sophisticated systems that integrate transit asset information with other modules, such as scheduling and crew assignment, or provide other

functionalities. These packages go beyond what is required by the proposed rule, so their costs are not necessarily indicative of the actual costs of the proposed rule.

The overall approach in the subsections below is to estimate the labor-hours required for each TAM task and to multiply by an appropriate wage rate to generate the total cost. The labor-hour figures are initial estimates based on findings from the limited literature on transit asset management, expert judgment from FTA staff on the approximate level-of-effort required, and the information from the four transit provider interviews. In some cases, it was possible to cross-check the totals that would result from these assumed cost levels against agencies’ actual expenditures on asset management programs, such as those funded through the SGR grant amounts or recent contract awards. These comparisons are discussed in more detail below.

Wage rates for transit provider labor hours are based on May 2013 Bureau of Labor Statistics (BLS) data for urban transit systems and interurban and rural bus transportation.<sup>23</sup> The hourly wage rates were adjusted to account for fringe benefits.<sup>24</sup> Table 2 below describes the wage rates used and the TAM plan activities to which they relate. For simplicity, the urban wage rates are applied to tier I providers and rural rates to tier II providers.

**TABLE 2—SUMMARY OF TRANSIT INDUSTRY WAGE RATES AND FRINGE BENEFITS FOR TAM ACTIVITIES**

Title	Wage rate	Loaded wage rate	Relevant TAM Activities
<b>Urban Transit Systems (NAICS 485100)</b>			
General and Operations Manager .....	\$50.23	\$78.36	Plan Strategy, Performance Measures and Targets, Data and Narrative Reporting to NTD.
Operations Specialties Manager .....	42.96	67.02	Asset Condition Assessment.
Business Operations Specialists .....	31.23	48.72	Data and Narrative Reporting to NTD.
Buyers and Purchasing Agents .....	27.82	43.40	Asset Condition Assessment, Analytical Processes, Prioritized Project List.
Transportation Inspectors .....	40.26	62.81	Asset Condition Assessment.
<b>Interurban and Rural Bus Transportation Systems (NAICS 485200)</b>			
General and Operations Manager .....	42.02	65.55	Performance Measures and Targets, Data and Narrative Reporting to NTD.
Business Operations Specialists .....	25.80	40.25	Data and Narrative Reporting to NTD.
Other Office and Administrative Support Workers .....	14.77	23.04	Asset Condition Assessment, Analytical Processes, Prioritized Project List.
Installation, Maintenance, and Repair Occupations .....	21.95	34.24	Asset Condition Assessment.

<sup>23</sup> [http://www.bls.gov/oes/current/naics3\\_485000.htm](http://www.bls.gov/oes/current/naics3_485000.htm). [http://www.bls.gov/oes/current/naics3\\_485000.htm](http://www.bls.gov/oes/current/naics3_485000.htm).

<sup>24</sup> Bureau of Labor Statistics News Release. Employer Costs for Employee Compensation—September 2014. Table 3, Service-providing industry group. <http://www.bls.gov/news.release/pdf/ecec.pdf>. BLS data show wages as 64.1% of

total compensation, with benefits at 35.9%. Therefore, employees’ wages are factored by 1.56 (100/64.1) to account for employer provided benefits.

Using NTD submissions and other information, FTA estimated that there are approximately 284 tier I providers and 3,714 tier II providers. These totals include subrecipients, and entities receiving Section 5310 formula grant funding that do not report to the NTD currently, but would be subject to the proposed TAM rule.

For calculation purposes, it is assumed, based on FTA's knowledge of the industry that tier I providers and tier II direct recipient providers would develop their own TAM plans, while tier II subrecipient providers, which tend to be much smaller organizations, would participate in a group TAM plan, minimizing the burden and costs to small providers of transit services; for example, either through standardization of the process or by developing templates for gathering the information and submitting reports to FTA.

We estimated the number of group TAM plans that would be developed for these subrecipients based on existing funding and reporting relationships. Specifically, it was assumed that the 120 subrecipients of section 5307 funding would be covered by 10 group TAM plans; that the estimated 1,700 subrecipients of section 5310 funding would be covered by 200 group TAM plans; and that the 1,300 rural subrecipients of section 5311 funding and 104 Native American tribes would be covered by 54 Group TAM plans by State DOTs or an equivalent entity. This yields an estimated total of 264 group TAM plans.

The table below shows the number of agencies impacted by the proposed rule and also provides other relevant figures by tier based on our estimates and the 2013 NTD data.

TABLE 3—NUMBER OF AGENCIES, PLANS AND ASSETS BY TIER (2013)<sup>25</sup>

	Tier I agencies	Tier II agencies
Number of Agencies	284	3,714
<b>Number of TAM Plans</b>		
Individual .....	284	490
Group Plans .....	0	264
<b>Number of Assets by Type<sup>26</sup></b>		
Revenue Vehicles .....	116,472	81,858
Rail & Bus Stations ..	4,195	822
Maintenance Facilities .....	1,068	1,367
Way Mileage (Track)	12,746	0
Bridges, Tunnels, & Transitions .....	2,563	0

(1) Asset Inventory

Under the proposed rule, transit providers would be required to complete an inventory of their capital assets. The inventory would need to provide accessible, consistent, and comprehensive information about the state of good repair of a transit provider's capital assets. Depending on the provider's size, this information includes number of revenue vehicles, number of stations, number of facilities, number of equipment, mileage of track, and number of mechanical failures.<sup>27</sup>

Based on knowledge of the transit industry and information from the transit provider interviews, the existence of a basic inventory of assets that is used for accounting and audit purposes is believed to be so widespread as to be universal. This supports the intuitive conclusion that transit agencies know what assets they have. These inventories would likely be updated as new assets are purchased and others are depreciated or retired, even in the absence of the proposed rule. Therefore, no incremental costs are anticipated for asset inventory.

(2) Asset Condition Assessment

Under the proposed rule, transit providers would be required to complete an assessment of their capital assets. The assessment must include sufficient information to monitor and predict the performance of each capital asset identified in the asset inventory. Additionally, the process must identify unacceptable safety risks related to the condition of the capital assets. The assessment should also be used when prioritizing investments for transit asset management. While many transit providers already perform these assessments, at least for certain asset types, it is likely that additional effort would be required to meet the standards of the proposed rule.

Estimates of the time required for assessment will vary by asset category. The estimated time requirements are listed below. These estimates are based on FTA's experience with the asset assessment in the transit industry, including unpublished results from a pilot study.

• For revenue and service vehicles, the proposed rule calls for an age-based assessment. Transit providers generally already have records of their vehicles'

ages and many are already required to report this information to the NTD. To be conservative, however, it is assumed that this information may be in a different format or database and/or require additional effort to be brought into the asset management system. For estimation purposes, it is assumed that approximately 30 minutes per vehicle would be required. One data limitation is that no information was available through NTD on non-revenue vehicles, but we do not expect this to affect how long it would take to procure this information.

• For facilities, the proposed rule calls for a condition-based assessment. Costs per station are estimated based on two staff members, each working a half day, for a total of eight hours per station per day. For maintenance facilities, costs are estimated based on two staff members working a full day, for a total of 16 hours per facility per day. It is assumed that equipment at stations and maintenance facilities would be part of the assessment. FTA does not have separate data on equipment. These are rough averages that reflect the wide range of assets in this category. For example, a downtown subway station may contain multiple platforms, exits, and passageways, whereas an outlying commuter railroad station may consist of little more than a platform and a shelter.

• For infrastructure way mileage (e.g., railroad tracks or separated BRT guideways), the proposed rule calls for a performance-based assessment. Transit providers already have some performance-related information such as speed restrictions, but again it is assumed that some additional effort would be required to prepare this information in a way that is consistent with the proposed rule. For estimation purposes, it is assumed that this would require roughly 30 minutes per mile of way. However, under special circumstances such as for subway tunnels, elevated structures, and the transitions from ground level to these areas, additional time may be necessary to assess the performance and also determine the structural or tunnel integrity. In these cases, it is assumed that this would require roughly 1 hour per mile of way.

• For equipment, the proposed rule calls for an age-based assessment. FTA lacks specific information about transit providers' ownership of equipment. Equipment is defined in the NPRM as tangible objects having a useful life of more than one year. As a result, the total size of this asset class is not known, and the cost estimates do not include potential TAM costs associated with

<sup>25</sup> Source: National Transit Database, FTA, 2013 (This is the latest year for which data is available).

<sup>26</sup> The table only includes assets reported to the NTD; therefore, it does not include equipment assets.

<sup>27</sup> <http://www.ntdprogram.gov/ntdprogram/assetInventory.htm>.

equipment. In addition, FTA does not have data on the extent to which condition assessments are already routinely undertaken for these equipment assets. However, FTA believes that most equipment will be located within maintenance facilities and passenger stations, or along rail guideways, and thus the costs of condition assessments for equipment would often be included in the condition assessments for those facilities, stations, or guideways. Even in cases where they are not, the condition assessment for these assets should be relatively simple, as the proposed rule requires only a simple, age-based assessment. FTA seeks comments on these assumptions along with information on the size of agencies' equipment stocks and potential costs of inventories and condition assessments.

- It is assumed that the asset condition assessment would need to be performed as part of the initial plan development, and would also need to be repeated periodically in order to fully implement the other provisions, notably investment prioritization, performance measures, and reporting requirements. We assume that assessments for vehicles and infrastructure are assumed to be repeated on an annual basis, while stations and maintenance facilities are assessed every three years.

Following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

Based on 2013 NTD data, tier I providers operate a total of 116,472 vehicles, 4,195 stations, 1,068 maintenance facilities, 12,746 miles of standard track, and 2,563 miles of track within subway tunnels or on elevated structures (including transitions). These assets would be tracked or inspected by various different employees at the transit provider. It is likely that the age-based assessment of the vehicles would be conducted by a buying or purchasing agent at a loaded wage rate of \$43.40, the condition-based station and maintenance facility assessment would be conducted by a transportation inspector at a loaded wage rate of \$62.81, and the performance-based way mileage, elevated structure, and tunnel assessment would be conducted by an operations specialties manager at a loaded wage rate of \$67.02. Multiplying the number of assets, by the corresponding time requirement described above, by the corresponding wage rate leads to a total initial cost of \$6.31 million.

It is assumed that the vehicles and way mileage, elevated structures, and tunnels would be assessed annually at a total annual cost of approximately

\$3.13 million and the stations and maintenance facilities would be assessed triennially at a tri-annual cost of approximately \$3.18 million.

Tier II Providers

Based on 2013 NTD data and our approximations for non-reporting providers, the tier II providers operate a total of 81,858 vehicles,<sup>28</sup> 822 stations, 1,367 maintenance facilities, and 0 miles of way mileage.<sup>29</sup> These assets would be tracked or inspected by various different employees of the transit provider. It is likely that the age-based assessment of the vehicles would be conducted by an office or administrative support worker at a loaded wage rate of \$23.04, and the condition-based station and maintenance facility assessment would be conducted by an installation or maintenance repair worker at a loaded wage rate of \$34.24. Multiplying the number of assets, by the corresponding time requirement described above, by the corresponding wage rate leads to a total initial cost of \$1.92 million.

It is assumed that vehicles' age-based assessments would be updated annually at a total annual cost of approximately \$0.94 million and the stations and maintenance facilities would be assessed triennially at a tri-annual cost of approximately \$0.97 million.

TABLE 4—INITIAL AND RECURRING COSTS FOR THE ASSET ASSESSMENT

	Initial	Annual recurring	Triennial recurring
Tier I .....	\$6,307,156	\$3,126,278	\$3,180,878
Tier II .....	1,917,170	943,053	974,116
Total .....	8,224,326	4,069,332	4,154,994

(3) Analytical Processes

Under the proposed rule, transit providers would be required to present a list of analytical processes or decision-support tools that allow for capital investment needs to be estimated over time and to assist with capital asset investment prioritization. No specific format or software is mandated, but certain capabilities are required. The investment prioritization plan must identify each asset within the asset inventory that is included within an investment project over the timeframe of the TAM plan. Projects must be ranked in order of priority and the year in which they are expected to be carried

out. The prioritization must account for SGR policies and strategies, as well as funding levels and the value of needed investments.

GAO's review of existing practices indicated that, at least among larger transit providers, staff already conduct some form of this analysis when making investment decisions, but to varying degrees and not necessarily in a way that conforms to the proposed requirements. Smaller transit providers may have less in the way of formal analytical tools for prioritizing projects and for incorporating asset condition information into this process. Estimates for this component generally assume

that larger agencies would be expanding and strengthening their existing activities, while smaller agencies may be essentially starting from scratch or from more informal processes.

Transit providers have a number of options for developing a system that would satisfy the proposed requirements of the TAM plan. Some may choose to purchase commercial software specifically designed for enterprise asset management; these can include packages that combine asset management with software tools for other functions, such as maintenance and scheduling. Others may develop their own tools in-house, for example

<sup>28</sup>This includes the vehicle count from NTD, plus an estimated 40,000 vehicles for the roughly 1,700 section 5310 subrecipients who do not submit any vehicle counts or other asset data to NTD.

<sup>29</sup>Rural transit agencies do not submit annual reporting on their miles of right-of-way. These rural agencies typically operate buses and paratransit vehicles on public streets and generally do not own

any rail systems or other transit rights-of-way. There may be a small number of exceptions that are not accounted for in this section due to the data limitation.



using a custom Excel workbook to incorporate asset-condition information and other asset-management considerations into project prioritization. The in-house development option is used here for cost-estimation purposes, though some providers may find it more cost-effective to purchase software.

There are also free and low-cost software packages available for agencies to adapt to their needs, including the TERM-Lite tool from FTA, available free of charge. The Transit Cooperative Research Program (TCRP) also has a free tool composed of four spreadsheet models entitled the Transit Asset Prioritization Tool (TAPT). This tool “is designed to assist transit agencies in predicting the future conditions of their assets, and in prioritizing asset rehabilitation and replacement.”<sup>30</sup> Such a tool would be particularly useful for smaller providers.

Following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

The resources required to implement the analytical processes would vary significantly across transit providers, based on the size and complexity of their asset portfolios and the strength of their current practices. As an overall average based on interviews and past pilot projects, FTA estimates that a transit provider would spend the equivalent of 520 person-hours for strengthening its analytical and decision-support tools and processes (or alternatively, purchasing or learning a ready-made software tool for an equivalent sum). It is assumed that this task would be completed by the aforementioned buyer or purchasing agent at a loaded wage rate of \$43.40. Multiplying the hours required, by the number of transit providers, by the wage rate leads to a total initial cost of \$6.40 million.

Once the initial investment is made in the analytical and decision-support tools and processes, maintaining and updating those processes is estimated to take the equivalent of 208 hours per year on average. The same buyer or purchasing agent is assumed to conduct these recurring updates at the \$43.30 wage rate. Multiplying the recurring hours required, by the number of agencies, by the wage rate leads to a total recurring cost of \$2.56 million.

<sup>30</sup> Schwager, Dianne. Transit Cooperative Research Program Report 172: Guidance for Developing a Transit Asset Management Program. Sponsored by the Federal Transit Administration. 2014. [http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp\\_rpt\\_172.pdf](http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_172.pdf).

Tier II Providers

Tier II providers have smaller vehicle fleets and no rail fixed-guideway service, removing some of the complexities in project prioritization that tier I providers face, but they also tend to have fewer existing formal processes in this area. In order to implement the analytical processes, FTA estimates that providers would spend the equivalent of 520 person-hours on average developing their analytical and decision-support tools or processes (or alternatively, purchasing or learning a ready-made software tool for an equivalent sum) for each individual TAM plan or group TAM plan. It is assumed this task would be completed by the aforementioned administrative support worker at a loaded wage rate of \$23.04. Multiplying the hours required, by the estimated number of individual and group plans created, by the wage rate leads to a total initial cost of \$9.03 million.

Once the initial system investment is made, maintaining and updating the analytical processes is estimated to take the equivalent of 104 hours per year. This is half of the assumed time needed for tier I providers because of the comparative simplicity of the systems overseen by tier II providers. The same administrative support worker is assumed to conduct these recurring updates at the \$23.04 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group plans created, by the wage rate leads to a total recurring cost of \$1.81 million.

TABLE 5—INITIAL AND RECURRING COSTS FOR THE ANALYTICAL PROCESSES

Agency size	Initial	Annually recurring
Tier I .....	\$6,400,731	\$2,560,292
Tier II .....	9,033,994	1,806,799
Total .....	15,434,725	4,367,091

(4) Prioritized Project List

Under the proposed rule, transit providers would be required to develop a list of projects from the investment prioritization process described above. The list must include projects for which funding would be sought under the section 5337 SGR Formula Program. While it is known that agencies generally have a method of determining which projects they would need to invest in next—and many large, multi-modal agencies often have sophisticated, multi-year planning

tools—the level of detail and process involved in updating the list is unknown. Following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

The large tier I providers in this category tend to have existing processes for generating prioritized project lists based on scenario analysis.<sup>31</sup> However, for some transit providers, additional effort may be needed to develop a project list that reflects the requirements of the proposed rule. While there is less case-study information on the practices of smaller tier I providers, most are believed to have existing processes for developing prioritized project lists. To align this process with the requirements of the proposed rule, it is estimated that transit providers would spend an average of 96 hours above their current baseline in creating the prioritized project list. It is assumed this task would be completed by the aforementioned buyer or purchasing agent (in coordination with other staff) at a loaded wage rate of \$43.40. Multiplying the hours required, by the number of agencies, by the wage rate leads to a total initial cost of \$1.18 million.

Once the initial project list is created, maintaining and updating the list is estimated to take 36 hours per year. The same buyer or purchasing agent is assumed to conduct these recurring updates at the \$43.40 wage rate. Multiplying the recurring hours required, by the number of agencies, by the wage rate leads to a total recurring cost of \$0.44 million.

Tier II Providers

As with larger transit providers, smaller transit providers generally have some form of an existing process for developing a prioritized project plan, but are assumed to require time above their current baseline to make this process consistent with the proposed TAM requirements. FTA estimates that each tier II provider developing a TAM plan, along with each group TAM plan sponsor, would spend an average of 96 hours creating their prioritized project list. It is assumed this task would be completed by the administrative support worker (in coordination with other staff) at a loaded wage rate of \$23.04. Multiplying the hours required, by the estimated number of individual and group plans, by the wage rate leads to a total initial cost of \$1.67 million.

<sup>31</sup> FTA, *Transit Asset Management Practices: A National and International Review*, June 2010.

Once the initial project list is created, maintaining and updating the list is estimated to take 24 hours per year. The same administrative support worker is assumed to conduct these recurring updates at the \$23.04 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group TAM plans, by the wage rate leads to a total recurring cost of \$0.42 million.

**TABLE 6—INITIAL AND RECURRING COSTS FOR THE PRIORITIZED PROJECT LIST**

Agency size	Initial	Annually recurring
Tier I .....	\$1,181,673	\$443,128
Tier II .....	1,667,814	416,954
Total .....	2,849,488	860,081

(5) Plan Strategy

Under the proposed rule, tier I transit providers would be required to develop TAM and SGR policies and strategies. This would include a description of key TAM activities spanning the time horizon of the plan, a specification of the resources needed to develop and implement the plan, and an outline of how the plan and related business practices would be updated over time.

These components would be optional for tier II providers. Following, is a detailed accounting of incremental costs by provider type.

Tier I Providers

It is estimated that these providers would spend an average of 96 hours developing the elements of the plan strategy above what they are currently doing in this area. Because this component deals with high level strategy, it is assumed this planning task will be completed by a general operations manager at a loaded wage rate of \$78.36. Multiplying the hours required, by the number of providers, by the wage rate leads to a total initial cost of \$2.13 million.

Every four years, providers would need to update their strategy document based on recent and planned activities and other developments. It is estimated that this document update would require an average of 80 hours of incremental staff time. The same operations manager is assumed to conduct these recurring updates at the \$78.36 wage rate. Multiplying the recurring hours required, by the number of providers, by the wage rate leads to a total four-year recurring cost of \$1.78 million.

Tier II Providers

There are no initial or recurring costs for this aspect of the TAM plan because tier II providers may opt out of completing these requirements, whether they develop their own TAM plan or participate in a group TAM plan.

**TABLE 7—INITIAL AND RECURRING COSTS FOR THE PLAN STRATEGY**

Agency size	Initial	Quadrennially recurring
Tier I .....	\$2,133,553	\$1,777,961
Tier II .....	0	0
Total .....	2,133,553	1,777,961

(6) Performance Measures and Targets

In addition to the TAM plan, under the proposed rule transit providers would be required to use performance measures to set targets for capital assets. Transit providers would need to use their asset condition assessments to determine the percentage of their assets that meet specified performance standards. Based on these performance measures and available funding, transit providers would be required to develop annual SGR performance targets that align with their TAM plan priorities. With the exception of a few transit providers profiled in more depth by GAO reports, it is unknown to what extent agencies are currently monitoring performance or whether their existing metrics and targets would meet the requirements of this section.

Transit providers have a number of resources to draw on in developing their measures and targets, including FTA publications<sup>32</sup> and TCRP Report 172.<sup>33</sup> Nonetheless, some compliance costs are assumed to be necessary to adapt this guidance to the details of each transit provider's assets, operating environment, and strategies. Setting performance measures and targets should be more straightforward for tier II providers, which are smaller and do not have the complexities associated with rail fixed-guideway elements. Following, is a detailed accounting of costs by provider type.

Tier I Providers

FTA's 2010 review of practices found that many large transit providers have existing performance measures for asset management. However, practices vary, and some transit providers would need additional work to comply with the

<sup>32</sup> [http://www.fta.dot.gov/documents/FTA\\_Report\\_No\\_0027.pdf](http://www.fta.dot.gov/documents/FTA_Report_No_0027.pdf).

<sup>33</sup> TCRP Report 172 is available at [http://www.tcrponline.org/PDFDocuments/tcrp\\_rpt\\_172.pdf](http://www.tcrponline.org/PDFDocuments/tcrp_rpt_172.pdf).

proposed provisions. Compared to the largest tier I providers, smaller tier I providers have less complex asset portfolios, but also may have less in the way of existing activities for performance measures. Overall, based on information from interviews, it is estimated that transit providers would spend an average of 208 hours developing their performance measures and targets. It is assumed this task would be completed by the aforementioned operations manager at a loaded wage rate of \$78.36. Multiplying the hours required, by the number of transit providers, by the wage rate leads to a total initial cost of \$4.62 million.

Once the initial measures and targets are developed, it is estimated that reviewing and updating them annually would take the equivalent of 36 hours per year on average. The same operations manager is assumed to conduct these recurring updates at the \$78.36 wage rate. Multiplying the recurring hours required, by the number of transit providers, by the wage rate leads to a total recurring cost of \$0.80 million.

Tier II Providers

Tier II providers do not have the complexities associated with developing performance measures for rail fixed-guideway transit. It is estimated that tier II providers developing their own TAM plan and group TAM plan sponsors would each spend an average of 80 hours developing the performance measures and targets. It is assumed this task would be completed by the operations manager at a loaded wage rate of \$65.55. Multiplying the hours required, by the estimated number of individual and group plans, by the wage rate leads to a total initial cost of \$3.95 million.

Once the initial measures and targets are developed, it is estimated that reviewing and updating them annually would take the equivalent of 24 hours per year on average. The same operations manager is assumed to conduct these recurring updates at the \$65.55 wage rate. Multiplying the recurring hours required, by the estimated number of individual and group plans, by the wage rate leads to a total recurring cost of \$1.19 million.

**TABLE 8—INITIAL AND RECURRING COSTS FOR THE PERFORMANCE MEASURES AND TARGETS**

Agency size	Initial	Annually recurring
Tier I .....	\$4,622,699	\$800,083

**TABLE 8—INITIAL AND RECURRING COSTS FOR THE PERFORMANCE MEASURES AND TARGETS—Continued**

Agency size	Initial	Annually recurring
Tier II .....	3,954,048	1,186,215
Total .....	8,576,747	1,986,297

(7) Data and Narrative Reporting to NTD

Under the proposed rule, transit providers would be required to submit an annual data report to the NTD, which reflects the SGR performance targets for the following year and assessment of the condition of the transit provider's transit system. Additionally, transit providers would be required to submit an annual narrative report to the NTD that provides a description of any change in the condition of its transit system from the previous year and describes the progress made during the year to meet the targets previously set for that year. FTA estimated costs for the proposed new reporting to the NTD based on a pilot program with seven rail transit providers. Based on internal FTA reports, it is expected that the reporting would require a transit provider staff time that was equivalent to 0.16 hours per revenue vehicle initial and 0.08 hours per vehicle in subsequent years. (For simplicity these figures are expressed in terms of hours per vehicle, but include time required for reporting on other assets such as stations and facilities. FTA's pilot program also used an alternative methodology based on the time required per data field submitted, which yielded nearly identical results.) These estimated labor-hour requirements have been applied in the calculations below. The calculations also include the estimated time required for the narrative report, which was not included in FTA's pilot program or earlier estimates.

Tier I Providers

With a total of 116,472 revenue vehicles and FTA's estimate of 0.16 reporting hours per vehicle, it is estimated that these providers collectively would require a total of 18,636 hours for their initial reporting to the NTD under the proposed rule. Multiplied by the loaded wage rate of \$48.72 for a Business Operations Specialist, the total cost is approximately \$0.91 million for tier I providers. The narrative report is separately estimated to require 24 labor hours per provider to develop and submit, including 22 hours for a Business Operations Specialist (loaded

wage rate \$48.72) and 2 hours for managerial review of the document by a general operations manager (loaded wage rate \$78.36). Across the 284 agencies in this group, the total cost is approximately \$0.35 million. Once the initial report and template are created, it is estimated that updating the data reports annually would take the equivalent of 9,318 hours per year, based on FTA's estimate of 0.08 hours per revenue vehicle and 116,472 vehicles. At a loaded wage rate of \$48.72 for a Business Operations Specialist, the total cost is approximately \$0.45 million. Updating the narrative report is estimated to require an additional 20 hours per year (18 hours for preparation by a Business Operations Specialist and 2 hours for review by the general operations manager). Multiplying the respective hours required, by the number of transit providers, by the wage rates leads to a total recurring cost of \$0.29 million.

Tier II Providers

With an estimated total of 81,858 revenue vehicles and FTA's estimate of 0.16 reporting hours per vehicle, it is estimated that collectively these providers would require a total of 13,097 hours for their initial reporting to the NTD under the proposed rule. Multiplied by the loaded wage rate of \$40.25 for a Business Operations Specialist, the total cost is approximately \$0.53 million. The narrative report is separately estimated to require 16 labor hours per TAM plan (individual or group TAM plan) to develop and submit, including 14 hours for a Business Operations Specialist (loaded wage rate \$40.25) and 2 hours for managerial review of the document by a general operations manager (loaded wage rate \$65.55). Across the 754 individual and group TAM plans, the total cost is approximately \$0.52 million. Once the initial report and template are created, it is estimated that updating the data report annually would take the equivalent of 6,549 hours per year, based on FTA's estimate of 0.08 hours per revenue vehicle and 81,858 vehicles. At a loaded wage rate of \$40.25 for a Business Operations Specialist, the total cost is approximately \$0.26 million. Updating the narrative report is estimated to require an additional 8 hours per year (6 hours for preparation by a Business Operations Specialist and 2 hours for general operations manager review). Multiplying the respective hours required, by the number of transit providers, by the wage rates leads to a total recurring cost of \$0.28 million.

**TABLE 9—INITIAL AND RECURRING COSTS FOR THE DATA AND NARRATIVE REPORTING TO NTD**

Agency size	Initial	Annually recurring
Tier I .....	\$1,256,342	\$747,121
Tier II .....	1,050,848	544,503
Total .....	2,307,191	1,291,624

(8) State and MPO Target Setting

Under the performance management framework established by MAP-21, States, MPOs, and transit providers must establish targets in key national performance areas to document expectations for future performance. Pursuant to 49 U.S.C. 5303(h)(2)(B)(ii) and 5304(d)(2)(B)(ii), States and MPOs must coordinate the selection of their performance targets, to the maximum extent practicable, with performance targets set by transit providers under 49 U.S.C. 5326 (transit asset management) and 49 U.S.C. 5329(safety), to ensure consistency.

In the Joint Planning NPRM, both agencies indicated that their performance-related rules would implement the basic elements of a performance management framework, including the establishment of measures and associated target setting. Because the performance-related rules implement these elements and the difficulty in estimating costs of target setting associated with unknown measures, the Joint Planning NPRM did not assess these costs. Rather, FTA and FHWA proposed that the costs associated with target setting at every level would be captured in each provider's respective "performance management" rules. For example, FHWA's second performance management rule NPRM, published after the joint planning NPRM, assumes that the incremental costs to States and MPOs for establishing performance targets, reflect the incremental wage costs for an operations manager and a statistician to analyze performance-related data.

The RIA that accompanied the Joint Planning final rule captured the costs of the effort by States, MPOs, and transit providers to coordinate in the setting of State and MPO transit performance targets for state of good repair and safety. FTA believes that the cost to MPOs and States to set transit performance targets is included within the costs of coordination. FTA requests comment on this point. Will there be any additional costs for states and MPOs in target setting beyond the coordination costs included in the planning rule? If

so, what would those costs be? To the extent responses to these questions cause the FTA to adjust any of its cost assumptions, those changes would be reflected in the final rule and any related information collections.

(9) Other Costs

In addition to the costs estimated in the subsections above, the proposed rule would also entail costs for FTA to provide technical assistance to support the transit industry in implementing the new requirements, and for internal costs associated with training for FTA employees who would work with the new TAM system. It is estimated that FTA could incur an annual cost of \$2 million to develop and provide guidance and training, as well staff for program management. This is based on current FTA cost for research, stakeholder outreach and staffing costs since the MAP-21 Reauthorization Act. It is likely that the FTA costs may decline over time as the program matures and asset management becomes an integral part of transit agencies' project prioritization practice. It is assumed that after the first five years, the costs would fall to \$1.5 million and then \$1 million after 10 years and to \$0.5 million after fifteen years.

Another potential cost area is for coordination necessary to develop group TAM plans. For example, group TAM plan sponsors and their participating agencies may need to hold meetings or conference calls to collect data, test a software tool, or more generally to coordinate efforts to develop plans for the smaller agencies. For estimation purposes, this coordination is assumed to require a mix of transit provider staff and managerial oversight. For each of the estimated 264 group TAM plans, FTA assumes that coordination would

require 120 hours of staff time (business operations specialist, loaded wage rate \$40.25) and 40 hours of management time (general operations manager, loaded wage rate \$65.55) per transit provider. This yields a total annual coordination cost of approximately \$2.0 million.

Agencies are required to keep records of plan development for at least one cycle of plan development which covers four years. FTA assumes that the tier I providers may spend approximately 80 hours every four years to coordinate the collection and formatting of the data for record keeping purposes. Using the business operations specialists loaded wage rate, the cost of recordkeeping for tier I providers would be \$1.1 million every four years. For the tier II providers, it is assumed that the group plan developers would retain the records on behalf of the small transit agencies. The level of effort for record keeping would be lower at 40 hours per plan cycle, since the coordination cost of gathering the relevant cost is already accounted for. Using the business operations specialist loaded wage rate \$40.25, the total cost for recordkeeping for tier II providers would be \$1.2 million for every plan cycle. Therefore, the total cost for recordkeeping would be \$2.3 million.

Cost Summary

The costs estimated in the subsections above have been based on best estimates of the required labor hours and other costs of implementing the required components of the National TAM System available to the FTA. They are inherently imprecise given the lack of consistent data on existing industry practices, and the variability in costs across agencies due to different labor rates, system sizes and complexities,

and other factors. Indeed, even among agencies that have already implemented TAM plans, little information exists on the total costs of implementation due to limited recordkeeping on internal labor costs. As such, FTA invites comment on the assumptions used to estimate costs and other information that could be used to estimate costs more precisely.

One means of providing an external check on the reasonableness of the cost estimates is to compare estimates from the model used here against known TAM projects. For example, a small transit provider with an asset profile of 6 revenue vehicles and one maintenance facility, the model would predict TAM implementation costs of roughly \$20,800 initial (over two years) and \$5,500 per year thereafter (see Table 10 below). By comparison, in fiscal year 2010, FTA made SGR grants to small transit providers in California and Washington to implement asset management systems; these grants were in the range of \$16,000 to \$17,000. The correspondence between model results and actual grant levels for asset management systems suggests that the cost model is producing results that are consistent with the limited real-world experience, at least for smaller agencies. For larger transit providers, actual versus predicted costs may vary more significantly due to differences in existing practices, and information from past grants may not provide a clear picture and they might face little to no incremental costs from the proposed rule because their existing practices generally meet or exceed the proposed TAM requirements. FTA requests comment on the costs associated with additional TAM projects that have been completed or which are currently underway.

TABLE 10—ESTIMATION OF INITIAL TAM COSTS FOR ILLUSTRATIVE SMALL TRANSIT PROVIDER

Cost category	Estimated hours required	Total cost
Asset Inventory .....	0 .....	\$0
Asset Condition Assessment .....	0.5 hours per vehicle times 6 vehicles 16 hours per estimated 1 maintenance facility.	617
Analytical Processes .....	520 .....	11,981
Prioritized Project List .....	96 .....	2,212
Performance Measures and Targets .....	80 .....	5,244
Data and Narrative Reporting to NTD .....	1 hour for data submittal (0.16 hours per vehicle times 6 vehicles) plus 16 hours for narrative report.	733
<b>Total:</b> .....	.....	<b>20,788</b>

Table 11 below shows the total estimated costs for TAM activities under the proposed rule, aggregated by provider size and separated by initial and recurring costs.

TABLE 11—SUMMARY OF AGENCY COSTS BY GROUP

Agency size	Initial costs, total over 2 years	Annually recurring	Triennially recurring	Quadrennially recurring
Tier I .....	\$23,009,073	\$7,676,902	\$3,180,878	\$2,884,879
Tier II .....	18,837,814	6,864,800	974,116	1,213,940
FTA Cost .....	4,000,000	2,000,000	.....	.....
<b>Total .....</b>	<b>45,846,887</b>	<b>16,541,702</b>	<b>4,154,994</b>	<b>4,098,819</b>

Table 12 below shows the total costs and the present value of the proposed rule over the 20-year analysis period, including tier II group TAM plan coordination costs. For the purposes of this analysis, 2015 serves as the discounting base year and dollar figures appear as 2015 dollars. The annualized cost of the proposed rule is \$18.9 million (at the 7% rate) and \$18.6 million (at the 3% rate).

TABLE 12—SUMMARY OF TOTAL CURRENT AND DISCOUNTED COSTS 2016–2035  
[\$Millions]

Year	Current	Discounted (7%)	Discounted (3%)
2016 .....	\$21.80	\$20.37	\$21.17
2017 .....	24.10	21.05	22.72
2018 .....	16.50	13.47	15.10
2019 .....	16.50	12.59	14.66
2020 .....	20.70	14.76	17.86
2021 .....	20.10	13.39	16.83
2022 .....	16.00	9.96	13.01
2023 .....	20.20	11.76	15.95
2024 .....	16.00	8.70	12.26
2025 .....	20.10	10.22	14.96
2026 .....	19.70	9.36	14.23
2027 .....	15.50	6.88	10.87
2028 .....	15.50	6.43	10.55
2029 .....	23.80	9.23	15.73
2030 .....	15.50	5.62	9.95
2031 .....	15.00	5.08	9.35
2032 .....	19.20	6.08	11.62
2033 .....	19.10	5.65	11.22
2034 .....	15.00	4.15	8.55
2035 .....	19.20	4.96	10.63
<b>Total: .....</b>	<b>369.50</b>	<b>199.71</b>	<b>277.21</b>

Benefits

As noted above, FTA research, the academic literature, and external reviews from organizations such as GAO have documented a strong case for the value of asset management programs for capital-intensive public agencies in general, including transit agencies. Asset management programs have been described as leading to the following outcomes and benefits:

- Improved transparency and accountability from the use of systematic practices in tracking asset conditions and performance measures. In turn, this can lead to improved relationships with regulators, funding agencies, taxpayers and other external stakeholders, as well as improved internal communications and decision-

making. While difficult to quantify or monetize, these impacts are sometimes described as some of the most important benefits from asset management because they relate to stewardship of public resources and the effective delivery of services.

- Optimized capital investment and maintenance decisions, leading to overall life-cycle cost savings (or alternatively, greater value for dollars spent).
- More data-driven maintenance decisions, leading to greater effectiveness of maintenance spending and a reduction in unplanned mechanical breakdowns and guideway deficiencies. These impacts can be considered as two distinct benefit areas: Travel time savings for passengers in

terms of fewer canceled trips and fewer speed restrictions on tracks, and savings for the transit provider in unplanned maintenance and repair.

- Potential safety benefits, in that greater effectiveness of dollars spent on maintenance can lead to improved vehicle and track condition and fewer safety hazards, and thus reduced injuries and fatalities related to incidents for which maintenance issues or poor conditions were a contributing factor.

These benefits have so far been presented by GAO and others almost exclusively in qualitative terms, presenting a challenge for estimating the quantitative benefits of this proposed rule. Accordingly, a review of the academic literature in this area revealed

little to no documented information on the quantitative benefits of transit asset management programs, as distinct from provider-specific implementation details or descriptions of best practices. Within the trade literature, one recent case study from the Bi-State Development Agency (St. Louis) presents results from a transit asset management program that has altered bus maintenance and replacement practices. The results include an increased “mean time between failures” for its bus fleet from 3,400 miles in 2000 to 22,000 in 2014, and bus lifespan targets that have gone from 12 years/600,000 miles to 15 years/825,000 miles. These outcomes are the equivalent of roughly six and a half times the increase in distance between and a 25% increase in bus longevity (with associated capital cost savings).<sup>34</sup>

Case studies of this type provide compelling evidence of the benefits of transit asset management, though by their nature they make it difficult to control for exogenous factors and other initiatives implemented by the transit provider at the same time. Beyond these case studies, there is little to no hard data on the impacts of asset management on ultimate outcomes such as service quality, reliability, and ridership, which would also influence benefit estimates. Indeed, one recent academic review of the literature in this field noted that “efforts to quantify benefits of transit state of good repair have generally stopped short of linking asset condition with user impacts or ridership.”<sup>35</sup> This is an unsurprising result given the relatively short period of time in which transit asset management practices have been studied.

The literature on asset management for highway investments and pavement management is more mature and includes a few examples of quantified benefits. For example, one before-and-after study of the Iowa Department of Transportation’s adoption of a pavement management tool found that the system improved project selection, ultimately leading to benefits in the form of better pavement conditions on the roadway network for the same expenditure level. The value of the improved pavement condition was equivalent to roughly 3% of total construction spending during

the 5-year “after” period studied.<sup>36</sup> A similar analysis with data from the Arizona Department of Transportation’s pavement management program found that the asset management approach had improved pavement longevity by about 13.5%, with concomitant savings in the pavement budget.<sup>37</sup> While useful as benchmarks, the extent to which these findings are applicable to transit agencies is unclear, since transit agencies’ key assets are vehicles, facilities, and guideway rather than pavement, and thus may exhibit different characteristics. However, the voluntary use of asset management programs by for-profit entities, such as utility companies and freight railroads, also strongly suggests that asset management programs yield cost savings, at least over the longer term, that exceed their implementation costs.<sup>38</sup>

Since we do not have a study on which to estimate the potential benefits of adopting asset management by transit providers, we have identified areas where asset management is likely to have an impact by improving decision-making and targeting investments to achieve the highest return on the dollars invested. By implementing the requirements of the TAM rule, providers would develop policies and plans that direct funds toward investments to meet the goal of maximizing the lifespan of assets with timely rehabilitation and maintenance activities. These activities have the potential to reduce the rate of mechanical failures experienced by the transit industry. In 2013, transit agencies in urbanized areas reported to the NTD a total of 524,629 mechanical failures in revenue service, which collectively required an estimated 64.3 million hours of labor for inspection and maintenance.<sup>39</sup> At a loaded wage rate of \$34.34 per hour (BLS, vehicle and equipment mechanics, interurban and rural bus transport), this equates to annual spending of over \$2.2 billion on unplanned mechanical breakdowns across the industry.

Reducing the mechanical failures by less than 4,200 incidents (0.9 percent)

<sup>34</sup> Smadi, O. “Quantifying the Benefits of Pavement Management,” 6th International Conference on Managing Pavements (2004).

<sup>37</sup> Hudson, W.R., et al. “Measurable Benefits Obtained from Pavement Management,” 5th International Conference on Managing Pavements (2001).

<sup>38</sup> See, for example, private sector case studies at <http://www.twpl.com/?page=CaseStudies>.

<sup>39</sup> The 2013 NTD data do not provide total hours for inspection and maintenance, only the number of mechanical failures. This analysis applies the average number of hours per failure from the most recent year for which both those data points are available (2007).

would cover the annual cost (\$18.9 million) of the proposed rule, making this Rule economically efficient. In addition to the savings in maintenance expenditures, reduced mechanical failures also would reduce the delays in service, increasing reliability of transit services.

The proposed rule’s requirements would significantly reduce potential safety risks, as assets would be better maintained and likely to reduce safety hazards due the asset condition, as noted in the nexus between asset condition and safety in this rule. In addition, transit asset management practices as outlined in the proposed rule would identify list of projects that better serve the performance goals of FTA and the industry to improve safety, asset condition and system performance by allowing for improved cross-functional decision-making.

The requirements of this rule would generate data for transit agencies to analyze over time showing trends in condition and performance, enabling them to better understand the relationship between their actions (expenditures) and outcomes (asset condition, safety, operations). Transit providers would select investments to meet their stated goals and targets. If the transit provider cannot meet the stated goals, it would explore the potential reasons for the gap between the actual performance and targeted performance. This may lead the transit provider to collect additional data, such as the cost of projects, with the intention of better understanding the underlying causes of why it is unable to attain the stated goal. Based on this analysis the transit provider may adjust the target, reprioritize its investments or make other changes in its processes to gain efficiencies. Through this asset management process of planning, executing, re-evaluating and revising, a transit provider would identify economies and best practices that would result in better use of resources and improve performance. The performance targets may be achieved through increased efficiencies or shift in funding priorities. The transit asset management process would also help transit providers develop better estimates of its’ systems needs to meet established targets.

In addition, the TAM plan will make a transit provider’s policies, goals and performance targets, more transparent to the public and the legislative decision-makers. The performance reports required under this rule would show how well the agencies are performing against their established targets. Through increased transparency and

<sup>34</sup> Harnack, Leah. “Transit as an Economic Driver,” *Mass Transit*, December 2014-January 2015, 10–15.

<sup>35</sup> Patterson, L. and D. Vautin. “Evaluating User Benefits and Cost-Effectiveness for Public Transit State of Good Repair Investments,” Transportation Research Board 94th Annual Meeting (2015).

accountability, it may be possible to make a better case for increased funding, resulting in improved performance over time and reducing the SGR backlog that has accumulated over the years.

FTA invites information from the public on information sources and methodologies for estimating the benefits described above.

#### Other Impacts

In 2012, \$16.8 billion of capital expenditures were incurred by the transit agencies. As noted above, there is an estimated \$85.9 billion transit SGR backlog. Given the size of capital expenditures, the size of the SGR backlog, and the potential benefits of adopting transit asset management systems and creating the TAM plans, it is likely that economic impacts in excess of \$100 million in a year could result from this rule. However, FTA has no information on which to estimate the size of these impacts. FTA requests information from the public on how to analyze the benefits and costs of addressing the SGR backlog, such as replacing assets sooner or performing additional maintenance. As noted above, FTA believes that investing funds to improve the state of good repair of capital assets would have important benefits. Experience of adopting asset management systems in capital intensive industries has demonstrated that significant gains over time are possible.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601-612), FTA has evaluated the likely effects of the proposals set forth in this NPRM on small entities, and has determined that they would not have a significant economic impact on a substantial number of small entities.

The proposed rule would affect roughly 3,100 small entities, most of whom are small government entities and small non-profit organizations that operate public transit services in non-urbanized areas. Compliance costs would vary according to provider size and complexity and the extent of current asset management practices. Costs are illustrated by an example calculation for a transit provider with 10 vehicles, for which compliance costs were estimated at \$21,069 (over two years) for initial implementation and \$5,832 per year for updates and reporting. Over a period of years, this would represent a small share (less than 1%) of the operating budget that would be typical for a transit provider of that size. Moreover, under the proposed rule,

small entities who met the criteria for tier II designation and subrecipients under the Rural Area Formula Program, could participate in a group TAM plan sponsored by their State DOT or direct recipient. This would allow for some of the costs of implementation (such as developing analytical tools, prioritization project list, target setting and performance measures) to be borne by the group TAM plan sponsor or spread across a larger number of entities, reducing the cost for each.

Overall, while the proposed rule would affect a substantial number of small entities, these impacts would not be significant due to the low magnitude of the costs and the potential for offsetting benefits. Moreover, FTA has designed the proposed rule to allow flexibility for small entities, including exemption from certain requirements and the option to participate in a group TAM plan. In addition, transit agencies would also see benefits from improved data-driven decision-making, including qualitative benefits to transparency and accountability and the potential for direct cost savings in maintenance and life-cycle costs of asset ownership. For this reason, FTA certified that this action would not have a significant economic effect on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 109 Stat. 48). Under FTA's grant programs, the development of a TAM Plan is eligible for funding as a planning or administrative expense, or capital expense under the SGR Grant Program authorized at 49 U.S.C. 5337.

#### Executive Order 13132 (Federalism)

This proposed rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132 (Aug. 4, 1999). FTA has determined that the proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions. Moreover, consistent with Executive Order 13132, FTA has examined the direct compliance costs of the NPRM on State and local governments and has determined that the collection and analysis of the data are eligible for Federal funding under FTA's grant programs.

#### Executive Order 12372

##### (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed rulemaking.

#### Executive Order 13653

Preparing the United States for the Impacts of Climate Change, declares a policy that the Federal government must build on recent progress and pursue new strategies to improve the Nation's preparedness and resilience. The executive order directs Federal agencies to support climate-resilient investment, in part by identifying "opportunities to support and encourage smarter, more climate-resilient investments by states, local communities and tribes, including by providing incentives through agency guidance, grants, technical assistance performance measures, safety consideration and other programs." This proposed rulemaking does not incorporate risk analysis as part of transit asset management. However, FTA does address the requirements of 1315(b) of MAP-21, in the Emergency Relief Program rule at 49 CFR part 602, by requiring transit agencies to evaluate reasonable alternatives, including change of location and addition of resilience/mitigation elements, for any damaged transit facility that has been previously repaired or reconstructed as a result of an emergency or major disaster.

#### Paperwork Reduction Act (PRA)

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*; "PRA") and the OMB regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for the Information Collection Request abstracted below. FTA acknowledges that this NPRM entails collection of information to implement the transit asset management requirements of 49 U.S.C. 5326. Specifically, a transit provider subject to the proposed rule would do the following: (1) Develop and implement a TAM plan; (2) set performance targets; (3) submit an annual narrative and data report to the NTD; and (4) maintain required records.

Please note, the information provided below pertains to the proposed requirements for the National TAM System. This collection approval does not cover the proposed amendments to regulations for FTA's NTD at 49 CFR part 630, to conform with the proposed reporting requirements for the National TAM System. The proposed amendments to the NTD will be covered

by a separate NTD Paperwork Reduction Act Justification Statement.

*Respondents:* Recipients and subrecipients of Chapter 53 funds that own, operate, or manage public transportation systems, including 284 tier I providers and roughly 3,714 tier II providers, or States or direct recipients that sponsor group TAM plans.

Estimated Annual Burden on Respondents

*Tier I Providers*—The initial costs for establishing new processes for collecting asset condition data; developing analytical processes, performance measures and targets; and reporting would be higher than the subsequent annual, triennial and quadrennial updates and would be incurred over a period of two years. The initial hours of burden for tier I

providers are expected to be 418,752 hours in total for 284 transit providers, averaging to just over 1,474 hours per provider. The annual average recurring burden is 187,803 hours, averaging at 661 hours per transit provider. The initial dollar cost of implementing the proposed rule would be \$23.0 million over two years and a recurring annual average cost of \$9.5 million, averaging to \$80,986 and \$33,451 per provider respectively.

*Tier II Providers*—The initial hours of burden for tier II providers are expected to be 709,822 hours in total for 754 plans to be developed by the direct recipients and/or group TAM plan sponsors, with an average of just over 941 hours per plan. The annual average recurring burden is 229,266 hours, averaging at 304 hours per TAM plan.

The initial dollar cost of implementing the proposed rule would be \$20.8 million over two years and a recurring annual average cost of \$7.5 million, averaging to \$27,586 and \$9,947 per plan, respectively.

Estimated Total Annual Burden

Tables 13 and 14 below show the initial hours of burden and the dollar cost to the tier I and tier II transit providers to be incurred in the first two years of implementing the proposed rule and the recurring annual average costs thereafter. The tables below show the assumptions made for the level of effort and the loaded wage rates (wage rate adjusted to account for employer cost of fringe benefits)<sup>40</sup> used for estimating the hours of burden and the cost of implementing the proposed rule.

TABLE 13—TIER I OPERATORS  
[More than 100 vehicles and fixed rail guideway.]

Item	Labor category	Labor rate (\$/hr) urban	Assumptions	Initial (two years) costs	Average annual recurring costs	Initial hours of burden (two years)	Average annual recurring hours of burden
	(BLS code/title)	(May 2013 BLS statistic) <sup>1</sup>					
Vehicle Condition Assessment.	Buyer or Purchasing Agent.	\$43.40	Thirty minutes per vehicle, 116,472 vehicles in total, every year.	\$2,527,442	\$2,527,442	58,236	58,236
Station Condition Assessment.	Transportation Inspector	62.81	Eight hours per station for 4,195 stations in total, every three years.	2,107,904	702,635	33,560	11,187
Maintenance Facilities Condition Assessment.	Transportation Inspectors.	62.81	Sixteen hours per facility for 1,068 facilities in total, every three years.	1,073,297	357,766	17,088	5,696
Way Miles (open) Condition Assessment.	Operations Specialties Manager.	67.02	Thirty minutes per mile for 12,746 miles of way, every year.	427,118	427,118	6,373	6,373
Tunnel, Bridge and Transitions Condition Assessment.	Operations Specialties Manager.	67.02	One hour per mile for 2,563 miles of bridges, tunnels & transitions annually.	171,772	171,772	2,563	2,563
Analytical Processes .....	Buyer or Purchasing Agent.	43.40	520 hours per recipient for initial analysis and 208 hours annual for updates for 284 recipients.	6,409,312	2,563,725	147,680	59,072
Prioritized Project List ....	Buyer or Purchasing Agent.	43.40	96 hours per recipient for initial project list and 36 hours annual for updates for 284 recipients.	1,183,258	443,722	27,264	10,224
Plan Strategy .....	General Operations Manager.	78.36	96 hours per recipient for plan strategy and 80 hours every four years for updates for 284 recipients.	2,136,407	445,085	27,264	5,680
Performance Measures and Targets.	General Operations Manager.	78.36	208 hours per recipient for performance measures and targets and 36 hours annual for updates for 284 recipients.	4,628,882	801,153	59,072	10,224
NTD Reporting .....	Business Operations Specialist.	48.72	0.16 hours per vehicle for 116,472 vehicles for initial year and 0.08 hours per vehicle for annual updates.	907,923	453,961	18,636	9,318
Narrative Report Writing	Operations Specialist ....	48.72	22 hours per recipient for initial narrative report and 18 hours annual for updates for 284 recipients.	304,403	249,057	6,248	5,112
Narrative Report Review	General Operations Manager.	78.36	2 hours per recipient for initial analysis and 2 hours annual for updates for 284 recipients.	44,508	44,508	568	568

<sup>40</sup> BLS data show wages as 64.1% of total compensation, with benefits at 35.9%. Therefore,

employees' wages are factored by 1.56 (100/64.1) to account for employer provided benefits.



TABLE 13—TIER I OPERATORS—Continued  
[More than 100 vehicles and fixed rail guideway.]

Item	Labor category	Labor rate (\$/hr) urban	Assumptions	Initial (two years) costs	Average annual recurring costs	Initial hours of burden (two years)	Average annual recurring hours of burden
	(BLS code/title)	(May 2013 BLS statistic) <sup>1</sup>					
Recordkeeping .....	Business Operations Specialist.	48.72	80 hours every four years for the 284 recipients.	1,106,918	276,730	14,200	3,550
Total Annual Dollar Cost and Hours of Burden .....				23,029,144	9,464,674	418,752	187,803

TABLE 14—TIER II OPERATORS  
[100 vehicles or less and no fixed rail guideway.]

Item	Labor category	Labor rate (\$/hr) urban	Assumptions	Initial costs (two years)	Average annual recurring costs	Initial hours of burden (two years)	Average annual recurring hours of burden
	(BLS code/title)	(May 2013 BLS statistic) <sup>1</sup>					
Vehicle Condition Assessment.	Administrative Support Workers.	\$23.04	Thirty minutes per vehicle, 81,858 vehicles in total, every year.	\$943,004	\$943,004	40,929	40,929
Station Condition Assessment.	Maintenance Repair Worker.	34.24	Eight hours per station for 822 stations in total, every three years.	225,162	75,054	6,576	2,192
Maintenance Facilities Condition Assessment.	Maintenance Repair Worker.	34.24	Sixteen hours per facility for 1,367 facilities in total, every three years.	748,897	249,632	21,872	7,291
Analytical Processes .....	Administrative Support Workers.	23.04	520 hours per recipient for initial analysis and 104 hours annual for updates for 754 plans.	9,033,523	1,806,705	392,080	78,416
Prioritized Project List ....	Administrative Support Workers.	23.04	96 hours per recipient for initial project list and 24 hours annual for updates for 754 recipients.	1,667,727	416,932	82,944	18,096
Performance Measures and Targets.	Operations Manager .....	65.55	80 hours per recipient for performance measures and targets and 24 hours annual for updates for 754 recipients.	3,953,976	1,186,193	60,320	18,096
NTD Reporting .....	Business Operations Specialist.	40.25	0.16 hours per vehicle for 81,858 vehicles for initial year and 0.08 hours per vehicle for annual updates.	527,166	263,583	13,097	6,549
Narrative Report Writing	Business Operations Specialist.	40.25	14 hours per recipient for initial narrative report and 6 hours annual for updates for 754 recipients.	424,879	182,091	10,556	4,524
Narrative Report Review	Business Operations Manager.	65.55	2 hours per recipient for initial analysis and 2 hours annual for updates for 754 recipients.	98,849	98,849	1,508	1,508
Group Plan Coordination	Business Operations Manager.	40.25	120 hours per group for initial plan coordination by staff for 264 group plans per year.	1,275,120	1,275,120	31,680	31,680
Group Plan Coordination	General Operations Manager.	65.55	40 hours per group for initial plan coordination by management for 264 group plans per year.	692,208	692,208	10,560	10,560
Recordkeeping .....	Business Operations Manager.	40.25	40 hours per group plan every four years for the group plan developers.	1,213,940	303,485	37,700	9,425
Total Initial and Recurring Average Annual Dollar Cost and Hours of Burden .....				20,804,451	7,492,856	709,822	229,266

Frequency: Annual.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze the potential environmental effects of their

proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This proposed rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.118(c)(4), pertaining to

planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and

that a categorical exclusion is appropriate for this rulemaking.

*Executive Order 12630 (Taking of Private Property)*

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1998), Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)*

Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (77 FR 27534) require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies and activities on minority and/or low-income populations. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, on July 17, 2014, FTA issued a Circular to update to its EJ Policy Guidance for Federal Transit Recipients ([www.fta.dot.gov/legislation\\_law/12349\\_14740.html](http://www.fta.dot.gov/legislation_law/12349_14740.html)), which addresses administration of the E.O. and DOT Order.

FTA has evaluated this rule under the EO, the DOT Order, and the FTA Circular and has determined that this rulemaking will not cause disproportionately high and adverse human health and environmental effects on minority or low income populations.

*Executive Order 12988 (Civil Justice Reform)*

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996), Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

FTA has analyzed this proposed rulemaking under Executive Order 13045 (April 21, 1997), Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this proposed rule will not cause an environmental risk to health or safety

that may disproportionately affect children.

*Executive Order 13175 (Tribal Consultation)*

FTA has analyzed this action under Executive Order 13175 (November 6, 2000), and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Effects)*

FTA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

*Privacy Act*

Anyone is able to search the electronic form of all comments received into any of FTA's dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477.

*Statutory/Legal Authority for This Rulemaking*

This rulemaking is issued under the authority of section 20019 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), which requires the Secretary of Transportation to prescribe regulations to establish a system to monitor and manage public transportation assets to improve safety and increase reliability and performance and to establish SGR performance measures. The authority is codified at 49 U.S.C. 5326.

*Regulation Identifier Number*

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects**

*49 CFR Part 625*

Public Transportation.

*49 CFR Part 630*

National Transit Database.

Issued in Washington, DC, under authority delegated in 49 CFR 1.91.

**Therese W. McMillan,**

*Acting Administrator, Federal Transit Administration.*

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5326, 5335, and the delegations of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations as follows:

- 1. Add part 625 to read as follows:

**PART 625—TRANSIT ASSET MANAGEMENT**

**Subpart A—General Provisions**

Sec.

- 625.1 Purpose.
- 625.3 Applicability.
- 625.5 Definitions.

**Subpart B—National Transit Asset Management System**

- 625.15 Elements of the National Transit Asset Management System.
- 625.17 State of Good Repair Principles.

**Subpart C—Transit Asset Management Plans**

- 625.25 Transit Asset Management Plan requirements.
- 625.27 Group Plans for Transit Asset Management.
- 625.29 Transit Asset Management Plan: horizon period, amendments, and updates.
- 625.31 Implementation deadline.
- 625.33 Investment prioritization.

**Subpart D—Performance Management**

- 625.41 Standards for measuring the condition of capital assets.
- 625.43 Performance measures for capital assets.
- 625.45 Setting performance targets for capital assets.

**Subpart E—Recordkeeping and Reporting Requirements for Transit Asset Management**

- 625.53 Recordkeeping for Transit Asset Management
  - 625.55 Annual reporting for Transit Asset Management
- Appendix A to Part 625—Examples of Asset Categories, Asset Classes, and Individual Assets

**Authority:** Sec. 20019 of Pub. L. 112–141, 126 Stat. 707, 49 U.S.C. 5326; Sec. 20025(a) of Pub. L. 112–141, 126 Stat. 718, 49 CFR 1.91.

## Subpart A—General Provisions

### § 625.1 Purpose.

This part carries out the mandate of 49 U.S.C. 5326 for transit asset management. This part establishes a National Transit Asset Management System to monitor and manage public transportation capital assets to improve safety and increase reliability and performance.

### § 625.3 Applicability.

This part applies to all recipients or subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used in the provision of public transportation.

### § 625.5 Definitions.

All terms defined in 49 U.S.C. Chapter 53 are incorporated into this part by reference. The following definitions also apply to this part:

*Accountable executive* means a single, identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; responsibility for carrying out transit asset management practices; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan, in accordance with 49 U.S.C. 5329(d), and the agency's transit asset management plan in accordance with 49 U.S.C. 5326.

*Asset category* means a grouping of asset classes, including a grouping of equipment, a grouping of rolling stock, a grouping of infrastructure, and a grouping of facilities. See Appendix A.

*Asset class* means a subgroup of capital assets within an asset category. For example, buses, trolleys, and cutaway vans are all asset classes within the rolling stock asset category rolling stock. See Appendix A.

*Asset inventory* means a register or repository of capital assets, and information about those assets.

*Capital asset* means a unit of rolling stock, a facility, a unit of equipment, or an element of infrastructure used in public transportation.

*Decision support tool* means a methodology:

- (1) To help prioritize projects to improve and maintain the state of good repair of capital assets within the public transportation system based on available condition data and objective criteria; or
- (2) To assess financial needs of asset investments over time.

*Direct recipient* means an entity that receives funds directly from the Federal Transit Administration.

*Equipment* means an article of nonexpendable, tangible property having a useful life of not less than one year.

*Facility* means a building or structure that is used in the provision of public transportation.

*Full level of performance* means the objective standard for determining whether a capital asset is in a state of good repair.

*Group TAM plan* means a single transit asset management plan that is developed by a State or direct recipient that includes more than one transit provider's capital asset inventory, condition assessments, decision support tools, investments prioritization, and performance targets.

*Group TAM plan participant* means a tier II transit provider, all subrecipients under the Rural Area Formula Program, and Native American tribes that elect to participate in a group TAM plan developed by a State or a direct recipient.

*Group TAM plan sponsor* means a State or a direct recipient that develops a group transit asset management plan for eligible participants.

*Horizon period* means the fixed period of time within which a transit provider will evaluate the performance of its transit asset management plan.

*Implementation strategy* means the approach to carrying out transit asset management practices, including establishing a schedule, accountabilities, tasks, dependencies, roles and responsibilities.

*Infrastructure* means permanent installations that interconnect capital assets for use in public transportation.

*Investment prioritization* means:

- (1) A ranking of capital projects; or
- (2) The methodology that leads to ranking of capital projects based on the condition of those assets and reasonably anticipated financial resources from all sources over the time horizon period of the transit asset management plan.

*Key asset management activities* means a list of the transit asset management activities that are critical to achieving a transit provider's transit asset management goals for a particular year.

*Life-cycle cost* means the cost of managing an asset over its whole life.

*Performance measure* means a parameter that is used to assess performance outcomes.

*Performance target* means a specific level of performance for a given performance measure over a specified timeframe.

*Public transportation system* means the entirety of a transit provider's operations, including the services provided through contractors.

*Recipient* means an entity that receives Federal financial assistance under 49 U.S.C. Chapter 53 and includes subrecipients.

*Rolling stock* means any revenue vehicle used in a public transportation system.

*Safety management system (SMS)* means the formal, top-down, organization-wide data-driven approach to managing safety risk and assuring the effectiveness of safety risk mitigations. It includes policies, procedures, and practices for the management of safety risk.

*State of good repair (SGR)* means the condition in which a capital asset is able to operate at a full level of performance.

*Subrecipient* means an entity that receives Federal transit grant funds indirectly through a State or a Direct Recipient.

*TERM scale* means the five (5) category rating system used in the Federal Transit Administration's Transit Economic Requirements Model (TERM) to describe the condition of an asset: 5.0—Excellent, 4.0—Good; 3.0—Adequate, 2.0—Marginal, and 1.0—Poor.

*Tier I provider* means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. Chapter 53 that has one hundred and one (101) or more vehicles in revenue service during peak regular operations, across all modes of service, or that operates a rail fixed-guideway public transportation system.

*Tier II provider* means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. Chapter 53 that has one hundred (100) or fewer vehicles in revenue service during peak regular operations, across all modes of service, and does not operate a rail fixed-guideway public transportation system, or any subrecipient under the section 5311 Rural Areas Formula Program.

*Transit asset management (TAM)* means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycle in order to provide safe, cost-effective, and reliable service.

*Transit asset management plan* means a plan developed by a recipient or group TAM plan sponsor that includes capital asset inventories and condition assessments, decision support tools, and investment prioritization.

*Transit asset management policy* means a transit provider's documented commitment to achieving a state of good

repair for all of its capital assets. The transit asset management policy defines the transit provider's transit asset management objectives and defines and assigns roles and responsibilities for meeting those objectives.

*Transit asset management strategy* means the approach a transit provider takes to affect its policy, including how it will meet objectives and state of good repair performance targets.

*Transit asset management system* means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively, through the life cycles of those assets.

*Transit provider* means a recipient or subrecipient who owns, operates, or manages capital assets used in the provision of public transportation.

*Useful life* means the expected life cycle of a capital asset, or the acceptable period of use in service.

*Useful life benchmark (ULB)* means the expected life cycle of a capital asset for a particular transit provider's operating environment, or the acceptable period of use in service for a particular transit provider's operating environment.

## Subpart B—National Transit Asset Management System

### § 625.15 Elements of the National Transit Asset Management System.

The National Transit Asset Management System includes the following elements:

(a) The definition of state of good repair, which includes objective standards for measuring the condition of capital assets in accordance with subpart D of this part;

(b) SGR performance measures for capital assets and requirements for transit providers and group TAM plan sponsors to establish SGR performance targets for improving the condition of their capital assets in accordance with subpart D of this part;

(c) Requirements for recipients of FTA financial assistance who own, operate, or manage capital assets, to develop and carry out a transit asset management plan in accordance with subpart C of this part, which must include:

(1) Inventories of their capital assets;

(2) Condition assessments of those assets;

(3) A prioritization of investments to improve the state of good repair of capital assets; and

(4) Decision support tools;

(c) Reporting requirements for transit asset management and SGR performance in accordance with subpart E of this part; and

(d) Analytical processes and decision support tools developed or recommended by FTA and available to the public transportation industry in the form of best practices, guidance, training, templates and other documents and resources.

### § 625.17 State of good repair principles.

(a) A capital asset is in a state of good repair if it is in a condition sufficient to enable the asset to operate at a full level of performance. In determining whether a capital asset is in a state of good repair, a transit provider must consider the life cycle of that asset, and whether scheduled maintenance, repair, and rehabilitation have been completed.

(b) A capital asset may operate at a full level of performance regardless of whether other capital assets within the public transportation system are in a state of good repair.

(c) A transit provider's accountable executive must balance transit asset management, safety, operation, and expansion needs in approving and carrying out transit asset management practices and a transit agency safety plan.

## Subpart C—Transit Asset Management Plans

### § 625.25 Transit Asset Management Plan Requirements.

(a) *General.* (1) Except as provided in subsection 625.25(a)(3), each tier I provider must develop and carry out its own TAM plan.

(2) A tier II provider may either participate in a group TAM plan developed by a State or a Direct Recipient or develop its own TAM plan; in either instance, a tier II provider must carry out the TAM plan.

(3) The transit provider's accountable executive is ultimately responsible for ensuring that a TAM plan is developed and carried out in accordance with this part.

(4) A TAM plan developed under this part should be coordinated, to the extent practicable, with States and Metropolitan Planning Organizations.

(b) *Transit asset management plan elements.* A TAM plan must include, at minimum, each of the following elements:

(1) An inventory of capital assets sufficient to generate accurate, comprehensive data on the number and types of capital assets that would be identified in a transit provider's program of capital projects;

(2) A condition assessment of the capital assets that must generate information in a level of detail sufficient to monitor and predict the performance

of each capital asset identified in the asset inventory;

(3) A list of the transit provider's analytical processes or decision-support tools that:

(i) Estimate capital investment needs over time; and

(ii) Assist capital asset investment prioritization;

(4) A project-based prioritization of investments in accordance with subsection 625.33 of this part, including those projects for which funding will be sought under the State of Good Repair Grants Program;

(5) A transit asset management and SGR policy;

(6) A strategy for the implementation of the TAM plan;

(7) A description of annual key transit asset management activities spanning the time horizon of the TAM plan;

(8) A specification of the resources, including personnel, needed to develop and implement the TAM Plan; and

(9) An outline of how the TAM plan and related business practices will be monitored, evaluated and updated, as needed, to ensure the continuous improvement of transit asset management practices.

(c) *Special provision.* Both the accountable executive of a tier II provider or a rural area formula grant subrecipient that develops its own TAM plan and a group TAM plan sponsor may elect to forgo the requirements of paragraphs (b)(5)–(b)(9) of this section.

### § 625.27 Group plans for transit asset management.

(a) *Responsibility for development of group TAM plans.* (1) A State must develop a group TAM plan for all of its tier II provider subrecipients and subrecipients under the Rural Area Formula Program that own, operate, or manage capital assets used in the provision of public transportation.

(2) A Native American tribe may choose to participate in a State-sponsored group TAM plan, or develop its own TAM plan.

(3) A direct recipient must develop a group TAM plan for all its tier II provider subrecipients that own, operate, or manage capital assets used in the provision of public transportation

(4) Notwithstanding subparagraphs (1) and (3) of this subsection, a State or direct recipient is not required to develop a group TAM plan if each of its eligible group TAM plan participants notifies the State or direct recipient that it is opting-out of the group TAM plan for one of the following reasons:

(i) The eligible participant will develop its own transit asset management plan; or

(ii) The eligible participant will participate in another State's or direct recipient's group TAM plan.

(b) *Group TAM plan requirements.* (1) A group TAM plan must comply with the requirements of section 625.25(b).

(2) A group TAM plan sponsor must coordinate with the accountable executive of each group TAM plan participant in the development of a group TAM plan.

(3) A group TAM plan must identify each participant.

(4) Upon completion of a group TAM plan, the group TAM plan sponsor must make the group TAM plan available to all participants in a format that is easily accessible.

(c) *Group TAM plan participants.* (1) An eligible group TAM plan participant may participate in only one group TAM plan.

(2) The accountable executive of each transit provider is ultimately responsible for carrying out the transit asset management practices necessary to implement a group TAM plan for that provider.

(3) Within a reasonable time limit to be set by the group TAM plan sponsor, a participant's accountable executive must provide each relevant group TAM plan sponsor with written notification of a decision to opt-out of a group TAM plan.

(4) Group TAM plan participants must provide group TAM plan sponsors with all information necessary and relevant to the development of the group TAM plan, including, but not limited to, their asset inventories, condition assessments, funding sources, and investment priorities.

**§ 625.29 Transit asset management plan: Horizon period, amendments, and updates.**

(a) *Horizon period.* A TAM plan must cover a horizon period of at least four (4) years.

(b) *Amendments.* A TAM plan may be updated at any time during the horizon period. A TAM plan should be amended during the horizon period in any year in which there is a significant change to the asset inventory, condition assessments, or investment prioritization that was not reasonably anticipated when the TAM plan was initially completed.

(c) *Updates.* A TAM plan must be updated in its entirety at least once every four (4) years. An update of the TAM plan should coincide with the cycle for the relevant Transportation Improvement Program or Statewide Transportation Improvement Program.

**§ 625.31 Implementation deadline.**

(a) An initial TAM plan must be completed no later than two years after the effective date of this part.

(b) Prior to the due date for completion of an initial TAM plan, a transit provider or group TAM plan sponsor may submit a written request to FTA to extend its implementation deadline. At its discretion, FTA may grant an extension of the implementation deadline, provided that the transit provider or group TAM plan sponsor demonstrates a good faith effort to complete its initial TAM plan by the two-year deadline and proposes a new deadline subject to FTA approval.

**§ 625.33 Investment prioritization.**

(a) A TAM plan must include an investment prioritization that identifies projects to improve or maintain the state of good repair of capital assets over the horizon period of the TAM plan.

(b) Projects to improve or maintain the state of good repair of capital assets must be ranked in order of priority and the year in which they are anticipated to be carried out.

(c) Ranking of projects in the investment prioritization must be established on the basis of the transit asset management policy and strategies identified in the TAM plan.

(d) The investment prioritization must give due consideration to those projects for state of good repair that pose an identified unacceptable safety risk.

(e) The investment prioritization must take into consideration an estimate of funding levels and funding sources that are reasonably expected to be available in each fiscal year during the TAM plan horizon period.

(f) The investment prioritization must take into consideration requirements under 49 CFR 37.161 and 37.163 concerning maintenance of accessible features, as well as requirements under 49 CFR 37.43 concerning alteration of transportation facilities.

**Subpart D—Performance Management**

**§ 625.41 Standards for measuring the condition of capital assets.**

(a) *General.* Each of the SGR standards in this section must be met for an asset to achieve a state of good repair.

(b) *SGR standards.* For the purpose of determining whether a capital asset is in a condition sufficient to enable the asset to operate at a full level of performance, the following standards apply to equipment, facilities, rolling stock, and infrastructure:

(1) The capital asset is able to perform its designed function;

(2) The use of the asset in its current condition does not pose a known unacceptable safety risk; and

(3) The life-cycle investment needs of the asset have been met or recovered, including all scheduled maintenance, rehabilitation, and replacements.

**§ 625.43 Performance measures for capital assets.**

(a) *Equipment- (non-revenue) service vehicles.* The performance measure for non-revenue, support-service and maintenance vehicles is the percentage of vehicles that have met or exceeded their useful life benchmark. To determine the ULB, a transit provider may either use the default ULB established by FTA or a ULB established by the transit provider in consideration of local conditions and usage and approved by FTA.

(b) *Rolling stock.* The performance measure for rolling stock is the percentage of revenue vehicles within a particular asset class that have either met or exceeded their ULB. To determine the ULB, a transit provider may either use the default ULB established by FTA or a ULB established by the transit provider in consideration of local conditions and usage and approved by FTA.

(c) *Infrastructure-rail fixed-guideway track, signals, and systems.* The performance measure for rail fixed-guideway track, signals, and systems is the percentage of track segments, signal, and systems with performance restrictions.

(d) *Facilities.* The performance measure for facilities is the percentage of facilities within an asset class, rated below condition 3 on the TERM scale.

**§ 625.45 Setting performance targets for capital assets.**

(a) *General.* (1) Within three months after the effective date of this part, a transit provider or group TAM plan sponsor must set SGR performance targets for the following fiscal year for each asset class included in its TAM plan.

(2) At least once every fiscal year, each transit provider or group TAM plan sponsor must set SGR performance targets for the following fiscal year.

(3) A transit provider or group TAM plan sponsor must set an SGR performance target for each asset class in its asset inventory.

(4) An SGR performance target must be set based on realistic expectations.

(5) An SGR performance target must be based on both the most recent data available and the financial resources from all sources reasonably expected to be available during the TAM plan horizon period.

(b) *Role of the accountable executive.* The accountable executive for a transit provider that develops its own TAM plan must establish and approve each SGR performance target that is set each year.

(c) *Setting SGR performance targets for group plan participants.* (1) A group TAM plan sponsor must set one unified SGR performance target for each asset class reflected in the group TAM plan.

(2) To the extent practicable, a group TAM plan sponsor must coordinate its unified SGR performance targets with the accountable executive of each group TAM plan participant.

(d) *Coordination with metropolitan, statewide and non-metropolitan planning processes.*

To the maximum extent practicable, a transit provider or group TAM plan sponsor must coordinate with States and Metropolitan Planning Organizations in the selection of State and Metropolitan Planning Organization performance targets.

### **Subpart E—Recordkeeping and Reporting Requirements for Transit Asset Management.**

#### **§ 625.53 Recordkeeping for transit asset management.**

(a) At all times, each transit provider and group TAM plan sponsor must maintain records and documents that support, and set forth in full, its TAM plan.

(b) A transit provider or group TAM plan sponsor must make its TAM plan, any supporting records or documents performance targets, investment strategies, and the annual condition assessment report available to States and Metropolitan Planning Organizations to aid in the planning process.

#### **§ 625.55 Annual reporting for transit asset management.**

(a) Each transit provider must submit the following reports:

(1) An annual data report to FTA's National Transit Database which reflects the SGR performance targets for the following year and a current assessment of the condition of the transit provider's public transportation system.

(2) An annual narrative report to the National Transit Database which provides a description of any change in the condition of the transit provider's transit system from the previous year and describes the progress made during the year to meet the SGR targets set in the previous reporting year.

(b) A group TAM plan sponsor must submit one consolidated annual data report and one consolidated annual narrative report, as described in subsection (a)(1) and (a)(2) of this section, respectively, to the National Transit Database on behalf of its group TAM plan participants.

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Appendix A to Part 625—Examples of Asset Categories, Asset Classes, and

Individual Assets

ASSET CATEGORY	ASSET CLASS		INDIVIDUAL ASSET
	Equipment	Construction	Crane Prime Mover
		Maintenance	Vehicle Lift Track Geometry Car
		Service Vehicles	Tow Truck or wrecker Emergency Response Vehicle
	Rolling Stock	Buses	40 Foot Bus 60 Foot Bus
		Cutaways	
		Cars and Vans	
		Railcars	Light Rail Vehicle Locomotive Passenger Coach
		Paratransit Vehicles	Van Cutaway
		Ferries	Catamaran Docking
Infrastructure	Signal Systems	Signal or Relay House Substation Interlockings	
	Rail-Fixed Guideway	Track Segment Interlockings	
	Catenary		
	Structures	Bridges Tunnels Elevated Structures	
	Mechanical Systems		
	Electrical Systems		
	IT Systems		
Facilities	Maintenance		
	Administration		
	Depots or Terminals		
	Parking Garages		

BILLING CODE C

**PART 630—NATIONAL TRANSIT DATABASE**

■ 2. The authority citation for part 630 is revised to read as follows:

Authority: 49 U.S.C. 5335.

■ 3. Amend § 630.3 by revising the definitions of “Applicant” and “Reporting Entity” to read as follows:

**§ 630.3 Definitions.**

\* \* \* \* \*

(c) \* \* \*

*Applicant* means an entity seeking Federal financial assistance under 49 U.S.C. chapter 53.

\* \* \* \* \*

*Reporting entity* means an entity required to provide reports as set forth in the reference documents.

\* \* \* \* \*

- 4. Amend § 630.4 by revising paragraph (a) to read as follows:

**§ 630.4 Requirements.**

(a) *National Transit Database Reporting System*. Each applicant for

and beneficiary of Federal financial assistance under 49 U.S.C. chapter 53 must comply with the applicable requirements of 49 U.S.C. 5335, as set forth in the reference documents.

\* \* \* \* \*

- 5. Revise § 630.5 to read as follows:

**§ 630.5 Failure to report data.**

Failure to report data in accordance with this part may result in the noncompliant reporting entity being ineligible to receive any funding under 49 U.S.C. chapter 53, directly or indirectly, until such time as a report is filed in accordance with this part.

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**BILLING CODE C**





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Part IV

## Department of the Interior

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Bureau of Land Management

43 CFR Parts 3160 and 3170

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases;  
Measurement of Oil; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Parts 3160 and 3170**

[15X.LLWO300000.L13100000.NB0000]

RIN 1004-AE16

**Onshore Oil and Gas Operations;  
Federal and Indian Oil and Gas Leases;  
Measurement of Oil****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would replace Onshore Oil and Gas Order Number 4, Measurement of Oil (Order 4) with new regulations that would be codified in the Code of Federal Regulations (CFR). Order 4 establishes minimum standards for the measurement of oil produced from Federal and Indian (except Osage Tribe) leases to ensure that production is accurately measured and properly accounted for. Order 4 was issued in 1989.

The changes contemplated as part of this proposed rule would strengthen the Bureau of Land Management's (BLM) policies governing production accountability by updating its minimum standards for oil measurement to reflect the considerable changes in technology and industry practices that have occurred in the 25 years since Order 4 was issued. This proposed rule addresses the use of new oil meter technology, proper measurement documentation, and recordkeeping; establishes performance standards for oil measurement systems; and includes a mechanism for the BLM to review, and approve for use, new oil measurement technology and systems. The proposed rule expands the acts of noncompliance that would result in an immediate assessment under the existing regulations. Finally, it sets forth a process for the BLM to consider variances from these requirements.

**DATES:** Send your comments on this proposed rule to the BLM on or before November 30, 2015. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

As explained later, the proposed rule would establish new information collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the information collection requirements in this proposed rule, please note that the OMB is required to make a decision concerning the

collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information collection requirements is best assured of having its full effect if the OMB receives it by October 30, 2015.

**ADDRESSES:** *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004-AE16. *Personal or messenger delivery:* 20 M Street SE., Room 2134LM, Washington, DC 20003. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions at this Web site.

Comments on the information collection burdens: *Fax:* Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax 202-395-5806. *Electronic mail:* [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov). Please indicate "Attention: OMB Control Number 1004-XXXX," regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information collection burdens, you should provide the BLM with a copy, at one of the addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rule preamble.

**FOR FURTHER INFORMATION CONTACT:** Mike McLaren, 1625 West Pine St., P.O. Box 768, Pinedale, WY 82941, or by telephone at 307-367-5389. For questions relating to regulatory process issues, please contact Faith Bremner at 202-912-7441. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact these individuals during normal business hours. FIRS is available 24 hours a day, 7 days a week to leave a message or question with these individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

The Secretary of the Interior (Secretary) has the authority under various Federal and Indian mineral leasing laws to manage oil and gas operations on Federal and Indian (except Osage Tribe) lands, including, but not limited to, the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, the Indian Mineral Leasing Act, 25 U.S.C. 396a *et seq.*, the Act of March 3, 1909, 25 U.S.C. 396, and

the Indian Mineral Development Act, 25 U.S.C. 2101 *et seq.* Each of these statutes grants to the Secretary authority to promulgate necessary and appropriate rules and regulations. See 30 U.S.C. 189; 30 U.S.C. 359; 25 U.S.C. 396d; 25 U.S.C. 396; and 25 U.S.C. 2107. The Secretary has delegated this authority to the BLM.

The BLM's onshore oil and gas program is one of the most important mineral-leasing programs in the Federal Government. In fiscal year (FY) 2014, onshore Federal oil and gas leases produced about 148 million barrels of oil, 2.48 trillion cubic feet of natural gas, and 2.9 billion gallons of natural gas liquids, with a market value of more than \$27 billion and generating royalties of almost \$3.1 billion. Nearly half of these revenues are distributed to the States in which the leases are located. Leases on tribal and Indian lands produced 56 million barrels of oil, 240 billion cubic feet of natural gas, 182 million gallons of natural gas liquids, with a market value of almost \$6 billion and generating royalties of over \$1 billion that were all distributed to the applicable tribes and individual allottee owners. Despite the magnitude of this production, the BLM's rules governing how that oil is measured and accounted for are more than 25 years old and need to be updated and strengthened. Federal laws, technology, and industry standards have all changed significantly in that time.

The BLM implements its authority over Federal and Indian (except Osage Tribe) oil and gas leases through the regulations at 43 CFR part 3160. Those regulations authorize the BLM to issue Onshore Oil and Gas Orders (Orders) when necessary to implement and supplement the regulations. Over the years, the BLM issued seven Orders that deal with different aspects of oil and gas production.<sup>1</sup> Order 4, which was issued in 1989, focuses on oil measurement. This proposed rule would update Order 4 to reflect advancements in technology, industry standards, and changes in applicable legal requirements. This rule proposes to issue those updated requirements as regulations that would be codified in the CFR.

These updated requirements are the result of the BLM's evaluation of its existing requirements, based on its experience in the field, and the conclusion of multiple separate reports—one by the Secretary's Subcommittee on Royalty Management, issued in 2007; one by the Department's Office of Inspector General (OIG), issued

<sup>1</sup> These Onshore Orders were published in the **Federal Register**, both for public comment and in final form, but they do not appear in the CFR.

in 2009; and multiple by the Government Accountability Office (GAO). The GAO issued issue-specific reports in 2010 and 2015, and its recommendations related to the adequacy of the BLM's oil measurement rules generally formed one of the bases for the GAO's inclusion and continued presence of the BLM's oil and gas program on the GAO's High Risk List in 2011, 2013, and 2015. As explained later, each of these entities recommended that the BLM evaluate its existing oil measurement guidance to ensure it reflects current technologies and standards and, where appropriate, update the guidance and regulations accordingly. Up-to-date measurement requirements are critically important because they provide the mechanism to ensure that oil and gas produced from Federal and Indian leases are properly accounted for, thus ensuring that operators pay the proper royalties due.

As explained in detail below, the proposed rule makes a number of changes that modernize and strengthen the existing requirements of Order 4. For example, by recognizing advancements in measurement technologies and changes in industry practices, the proposed rule would allow operators to use a Coriolis measurement system (CMS) and eliminate the need for industry to submit and the BLM to process variance requests as it currently does when operators want to use a CMS.<sup>2</sup> Currently, under Order 4, the only meter that an operator can use on a lease without prior approval is a lease automatic custody transfer (LACT) system.<sup>3</sup> A LACT system uses a positive displacement (PD) meter, which requires more maintenance than a CMS. The BLM is proposing this change because field and laboratory testing have proven the CMS to be reliable and accurate. This will also make CMS requirements and standards uniform across the country, as opposed to varying by BLM state or field office as they currently do. Finally, this change would increase efficiency by saving operators the time it takes to apply for variances and the BLM the time it takes to process them.

In recognition that measurement techniques and technologies will

<sup>2</sup> A CMS is a metering system using a Coriolis flow meter in conjunction with a tertiary device, pressure transducer, and temperature transducer in order to derive and report net oil volume. A Coriolis flow meter is based on the principle that fluid mass flow through a tube results in a measurable twisting or distortion and consequent oscillation of the tube. Sensors measure that oscillation.

<sup>3</sup> A LACT system is a piece of equipment that automatically measures, analyzes, and transfers oil from a storage tank to a pipeline or tanker truck.

continue to evolve, the BLM is also proposing to adopt a process and criteria that would allow it, through a new Production Measurement Team (PMT), to review and approve for use new measurement technologies that are demonstrated to be reliable and accurate. The new technologies would have to meet or exceed the same performance standards as those prescribed in this proposed rule.<sup>4</sup>

Similarly, the proposed rule strengthens existing requirements by prohibiting the use of automatic temperature/gravity compensators on LACT systems, which are currently required by Order 4. These compensators are designed to automatically adjust LACT totalizer readings to account for temperature changes and, in some cases, oil gravity changes. However, the use of automatic compensators means an uncorrected totalizer reading is not available for such systems, which means the BLM and the operator lack access to the raw data necessary to verify that the compensators are functioning correctly or that the totalizer reading is correct. To ensure such data exists, this proposed rule would, instead, require operators to use temperature averaging devices, which record and average the temperatures of the fluids flowing through the LACT. Under this system, the operator would use the data from the averaging devices to manually correct the volumes from the totalizer for the effects of temperature and oil gravity and the BLM would have the raw data necessary to verify the results and confirm system functionality. In the BLM's experience, the majority of LACT systems already use averaging devices, which can be used only under BLM-approved variances, while only about 20 percent use automatic temperature/gravity compensators.

The proposed rule would also strengthen existing regulations by increasing meter-proving requirements for operators who produce large volumes of oil. Current regulations require quarterly proving for all meters, except those meters that exceed a 100,000 bbl per month volume that are

<sup>4</sup> The PMT would be distinguished from the Department of the Interior's Gas and Oil Measurement Team (DOI GOMT), which consists of members with gas or oil measurement expertise from the BLM, the ONRR, and the Bureau of Safety and Environmental Enforcement (BSEE). BSEE handles production accountability for Federal offshore leases. The DOI GOMT is a coordinating body that enables the BLM and BSEE to consider measurement issues and track developments of common concern to both agencies. The BLM is not proposing a dual-agency approval process for use of new measurement technologies for onshore leases. The BLM expects that the members of the BLM PMT would participate as part of the DOI GOMT.

required to be proven monthly. Under this proposal, meters would be proven anytime the non-resettable totalizer increases by 50,000 bbl, or quarterly, whichever occurs first. Increased proving frequencies ensure that meter-factor changes that effect measurement are corrected before large volumes of production are measured incorrectly, which could adversely impact royalty determinations. This proposed change would affect approximately 5 percent of existing LACT systems nationwide.

Finally, the proposed rule would clarify existing regulations to require that oil storage tanks be vapor-tight and that all venting occur through a pressure-vacuum relief valve. This would minimize hydrocarbon gas lost to the atmosphere by ensuring that venting is done under controlled conditions primarily in response to changes in the ambient temperature.

Where appropriate, this proposed rule incorporates by reference new American Petroleum Institute (API) standards that address the activities covered by this rule as explained later.

- I. Public Comment Procedures
- II. Background
- III. General Overview of the Proposed Rule
- IV. Section-by-Section Analysis
- V. Onshore Order Public Meetings, April 24–25, 2013
- VI. Procedural Matters

## I. Public Comment Procedures

If you wish to comment on the proposed rule, you may submit your comments by any one of several methods specified (see **ADDRESSES**). If you wish to comment on the information collection requirements, you should send those comments directly to the OMB as outlined (see **ADDRESSES**); however, we ask that you also provide a copy of those comments to the BLM.

Please make your comments as specific as possible by confining them to issues for which comments are sought in this notice, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those that are supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be

available for public review at the address listed under **ADDRESSES** during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## II. Background

As noted earlier, the regulations at 43 CFR 3164.1 provide for the issuance of Onshore Orders to “implement and supplement” the regulations in part 3160. The table in 43 CFR 3164.1(b) lists the existing Orders. This proposed rule would revise and replace Order 4 and would govern measurement of oil production on Federal and Indian (except Osage Tribe) oil and gas leases. Order 4 has been in effect since August 23, 1989.<sup>5</sup> The BLM is proposing to codify the requirements of this proposed rule, which would replace Order 4, at a new 43 CFR subpart 3174.

## III. General Overview of the Proposed Rule

Under the applicable law, royalty is owed to the United States on all production removed or sold from Federal and Indian oil and gas leases. The royalty payments are based on the measured production from those leases. Thus, it is critically important that the BLM ensure accurate measurement, proper reporting, and accountability. The BLM is pursuing proposed updates to Order 4’s requirements because they are necessary to reflect changes in oil measurement practices and technology.

Order 4 has been in place since 1989. As a result, its equipment mandates and other requirements do not reflect improvements in oil measurement technologies and practices. In the BLM’s experience, this has meant that industry has had to request, and the BLM has had to process, an increasing number of variances to authorize operators to install and use new technology, such as CMSs, even though the reliability of these systems has been long established. The variances are required because Order 4 does not contemplate CMSs. Additionally, since they are not included, Order 4 also does not provide uniform performance standards for

these systems, which has led BLM state and field offices to specify their own standards. The BLM’s experience in the field with Order 4’s limitations is consistent with the findings of multiple separate independent reports.

In 2007, the Secretary appointed an independent panel—the Subcommittee on Royalty Management (Subcommittee)—to review the Department’s procedures and processes related to the management of mineral revenues and to provide advice to the Department based on that review.<sup>6</sup> In a report dated December 17, 2007, the Subcommittee determined that the BLM’s production accountability methods are “unconsolidated, outdated, and sometimes insufficient.” The report says:

- BLM policy and guidance have not been consolidated into a single document or publication, resulting in the BLM’s 31 oil and gas field offices using varying policy and guidance (see page 31);
- Some BLM policy and guidance is outdated and some policy memoranda have expired (*ibid.*); and
- Some BLM State offices have issued their own “Notices to Lessees and Operators” (NTLs) for oil and gas operations. While such NTLs may have a positive effect on local oil and gas field operations, they nevertheless lack a national perspective and may introduce inconsistencies among the States (*ibid.*).

The Subcommittee specifically recommended that the BLM evaluate Order 4 to ensure that it includes sufficient guidance for ensuring that accurate royalties are paid on Federal oil production. In response, the Interior Department formed a Fluid Minerals Team, comprised of Departmental oil and gas experts. The team determined that Order 4 should be updated in light of changes in technology and BLM and industry practices. In addition to the Subcommittee report, findings and recommendation addressing similar issues have been issued by the GAO (Report to Congressional Requesters, *Oil and Gas Management, Interior’s Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes*, GAO–10–313 (GAO 2010 Report), and Report to Congressional Requesters, *Oil and Gas Resources*,

*Interior’s Production Verification Efforts: Data Have Improved but Further Actions Needed*, GAO 15–39 (GAO 2015 Report)) and the OIG (*Bureau of Land Management’s Oil and Gas Inspection and Enforcement Program*, CR–EV–0001–2009).

In its 2010 report, the GAO found that the Department’s measurement regulations and policies do not provide reasonable assurances that oil and gas are accurately measured because, among other things, its policies for tracking where and how oil and gas are measured are not consistent and effective (GAO 2010 Report, p. 20). The report also found that the BLM’s regulations do not reflect current industry-adopted measurement technologies and standards designed to improve oil and gas measurement (*ibid.*). The GAO recommended that Interior provide Department-wide guidance on measurement technologies not addressed in current regulations and approve variances for measurement technologies in instances when the technologies are not addressed in current regulations or Department-wide guidance (see *ibid.*, p. 80). The OIG report made a similar recommendation that the BLM, “Ensure that oil and gas regulations are current by updating and issuing onshore orders. . . .” (see page 11). In its 2015 report, the GAO reiterated that “Interior’s measurement regulations do not reflect current measurement technologies and standards,” and that this “hampers the agency’s ability to have reasonable assurance that oil and gas production is being measured accurately and verified. . . .” (GAO 2015 Report, p. 16.) Among its recommendations were that the Secretary direct the BLM to “meet its established time frame for issuing final regulations for oil measurement.” (*Ibid.*, p. 32.)

The GAO’s recommendations related to the adequacy of the BLM’s oil measurement rules are also significant because they formed one of the bases for the GAO’s inclusion of the BLM’s oil and gas program on the GAO’s High Risk List in 2011 (Report to Congressional Committees, *High Risk Series, An Update*, GAO–11–278). Specifically, the GAO concluded in 2011 “that Interior’s verification of the volume of oil . . . produced from federal leases—on which royalties are due the federal government—does not provide reasonable assurance that operators are accurately measuring and reporting these volumes.” (GAO–11–278, p.15.) Because the GAO’s recommendations have not yet been fully implemented, the onshore oil and gas program has remained on the High

<sup>5</sup> It was published on February 24, 1989 (54 FR 8086).

<sup>6</sup> The Subcommittee was commissioned to report to the Royalty Policy Committee, which is chartered under the Federal Advisory Committee Act to provide advice to the Secretary and other Departmental officials responsible for managing mineral leasing activities and to provide a forum for the public to voice concerns about mineral leasing activities.

Risk List in subsequent updates in 2013 (Report to Congressional Committees, *High Risk Series, An Update*, GAO-13-283) and 2015 (Report to Congressional Committees, *High Risk Series, An Update*, GAO-15-290).

The provisions of this proposed rule respond to the recommendations by the Subcommittee, the GAO, and the OIG. They were also developed by the BLM to enhance and clarify some of the requirements in Order 4 in response to changes in technology, BLM field

experience, and changes to applicable statutory requirements.

The following table provides an overview of the changes contemplated as part of this proposed rule and identifies the substantive changes relative to Order 4.

Order 4	Proposed rule	Substantive changes
I. Introduction—A. Authority .....	No section in this proposed rule ...	This section of Order 4 would appear in proposed 43 CFR 3170.1. New subpart 3170 was proposed separately in connection with proposed new 43 CFR subpart 3173 (site security), (80 FR 40768, July 13, 2015).
I. Introduction—B. Purpose .....	No section in the proposed rule ...	The purpose of this proposed rule is to revise and replace Order 4 with a new regulation that would be codified in the CFR.
I. Introduction—C. Scope .....	No section in this proposed rule ...	See proposed new 43 CFR 3170.2 (80 FR 40802, July 13, 2015).
II. Definitions .....	43 CFR 3174.1 .....	See also proposed new 43 CFR 3170.3 (80 FR 40802, July 13, 2015), which would add definitions of some of the key terms and would add a list of acronyms that are used in this proposed rule. Terms for which new definitions would be added include: Configuration log, CMS, event log, opaque oil, quantity transaction record (QTR), resistance thermal device (RTD), tertiary device, and unity.
III. Requirements—A. Required Recordkeeping.	No section in this proposed rule ...	See proposed new 43 CFR 3170.7 (80 FR 40804, July 13, 2015).
III. Requirements—B. General .....	43 CFR 3174.2 and 3174.3 .....	The proposed rule would remove all specific reference to: “Violation” (major or minor), “Corrective Action” (what needs to be done to resolve the violation), and “Normal Abatement Period” (how much time is allowed to correct the violation). The BLM will address these issues in internal guidance documents (handbooks, manuals or instructional memoranda (IMs)). This proposed rule would specify that oil may be produced into and stored only in tanks meeting the minimum requirements of this rule. This proposed rule would also establish overall performance requirements in terms of uncertainty levels, bias, and verifiability of measurement.
None .....	43 CFR 3174.4 .....	The proposed rule would adopt the latest versions of certain API and ASTM International (ASTM) standards.
III. Requirements—C. Oil Measurement by Tank Gauging.	43 CFR 3174.5 and 3174.6 .....	This proposed rule would require all oil storage tank hatches, connections, and other access points to be vapor-tight and would require appropriate pressure-vacuum relief systems. This proposed rule would require the operator to submit tank calibration charts (tank tables) to the authorized officer (AO) within 30 days of calibrating or recalibrating. This entire section has been reorganized to give the step-by-step procedure to correctly perform the tank gauging operation. The provision specifically references API 18.1 for tanks of 1,000 bbl or less; however, the procedure applies to all tanks, including those tanks with capacities greater than 1,000 bbl.
III. Requirements—D. Oil measurement by Positive Displacement Metering System.	43 CFR 3174.7 and 3174.8 .....	This proposed rule would require LACT systems to use electronic temperature averaging devices, and would prohibit the use of automatic temperature/gravity compensators. This proposed rule would require operators, within 24 hours, to notify the AO of any LACT system failures or equipment malfunctions, or other failures that could adversely affect oil measurement.
None .....	43 CFR 3174.9 and 3174.10 .....	This proposed rule would allow the use of CMSs for the measurement of oil and would add sections on CMS component and operating requirements.
III. Requirements—D. 3. Sales Meter Proving Requirements.	43 CFR 3174.11 .....	This proposal would change the oil volume proving requirements to require proving for every 50,000 bbl of volume that flows through the meter, or quarterly, whichever occurs first. The proposed rule would also establish requirements for the sizing of pipe provers, define the conditions under which proving must occur, and include verification of pressure and temperature measurement devices.
None .....	43 CFR 3174.12 .....	This proposed rule would require oil measurement tickets and specify minimum information requirements contained on the tickets. These requirements appear in the current Onshore Oil and Gas Order No. 3 (Order 3). Three new requirements would be added. Operators would be required to: (1) Include BLM-approved Facility Measurement Point (FMP) numbers on each measurement ticket; (2) Notify the AO within 2 days if the operator disagrees with the tank gauger’s measurement; and (3) Fill out measurement tickets for LACT systems and CMSs. The proposed rule would allow the use of electronic measurement tickets.

Order 4	Proposed rule	Substantive changes
III. Requirements—E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer, 1. and 2.	43 CFR 3174.13 .....	This proposed rule would remove language concerning measurement on and off the lease, which would be moved to the new proposed rule to replace Order 3. See proposed subpart 3173 (80 FR 40768, July 13, 2015). It also proposes that all alternate measurement system approval requests be reviewed by the PMT.
F. Determination of Oil Volumes by Methods Other Than Measurement.	43 CFR 3174.14 .....	The proposed rule would retain the requirements of Order 4 with respect to determining volumes of oil that cannot be measured as a result of spillage or leakage.
None .....	43 CFR 3174.15 .....	This proposed rule would add six new violations as follows, each of which would be subject to an immediate assessment of \$1,000: (1) Any required FMP LACT system components missing or nonfunctioning; (2) Failure to notify the AO within 24 hours of any FMP LACT system failure or equipment malfunction resulting in use of an unapproved alternate method of measurement; (3) Any required FMP CMS components missing or nonfunctioning; (4) Failure to notify the AO within 7 days of any changes to any CMS internal calibration factors; (5) Failure to meet the proving frequency requirements for an FMP; and (6) Failure to obtain a written variance approval before use of any oil measurement method other than manual tank gauging, LACT system, or CMS at an FMP.
IV. Variances from Minimum Standards.	No section in this proposed rule ...	See proposed new 43 CFR 3170.6 (80 FR 40778, July 13, 2015).

**IV. Section-by-Section Analysis**

This proposed rule would be codified primarily in a new 43 CFR subpart 3174 within a new part 3170. The BLM is concurrently preparing a separate proposed rule to update and replace Onshore Oil and Gas Order No. 5 (Order 5) (gas measurement) that the BLM intends to codify at a new 43 CFR subpart 3175. The BLM has previously published a separate proposed rule to replace Onshore Oil and Gas Order No. 3 (Order 3) (site security), which the BLM would codify at a new 43 CFR subpart 3173. Given this structure, it is the BLM’s intent that a new 43 CFR subpart 3170 would contain definitions of certain terms common to more than one of the proposed rules, as well as other provisions common to all rules, *i.e.*, provisions prohibiting by-pass of and tampering with meters; procedures for obtaining variances from the requirements of a particular rule; requirements for recordkeeping, records retention, and submission; and administrative appeal procedures. Subpart 3170 was proposed previously in conjunction with proposed subpart 3173 (80 FR 40768, July 13, 2015). All of the definitions and substantive provisions of proposed subpart 3170 would apply to the new subpart 3174 proposed here.

Certain provisions of this proposed rule would result in amendments to related provisions in the onshore oil and gas operations rules in 43 CFR part 3160. The proposed amendments to those provisions are discussed below.

**Subpart 3174 and Related Provisions**

*§ 3174.1 Definitions and Acronyms*

Section 3174.1 would define the terms and acronyms that are used in proposed subpart 3174. With the proposal to integrate new technology into the rule, such as the use of CMSs, related definitions would need to be added to the proposed regulations. Defining these terms and acronyms is necessary to ensure consistent interpretation and implementation of this proposed rule. As such, the proposed rule would add a definition of “Coriolis measurement system,” and define the primary components of a CMS. Related definitions would be added to establish the minimum required components of an event log, a configuration log, and a quantity transactions record. Definitions for technical terms, such as “opaque oil,” “RTD,” and “turbulent flow,” would be added because they may not be readily understood. Definitions of many of the terms already defined in Order 4 are also included in this proposed rule.

*§ 3174.2 General Requirements*

Paragraphs (a) through (d) of proposed § 3174.2 refer the reader to other sections in this proposed rule that contain the proposed requirements for oil storage tanks, on-lease oil measurement, commingling, and FMP numbers, respectively.

Proposed § 3174.2(e) would specify that all equipment used to measure the volume of oil for royalty purposes installed after the effective date of this subpart must comply with the requirements of this subpart. Operators would have 180 days after the effective

date of the final rule to bring existing equipment used to measure oil for royalty purposes installed before the effective date of the final rule into compliance with the proposed requirements of this subpart. With respect to the proposed compliance phase-in period of 180-days for existing equipment, the BLM would be interested in receiving comments and information about the lead-time required to order, install, and configure any new equipment that might be required at existing facilities as result of the proposed rule’s requirements.

Proposed § 3174.2(f) would exempt meters used for allocation measurement as part of a commingling approval granted under a new 43 CFR 3173.14 from complying with the requirements of this subpart. The new 43 CFR 3173.14 has been proposed under a separate rulemaking that would update and replace Order 3 (site security). In the restricted circumstances under which commingling would be approved under that proposed provision, it would no longer be necessary for allocation meters to meet the standards of either the current or proposed oil measurement and gas measurement rules.

*§ 3174.3 Specific Measurement Performance Requirements*

Proposed § 3174.3(a)(1) would set overall performance standards for measuring oil produced from Federal and Indian leases, regardless of the type of meters or measurement method used. Order 4 has no explicit statement of performance standards. The BLM would apply the performance standards to individual LACT meters or CMSs as part of the compliance process. This would

accommodate the range of meters and related equipment available to operators. The performance goals could result in operating limitations (such as a minimum flow rate through the meter); however, they could also allow flexibility for various operational functions (for example, the range of error between the meter in the field and the meter prover between successive runs during a proving). To facilitate this, the BLM is considering the development of an uncertainty calculator similar to the BLM's gas uncertainty calculator currently in use. The performance standards would also provide specific objective criteria with which the BLM could analyze variance requests for meters, measurement systems, and procedures not specifically addressed in the proposed rule.

Proposed § 3174.3(a)(1) would establish the maximum allowable volume measurement uncertainty. Uncertainty indicates the risk of measurement error. The BLM believes that the measurement uncertainties discussed below are reasonable, based on equipment capabilities, industry standard practices and procedures, and BLM field experience. Please specifically comment on whether other volume measurement uncertainties would be more appropriate for the range of meters and related equipment currently in use on Federal lands.

For FMPs measuring more than 10,000 bbl per month, the maximum proposed overall volume measurement uncertainty would be  $\pm 0.35$  percent. The BLM derived the proposed  $\pm 0.35$  percent uncertainty by calculating the implied uncertainty for a PD meter meeting the minimum requirements of Order 4. The implied uncertainty calculation includes the effects of the maximum allowable meter-factor drift between meter provings; the minimum standard for repeatability during a proving; the accuracy of the pressure and temperature transducers used to determine the correction for pressure on liquids (CPL) and the correction for temperature on liquids (CTL) factors; and the uncertainty of the CPL and CTL calculation. Based on this analysis, the overall uncertainty of a PD meter complying with Order 4 is  $\pm 0.32$  percent. Therefore, the BLM believes a  $\pm 0.35$  percent uncertainty requirement is reasonable for both PD meters and CMS measurement at a 10,000-bbl-per-month threshold to ensure accurate royalty measurement for a high monthly volume.

For FMPs measuring more than 100 bbl per month and less than or equal to 10,000 bbl per month, the maximum proposed overall measurement

uncertainty would be  $\pm 1.0$  percent. The proposed  $\pm 1.0$  percent is based on the uncertainty calculations of manual tank gauging meeting the minimum requirements of Order 4, which show that uncertainty is dependent on the volume removed. The proposed  $\pm 1.0$  percent is the average calculated uncertainty for a typical 100–200 bbl truck load-out.

Based on comments from public meetings held on April 24 and 25, 2013 (discussed below), the BLM is proposing a third tier for FMPs measuring less than 100 bbl per month. The proposed overall allowed uncertainty for the third tier would be  $\pm 2.5$  percent, which would still provide minimal risk of royalty loss, while allowing the maximum ultimate recovery from low-volume leases. The proposed  $\pm 2.5$  percent is the highest calculated uncertainty for manual tank gauging meeting the minimum requirements of Order 4.

Under proposed § 3174.3(a)(2), only a BLM State Director could grant an exception to the prescribed uncertainty levels. Granting an exception would require a showing that meeting the required uncertainty level would involve extraordinary cost or unacceptable adverse environmental effects, and the written concurrence of the BLM Director.

Proposed § 3174.3(b) would establish the degree of allowable bias in a measurement. Bias, unlike uncertainty, results in measurement error, whereas uncertainty only indicates the risk of measurement error. For all FMPs, no statistically significant bias would be allowed. (The BLM acknowledges that it is virtually impossible to completely remove all bias in measurement.) When a measurement device is tested against a laboratory device or prover, there is often slight disagreement, or apparent bias, between the two. However, both the measurement device being tested and the laboratory device or prover have some inherent level of uncertainty. If the disagreement between the measurement device being tested and the laboratory device or prover is less than the uncertainty of the two devices combined, then it is not possible to distinguish apparent bias in the measurement device being tested from inherent uncertainty in the devices (sometimes referred to as “noise” in the data). Therefore, the BLM does not consider apparent bias that is less than the uncertainty of the two devices combined to be statistically significant.

Proposed § 3174.3(c) would require that all measurement equipment allow for independent verification by the BLM. As with the bias requirements,

Order 4 only allows measurement methods that can be independently verified by the BLM and, therefore, this requirement would not change existing requirements. The verifiability requirement in this section would prohibit the use of measurement equipment that does not allow for independent verification. For example, if a new meter were to be developed that did not record the raw data used to derive a volume, that meter could not be used at an FMP, because without the raw data the BLM would be unable to independently verify the volume. Similarly, if a meter were to be developed that used proprietary methods that precluded the ability to recalculate volumes, its use would also be prohibited.

#### § 3174.4 Incorporation by Reference

The proposed rule would incorporate a number of industry standards, either in whole or in part, without republishing the standards in their entirety in the CFR, a practice known as incorporation by reference. These standards were developed through a consensus process, facilitated by the API and the ASTM, with input from the oil and gas industry. The BLM has reviewed these standards and determined that they would achieve the intent of 43 CFR 3174.5 through 3174.13 of this proposed rule. The legal effect of incorporation by reference is that the incorporated standards become regulatory requirements. This proposed rule would incorporate the current versions of the standards listed.

Some of the standards referenced in this section would be incorporated in their entirety. For other standards, the BLM would incorporate only those sections that are enforceable, meet the intent of § 3174.3 of this proposed rule, or do not need further clarification.

The proposed incorporation of industry standards follows the requirements found in 1 CFR part 51. Industry standards proposed for incorporation are eligible under 1 CFR 51.7 because, among other things, they will substantially reduce the volume of material published in the **Federal Register**; the standards are published, bound, numbered, and organized; and the standards proposed for incorporation are readily available to the general public through purchase from the standards organization or through inspection at any BLM office with oil and gas administrative responsibilities. 1 CFR 51.7(a)(3) and (a)(4). The language of incorporation in proposed 43 CFR 3174.4 meets the requirements of 1 CFR 51.9. Where appropriate, the BLM proposes to

incorporate an industry standard governing a particular process by reference and then impose requirements that are in addition to and/or modify the requirements imposed by that standard (e.g., the BLM sets a specific value for a variable where the industry standard proposed a range of values or options).

All of the API and ASTM materials for which the BLM is seeking incorporation by reference are available for inspection at the BLM, Division of Fluid Minerals; 20 M Street SE., Washington, DC 20003; 202-912-7162; and at all BLM offices with jurisdiction over oil and gas activities. The API materials are available for inspection at the API, 1220 L Street NW., Washington, DC 20005; telephone 202-682-8000; API also offers free, read-only access to some of the material at [www.publications.api.org](http://www.publications.api.org). The ASTM materials are available for inspection at the ASTM, 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428; telephone 1-877-909-2786; [www.astm.org/Standard/index.shtml](http://www.astm.org/Standard/index.shtml); ASTM also offers free read-only access to the material at [www.astm.org/READINGLIBRARY/](http://www.astm.org/READINGLIBRARY/).

The following describes the API and ASTM standards that the BLM proposes to incorporate by reference into this rule:

API Manual of Petroleum Measurement Standards (MPMS) Chapter 2, Section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Tank Strapping Method, 1st Ed., February 1995, Reaffirmed February 2012 ("API 2.2A"). This standard describes the procedures for calibrating upright cylindrical tanks used for storing oil.

API MPMS Chapter 3, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, 3rd Ed., August 2013 ("API 3.1A"). This standard describes the following: (a) The procedures for manually gauging the liquid level of petroleum and petroleum products in non-pressure fixed roof tanks; (b) Procedures for manually gauging the level of free water that may be found with the petroleum or petroleum products; (c) Methods used to verify the length of gauge tapes under field conditions and the influence of bob weights and temperature on the gauge tape length; and (d) Influences that may affect the position of gauging reference point (either the datum plate or the reference gauge point).

API MPMS Chapter 4, Section 1, Introduction, 3rd Ed., February 2005, Reaffirmed June 2014 ("API 4.1"). Section 1 is a general introduction to the subject of proving meters. API MPMS

Chapter 4, Section 2, Displacement Provers, 3rd Ed., September 2003, Reaffirmed March 2011 ("API 4.2," and "API 4.2, Eq. 12"). This standard outlines the essential elements of meter provers that do, and also do not, accumulate a minimum of 10,000 whole meter pulses between detector switches, and provides design and installation details for the types of displacement provers that are currently in use. The provers discussed in this chapter are designed for proving measurement devices under dynamic operating conditions with single-phase liquid hydrocarbons.

API MPMS Chapter 4, Section 5, Master-Meter Provers, 3rd Ed., November 2011 ("API 4.5"). This standard covers the use of displacement and Coriolis meters as master meters. The requirements in this standard are for single-phase liquid hydrocarbons.

API MPMS Chapter 4, Section 6, Pulse Interpolation, 2nd Ed., May 1999, Reaffirmed October 2013 ("API 4.6"). This standard describes how the double-chronometry method of pulse interpolation, including system operating requirements and equipment testing, is applied to meter proving.

API MPMS Chapter 4, Section 9, Part 2, Methods of Calibration for Displacement and Volumetric Tank Provers, Determination of the Volume of Displacement and Tank Provers by the Waterdraw Method of Calibration, 1st Ed., December, 2005, Reaffirmed September 2010 ("API 4.9.2"). This standard covers all of the procedures required to determine the field data necessary to calculate a Base Prover Volume of Displacement Provers by the Waterdraw Method of Calibration.

API MPMS Chapter 5, Section 6, Measurement of oil by Coriolis Meters, 1st Ed., October 2002, Reaffirmed November 2013 ("API 5.6," "API 5.6.3.2(e)," "API 5.6.8.3," "API 5.6.9.1.2.1," and "API 5.6, Eq. 2"). This standard is applicable to custody-transfer applications for liquid hydrocarbons. Topics covered are API standards used in the operation of Coriolis meters, proving and verification using volume-based methods, installation, operation, and maintenance.

API MPMS Chapter 6, Section 1, Lease Automatic Custody Transfer (LACT) Systems, 2nd Ed., May 1991, Reaffirmed May 2012 ("API 6.1"). This standard describes the design, installation, calibration, and operation of a LACT system.

API MPMS Chapter 7, Temperature Determination, 1st Ed., June 2001, Reaffirmed February 2012 ("API 7" and "API 7.1"). This standard describes the

methods, equipment, and procedures for determining the temperature of petroleum and petroleum products under both static and dynamic conditions.

API MPMS Chapter 8, Section 1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, 4th Ed., October 2013, ("API 8.1"). This standard covers procedures and equipment for manually obtaining samples of liquid petroleum and petroleum products from the sample point into the primary containers.

API MPMS Chapter 9, Section 3, Standard Test Method for Density, Relative Density, and API Gravity of Crude Petroleum and Liquid Petroleum Products by Thermohydrometer Method, 3rd Ed., December 2012 ("API 9.3"). This standard covers the determination, using a glass thermohydrometer in conjunction with a series of calculations, of the density, relative density, or API gravity of crude petroleum, petroleum products, or mixtures of petroleum and nonpetroleum products normally handled as liquids and having a Reid vapor pressures of 101.325 kPa (14.696 psi) or less.

API MPMS Chapter 10 Section 4, Determination of Water and/or Sediment in Crude Oil by the Centrifuge Method (Field Procedure), 4th Ed., October 2013 ("API 10.4," "10.4.9," and "10.4.9.2"). This standard describes the field centrifuge method for determining both water and sediment, or sediment only, in crude oil.

API MPMS Chapter 11, Section 1, Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products and Lubricating Oils, 2nd Ed., May 2004, including Addendum 1, September 2007, Reaffirmed August 2013 ("API 11.1"). This standard provides the algorithm and implementation procedure for the correction of temperature and pressure effects on density and volume of liquid hydrocarbons, which fall within the categories of crude oil.

API MPMS Chapter 12, Section 2, Part 1, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, 2nd Ed., May 1995, Reaffirmed March 2014 ("API 12.2.1"). This standard provides standardized calculation methods for the quantification of liquids and the determination of base prover volumes under defined conditions. The standard specifies the equations for computing correction factors, rules for rounding, calculational sequence, and discrimination levels to be employed in the calculations.



API MPMS Chapter 12, Section 2, Part 3, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Proving Report, 1st Ed., October 1998, Reaffirmed March 2009 (“API 12.2.3”). This standard provides standardized calculation methods for the determination of meter factors under defined conditions. The criteria contained here will allow different entities using various computer languages on different computer hardware (or by manual calculations) to arrive at identical results using the same standardized input data. This document also specifies the equations for computing correction factors, including the calculation sequence, discrimination levels, and rules for rounding to be employed in the calculations.

API MPMS Chapter 12, Section 2, Part 4, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Calculation of Base Prover Volumes by the Waterdraw Method, 1st Ed., December, 1997, Reaffirmed March 2009 (“API 12.2.4”). This standard provides standardized calculation methods for the quantification of liquids and the determination of base prover volumes under defined conditions. The criteria contained in this document allows different individuals, using various computer languages on different computer hardware (or manual calculations), to arrive at identical results using the same standardized input data. This standard specifies the equations for computing correction factors, rules for rounding, the sequence of the calculations, and the discrimination levels of all numbers to be used in these calculations.

API MPMS Chapter 18, Section 1, Measurement Procedures for Crude Oil Gathered From Small Tanks by Truck, 2nd Ed., April 1997, Reaffirmed February 2012 (“API 18.1”). This standard describes the procedures, organized into a recommended sequence of steps, for manually determining the quantity and quality of crude oil being transferred under field conditions.

API MPMS Chapter 21, Section 2, Electronic Liquid Volume Measurement Using Positive Displacement and Turbine Meters, 1st Ed., June 1998, Reaffirmed August 2011 (“API 21.2,” “API 21.2.10,” “21.2.10.2,” “21.2.10.6,” and “API 21.2.9.2.13.2a”). This standard provides for the effective utilization of electronic liquid measurement systems for custody-transfer measurement of liquid hydrocarbons.

API Recommended Practice (RP) 12 R1, Setting, Maintenance, Inspection,

Operation and Repair of Tanks in Production Service, 5th Ed., August 1997, Reaffirmed April 2008 (“API RP 12 R1”). This recommended practice is a guide on new tank installations and maintenance of existing tanks. Specific provisions of this recommended practice are identified as requirements in this proposed rule.

API RP 2556, Correction Gauge Tables For Incrustation, 2nd Ed., August 1993, Reaffirmed August 2013 (“API RP 2556”). This recommended practice provides for correcting gauge tables for incrustation applied to tank capacity tables. The tables given in this recommended practice show the percent of error of measurement caused by varying thicknesses of uniform incrustation in tanks of various sizes.

ASTM D-1250, Table 5A, Generalized Crude Oils Correction of Observed Gravity to API Gravity at 60o F, September 1980 (“ASTM Table 5A”). Table 5A gives the values of API gravity at 60o F corresponding to an API hydrometer reading at observed temperatures other than 60o F.

#### *§§ 3174.5 and 3174.6 Oil Measurement by Manual Tank Gauging—Procedures*

Proposed § 3174.5(a) would provide that measurement by manual tank gauging must accurately compute the total net standard volume of oil withdrawn from a properly calibrated sales tank by following a proper sequence of activities outlined in § 3174.6.

Proposed § 3174.5(b) would include requirements that all oil storage tanks, hatches, connections, and other access points be vapor tight and that all venting occur through a pressure-vacuum relief valve placed in the vent line or in the connection with another tank. This requirement would minimize hydrocarbon gas lost to the atmosphere by ensuring that venting is done under controlled conditions through the pressure-vacuum relief valve primarily in response to changes in ambient temperature. This requirement would be added to eliminate confusion over the intent of the language in Order 4 in this area. This change would expressly state the required condition—vapor-tight with a pressure-vacuum integrity device. This section would further clarify that each storage tank be clearly identified by a unique number. Other existing requirements in Order 4 are included in this proposed section, namely, that each oil storage tank must be set and maintained level and must be equipped with a distinct gauging reference point.

Proposed § 3174.5(c) would retain the current Order 4 requirement that oil

storage tanks associated with an FMP that are measured by tank gauging be accurately calibrated, and would include additional specifics regarding calibration requirements. Proposed § 3174.5(c)(1) would specify that the tank capacity tables must be calculated by actual tank measurements, which would eliminate using general formulas, such as the formula created for calculating the volume of a typical 400 bbl tank using 1.67 bbl/inch. This proposed paragraph would specify that the volume be measured in barrels and change the incremental height measurement from the current ¼ inch to ⅜ inch when calculating the capacity tables. This change would match the gauging accuracy changes from the current Order 4 gauging of ¼ inch to the proposed ⅜ inch gauging accuracy, which would match the current industry standard.

Proposed § 3174.5 paragraph (c)(2) and (3) would retain the current Order 4 requirement that storage tanks associated with an FMP and measured by tank gauging be recalibrated if they are relocated, repaired, or the capacity is changed as a result of denting, damage, installation, removal of interior components, or other alterations. However, instead of the existing requirement that operators submit sales tank calibration charts upon request from the AO, they would be required to submit the charts to the AO within 30 days after calibration. This proposed change would ensure that BLM personnel use the latest charts when conducting inspections or audits.

Proposed § 3174.6(a) would list the proper sequence of activities for measuring oil by manual tank gauging along with the corresponding section reference. The BLM is proposing the sequence listed in the API Manual of Petroleum Measurement Standards (MPMS) Chapter 18.1 for all size tanks that would be used as FMPs. API MPMS 18.1 specifically covers tank sizes of 1,000 bbl or less, but the most recent edition of the API standards referenced in MPMS 18.1 has removed many of the procedural differences between the tank sizes, making this sequence acceptable for tanks of all sizes.

Proposed § 3174.6(b)(1) would retain the current Order 4 requirement that tanks must be isolated for 30 minutes to allow for tank contents to settle before proceeding with tank gauging operations.

Proposed § 3174.6(b)(2) would change the requirements for determining the temperature of oil in a sales tank that is used as an FMP. The minimum thermometer immersion times listed in API MPMS Chapter 18.1 and in API

MPMS Chapter 7 would be used, which would vary depending on the oil API oil gravity, whether the thermometer is stationary or in motion, and whether the thermometer was electronic or mechanical (wood-back).

Proposed § 3174.6 paragraphs (b)(3) through (9) would follow API MPMS chapter 18.1, the industry standard, in prescribing the procedure for conducting the step-by-step process of manual tank gauging and the proper equipment usage. This is a change from Order 4, which lists the equipment required, but not the proper sequence of processes. The gauging measurement accuracy would be changed from the current Order 4 requirement of ¼ inch gauging accuracy to ⅛ inch gauging accuracy. This change is proposed to match industry standards that now indicate gauging should be accurate to within ⅛-inch.

Proposed § 3174.6(b)(10) would list the proper documentation of a measurement ticket, to provide for consistent documentation and ensure that the operator uses the correct reference material.

#### § 3174.7 LACT System—General Requirements

Proposed § 3174.7 paragraphs (a) through (c) would refer to other sections of this proposed rule for construction and operation requirements for LACT systems, proving requirements, and measurement tickets, and would provide a table of the LACT system requirements and corresponding section references.

Proposed § 3174.7 paragraphs (d) through (f) would retain current requirements that all components of a LACT system be accessible for inspection by the AO and that the AO must be notified of all LACT system failures that may have resulted in measurement error. The proposed rule would modify this notification requirement to put a 24-hour time limit on the notification. This would be added to ensure that the BLM is able to verify that all oil volumes are properly derived and accounted for, and verify any alternative measurement method, meter repairs, or meter provings. This proposed rule would retain the current Order 4 requirement that all oil samples taken from the LACT system samplers for determination of temperature, oil gravity, and sediment and water (S&W) content must meet the same minimum standards set in the manual tank gauging sections.

Proposed § 3174.7(g) would prohibit the use of Automatic Temperature Compensators (ATCs) and Automatic Temperature and Gravity Compensators

(ATGs) on LACT systems. Order 4 requires these devices. Instead, the proposed rule would require the use of an electronic temperature averaging device. ATCs and ATGs are designed to automatically adjust the LACT totalizer reading to compensate for changes in temperature and, in some cases, for changes in oil gravity as well. Unfortunately, the accuracy or operation of these devices cannot be verified in the field and there is no record of the original, uncorrected, totalizer readings. Therefore, the BLM believes that the use of these devices inhibits its ability to verify the reported volumes because there is no source record generated and they degrade the accuracy of measurement. Because there are relatively few LACT systems that still employ ATCs or ATGs, the BLM does not believe this requirement would result in significant costs to the industry.

#### § 3174.8 LACT System—Components and Operating Requirements

Proposed § 3174.8, with the exception of proposed § 3174.8(b)(11), would contain the same LACT system components and operating requirements as Order 4.

Proposed § 3174.8(b)(11) would establish requirements for electronic temperature averaging devices, using API standards where available. Order 4 does not address electronic temperature averaging devices.

#### §§ 3174.9 and 3174.10 Coriolis Measurement Systems

Proposed §§ 3174.9 and 3174.10 would create new sections for CMSs, which are not addressed in Order 4. Order 4 allows only for the use of PD meters with LACT systems. The proposal to allow the use of Coriolis meters in this rule is based on technological advancements that provide for measurement accuracy that meets or exceeds the overall performance standards in proposed § 3174.3. Field and laboratory testing of the Coriolis meter has proven it to be a reliable, accurate meter when installed, configured, and operated correctly.

Proposed § 3174.9 paragraphs (a) through (c) would specify that CMSs must consist of components that have been reviewed by the PMT, approved by the BLM, and identified and described on the nationwide approval list at [www.blm.gov](http://www.blm.gov). Installations meeting the proposed standards described in this section, § 3174.10, and API 5.6 (incorporated by reference) would not require additional BLM approval. CMS proving must meet the proving requirements described in proposed

§ 3174.11 and measurement tickets would be required, as described in proposed § 3174.12(b).

Proposed § 3174.9(d) would provide a table of the requirements, section reference, and applicable API standards under which oil measurement under a CMS must follow.

Proposed § 3174.9(e) would list the components in order from upstream to downstream of a CMS used at an FMP. The requirements for a CMS would generally parallel the requirements for LACT systems.

Proposed § 3174.9(e)(1) through (4) would parallel the LACT system equipment requirements and are needed to ensure accurate and proper functioning of a CMS. A charge pump may be necessary to maintain required pressure and flow rate to achieve uncertainty levels proposed under § 3174.3(a). A block valve upstream of the meter would be required for zero value verification. An air/vapor eliminator would be required upstream of the meter.

Proposed § 3174.9(e)(5) through (6) would set accuracy thresholds for temperature and pressure measurement devices that are part of a CMS installed downstream of the meter, but upstream of the proving connections. These devices are needed to calculate the CPL and CTL factors. The uncertainties of these devices would be used to ensure the CMS meets or exceeds the uncertainty levels that would be required by proposed § 3174.3(a). Under proposed § 3174.9(e)(7), a density measurement verification point would follow the temperature and pressure measurement devices.

Proposed § 3174.9(e)(8) would not require a composite sampling system if the S&W content is not used to determine net oil volume. Measurement using a PD meter requires a composite sampling system and determines net oil volume by deducting S&W content. In contrast, Coriolis meters do not necessarily use S&W content in determining net oil volume. In practice, Coriolis meters may be used at the outlet of a separator. It may not be feasible to use a composite sampling system at the outlet of a separator due to high separator pressure, thus effectively precluding the use of a PD meter at that location. This is because the lack of a composite sampling system would eliminate the ability to determine S&W content through the traditional centrifuge procedures proposed in § 3174.6(b)(6). Without the ability to accurately determine S&W content, proposed § 3174.9(e)(9) would require operators to report the S&W content as zero, should they choose to use a CMS

at the outlet of a separator. The BLM may consider a variance to use other methods to determine S&W content should acceptable technology or processes be proposed in the future. However, the BLM would only approve an alternate method of S&W determination if resulting overall measurement uncertainty was within the limits proposed in § 3174.3(a).

Proposed § 3174.9 paragraphs (e)(9), (10), and (11) would parallel the meter proving connections, back-pressure valve, and check valve requirements for LACT systems.

Proposed § 3174.10(a) would establish a minimum pulse resolution (*i.e.*, the increment of total volume that can be individually recognized, measured in pulse per unit volume) of 8,400 pulses per barrel for CMSs. Because this resolution is standard for PD meters, and is accepted by the BLM, the same standard would apply to CMSs. The BLM originally considered a minimum pulse resolution of 10,000 pulses per barrel; however, this was reduced to 8,400 pulses per barrel based on comments received in response to the public meeting held on April 24 and 25, 2013 (see comments at the end of the discussion on major proposed changes).

Proposed § 3174.10 paragraphs (b), (c), (d), and (e) would establish minimum standards for the specifications for a specific make, model, and size of a Coriolis meter. The specifications would allow the BLM to determine the overall measurement uncertainty of the CMS to ensure that it meets the requirements of proposed § 3174.3(a). The specifications would also help ensure that the meters are properly installed, require that the BLM be notified of any changes to any of the internal calibration factors, and require a non-resettable totalizer for registered volume.

Proposed § 3174.10(f) would require verification of the meter zero reading before proving the meter or any time the AO requests it. This would be accomplished by shutting off the flow and observing the flow rate indicated by the CMS. If the indicated flow rate is within the manufacturer's specifications for zero stability, then the zero error would be accounted for in the uncertainty calculation and no adjustments would be required. However, if the indicated flow rate was outside the manufacturer's specification for zero stability, the meter's zero reading would be required to be adjusted.

Proposed § 3174.10(g) would establish the method by which a CMS determines net oil volume on which royalty is due. Most CMSs include advanced software

features that can automatically calculate net oil volume. However, in order to allow the BLM to independently recalculate net oil volume, the proposed provision would establish a calculation method similar to that used for PD meters. This would allow for manual recalculation and verification by the BLM, without relying on algorithms internal to the CMS.

Proposed § 3174.10(h) would allow the API oil gravity to be determined by using one of two methods: (a) Directly from the average density measured by the Coriolis meter; or (b) A sample taken from a composite sample container. This would accommodate situations in which it is not feasible to install a composite sampling system due to economic or operating constraints. The BLM recognizes that high amounts of water in the oil would affect the average density determined by the Coriolis meter, which could in turn affect the value of the oil used to determine royalty due. However, because the BLM would not allow an S&W adjustment in situations where a composite sampling system was not used, we believe the increase in the measured and reported volume on which royalty is due would offset any value reductions due to the water content. The operator would determine whether to install a composite sampling system. The BLM specifically seeks comments on this proposed approach.

Proposed § 3174.10 paragraphs (i), (j), and (k) would establish minimum requirements for the information that the operator would need to maintain on-site, information that must be retained for an audit trail, and requirements for protecting the retained data in the CMS unit's memory. This information is necessary for the BLM to ensure compliance with these regulations and conduct production audits.

#### § 3174.11 Meter Proving Requirements

Proposed § 3174.11 paragraphs (a) and (b) would establish that a meter would not be eligible to be used for royalty determination unless it is proven by the standards detailed in this proposed rule. A summary table is provided of the minimum standards for proving FMP meters and their applicable section reference.

Proposed § 3174.11(c) would establish the acceptable types of provers that could be used to prove a LACT or CMS.

Proposed § 3174.11 paragraphs (c)(1), (2), and (3) would describe and detail the requirements for acceptable meter provers, which include the master meters and displacement provers that are currently allowed under Order 4. (A meter prover is a device that verifies a

meter's accuracy.) Coriolis master meters have been added, which were not addressed in Order 4. The BLM believes that Coriolis technology has advanced to the point where Coriolis meters can meet the accuracy requirements required for master meters. The proposed rule would not allow tank-provers to be used as an acceptable device for proving a meter. According to API standards, tank-provers are not recommended for viscous liquids, which include most crude oil. Because there are few tank-provers currently in use on Federal and Indian leases, this requirement is not expected to result in a significant cost to industry.

Proposed § 3174.11(c)(4) would establish displacement prover sizing standards. These standards would ensure that fluid velocity within the prover is within the limits recommended by API MPMS Chapter 4.2.4.3.4. Displacement velocities that are too low (prover is oversized) can result in unacceptable pressure and flow-rate changes and higher uncertainty due to possible displacement device "chatter." Displacement velocities that are too high (prover is undersized) can cause damage to the components of the prover.

Proposed § 3174.11(d)(1) would expand on the current Order 4 requirement to prove the meter under "normal" operating conditions. This section would define limits of flow rate, pressure, and API oil gravity that must exist during the proving to be considered the "normal" operating condition. The BLM proposes to add this requirement because the BLM realizes that the meter factor can change with changes in these parameters. For example, a meter factor determined at an abnormally low flow rate may not represent the meter factor at a higher flow rate where the meter normally operates. This proposed section would also require a multi-point meter proving if the LACT or CMS were subject to highly variable conditions. The multi-point meter proving would establish three meter factors; one at the low end of the normal operating range, one at the midpoint, and one at the high end. An appropriate meter factor would then be applied according to proposed § 3174.11(d)(6).

Proposed § 3174.11 paragraphs (d)(2) through (5) would provide the details for minimum proving requirements, such as requiring a minimum proving pulse resolution of 10,000 pulses per proving run or requiring the use of pulse interpolation, if this cannot be met, and setting a requirement to continue

repeating proving runs until the calculated meter factor from five consecutive runs is within a 0.05 percent tolerance between the highest and lowest value. The new meter factor would be the arithmetic average of the five meter factors from the five consecutive proving runs. This section also would require the meter factors to be calculated following the sequence described in API MPMS Chapter 12.2.3.

Proposed § 3174.11(d)(6) would allow two methods of incorporating multiple meter factors that would be required under proposed § 3174.11(d)(1)(iv). The first method would be to combine the meter factors into a single arithmetic average. The second method would be to curve-fit the meter factors and incorporate a real-time dynamic meter factor into the flow computer (this would apply primarily to CMS). Neither multi-point provings nor multi-point meter factors are discussed in Order 4. Please specifically comment on proposed § 3174.11 paragraphs (d)(1)(iv) and (d)(6) regarding how to handle meter factor determinations when the LACT or CMS experiences highly variable flow rates, pressures, or API oil gravities.

Proposed § 3174.11 paragraphs (d)(7) and (8) would set the minimum and maximum values that would be allowed for a meter factor, both between meter provings and for initial meter factors for newly installed or repaired meters. These meter factor ranges are not changed from Order 4.

Proposed § 3174.11(d)(9) would allow back-pressure valve adjustment after proving only within the normal operating fluid flow rate and fluid pressure as prescribed in proposed § 3174.11(d)(1). If the back-pressure valve is adjusted after proving, the “as left” fluid flow rate and fluid pressure would have to be documented on the proving report. The BLM is proposing this requirement because the BLM has observed this practice frequently in certain areas of the country and has observed that a change in back-pressure outside the proving conditions does, in some cases, affect the meter factor and results in operators reporting incorrect volumes. Allowing back-pressure valve adjustment after proving would not be intended as a means to circumvent the displacement prover minimum and maximum velocity requirements of proposed § 3174.11(c)(4). Order 4 has no specific requirements relating to the adjustment of the back-pressure valve after proving.

Proposed § 3174.11(d)(10) would set standards for the pressure used to calculate a CPL for a composite meter factor for LACTs. It would also prohibit

the use of a composite meter factor for Coriolis meters because they have the capability to use a true average pressure over the measurement ticket period in the calculation of an average CPL. The use of a composite meter factor is intended to make measurement tickets easier to complete because the CPL is already included in the meter factor. This is typically not an issue with a Coriolis meter because of the advanced capability of the flow computer to which it is connected.

Proposed § 3174.11(e) contains a new provision for meter-proving requirements that were previously located in the LACT section of Order 4. This change would consolidate in one place all meter-proving requirements for both LACTs and CMSs. The proposal would change FMP meter-proving requirements for operators who run large volumes of oil through their meters. Currently, an FMP meter must be proven at least quarterly, unless total throughput exceeds 100,000 bbl per month, in which case the meter must be proven monthly. This proposal would require operators to prove an FMP meter each time the volume flowing through the meter, as measured on the non-resettable totalizer, increases by 50,000 bbl, or quarterly, whichever occurs first. This change to meter provings would affect approximately 5 percent of existing LACT systems nationwide, yet would ensure that meter-factor changes are corrected before large volumes of production are measured incorrectly, which could have an adverse impact on Federal or Indian royalty determinations.

The proposed 50,000 bbl threshold was determined by performing a statistical analysis to determine the volume at which the cost of proving the meter could be equal to the amount of potential royalty underpayment or overpayment that could occur, due to the difference in meter factors. This section also proposes to expand the current Order 4 requirement from proving after repair to proving any time after the mechanical or electrical components of the meter have been opened, changed, repaired, removed, exchanged, or reprogrammed.

Proposed § 3174.11(f) would not change Order 4 requirements for excess meter factor deviation and the required actions if proving reflects a deviation in meter factor that exceeds  $\pm 0.0025$ .

Proposed § 3174.11 paragraphs (g) and (h) would require that the temperature and pressure devices used as part of a LACT or CMS be verified as part of every proving. These sections would establish standards for the verification

procedure and the test equipment used in the verification.

Proposed § 3174.11(i) would require verification of the density measurement function of the Coriolis meter under API MPMS Chapter 5.6.9.1.2.1 if measured density is used to determine API oil gravity (instead of a thermohydrometer, which is generally required under proposed § 3174.6(b)(4)). This would provide an independent verification that the Coriolis meter's density determination function is within the accuracy specifications for that meter.

Proposed § 3174.11(j) would prescribe meter-proving reporting requirements. This section would provide additional requirements for data that would need to be included on the meter-proving report beyond what is required under Order 4. One change would require operators to list the BLM-assigned FMP numbers on each proving report. Proposed § 3174.11 includes requirements for verification of the temperature average or RTD, verification of the pressure transducer, and density verification, as applicable, as well as any “as left” conditions after adjustment of the back-pressure valve that operators also would have to document on the proving report.

#### § 3174.12 Measurement Tickets

Proposed § 3174.12 would specify the measurement ticket (run ticket) requirements that are currently in Order 3. The BLM believes that measurement ticket requirements are better suited to this proposed rule than to the rule that the BLM has proposed separately to replace Order 3, because this proposed rule specifies the requirements for the data that is recorded on oil measurement tickets. This section details the specific data requirements for measurement tickets based on which method of oil measurement is used, *i.e.*, manual tank gauging, LACT system, or CMS.

This rule proposes five changes to Order 3's current measurement-ticket requirements. One of those changes would require operators to list the BLM-assigned FMP numbers on each measurement ticket. This is to incorporate the new approval requirement for assigned FMPs included in the separately published proposed rule to replace Order 3. The second change would require operators to notify the BLM whenever they disagree with data documented on a measurement ticket. This is to allow the BLM to investigate the alleged discrepancy and potential impacts on Federal or Indian royalty determinations. The third change would require the operator, purchaser, or

transporter, as appropriate, to fill out measurement tickets whenever a LACT system or CMS is proven and at least monthly. This would provide an audit trail for oil measured through a LACT system. The fourth change would allow the submission of electronic run tickets in lieu of paper run tickets. The fifth and final change would require the resetting of totalizers (accumulators) used to determine average pressure and average temperature whenever a measurement ticket is closed. This would ensure that the averages used for the calculation of CPL, CTL, and density only reflect the data measured and recorded since the opening of the measurement ticket.

#### *§ 3174.13 Oil Measurement by Other Methods*

Proposed § 3174.13(a) would provide that using any method of oil measurement other than manual tank gauging, LACT system, or CMS at an FMP would require BLM approval. Under proposed § 3174.13(b), the BLM would use the PMT as a central advisory body within the BLM to review and recommend approval of industry measurement technology not addressed in the proposed regulations. The PMT is made up of a panel of BLM employees who are oil and gas measurement experts.

The process outlined in proposed § 3174.13(b) for reviewing new equipment would allow the BLM to keep up with technology as it advances and approve its use without having to update its regulations. Under the proposed rule, if the PMT recommends, and the BLM approves, new equipment, the BLM would post the make, model, and range or software version on the BLM Web site [www.blm.gov](http://www.blm.gov) as being appropriate for use at an FMP for oil measurement going forward, *i.e.*, subsequent users of the technology would not have to go through the PMT process. The web posting identifying the equipment or technology would include, as appropriate, conditions of use.

The PMT would consider new measurement technologies on a case-by-case basis. Proposed § 3174.13(b) would identify the requirements for requesting approval of oil measurement by equipment other than equipment listed in this proposed rule. The BLM believes this process would be used as other technologies appear and their reliability is established. For example, the BLM considered other meters for inclusion in this proposed rule, such as turbine meters and ultrasonic meters; however, it ultimately decided not to include them in this rule because there is

insufficient testing to validate their accuracy and reliability under all operating conditions at this time.

Proposed § 3174.13(c) would expressly provide that the procedures for requesting and granting a variance under § 3170.6 could not be used as an avenue for approving new technology or equipment. An operator could obtain approval of alternative oil measurement equipment or methods only through review, recommendation, and approval by the PMT under proposed § 3174.13.

#### *§ 3174.14 Determination of Oil Volumes by Methods Other Than Measurement*

Proposed § 3174.14 would not be a change from Order 4 requirements for determining volumes of oil that cannot be measured as a result of spillage or leakage. This section includes, but is not limited to, oil that is classified as slop or waste oil.

#### *§ 3174.15 Immediate Assessments*

Proposed § 3174.15 would identify certain acts of noncompliance that would be subject to immediate assessments. These actions subject to immediate assessment would be in addition to those identified in the current regulations at 43 CFR 3163.1(b). These assessments are not civil penalties and are separate from the civil penalties authorized in Section 109 of FOGRMA, 30 U.S.C. 1719.

Order 4 does not provide for immediate assessments in addition to those specified in 43 CFR 3163.1(b). However, the BLM continues to incur costs associated with correcting violations of lease terms and regulations. Accordingly, this proposed rule would add six new violations that would be subject to immediate assessments.

The authority for the BLM to impose these assessments was explained in the preamble to the final rule in which 43 CFR 3163.1 was originally promulgated in 1987:

The provisions providing assessments have been promulgated under the Secretary of the Interior's general authority, which is set out in Section 32 of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 189), and under the various other mineral leasing laws. Specific authority for the assessments is found in Section 31(a) of the Mineral Leasing Act (30 U.S.C. 188(a), which states, in part ". . . the lease may provide for resort to [sic] appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof." All Federal onshore and Indian oil and gas lessees must, by the specific terms of their leases which incorporate the regulations by reference, comply with all applicable laws and regulations.

Failure of the lessee to comply with the law and applicable regulations is a breach of the lease, and such failure may also be a breach of other specific lease terms and conditions. Under Section 31(a) of the Act and the terms of its leases, the BLM may go to court to seek cancellation of the lease in these circumstances. However, since at least 1942, the BLM (and formerly the Conservation Division, U.S. Geological Survey), has recognized that lease cancellation is too drastic a remedy, except in extreme cases. Therefore, a system of liquidated damages was established to set lesser remedies in lieu of lease cancellation. . . .

The BLM recognizes that liquidated damages cannot be punitive, but are a reasonable effort to compensate as fully as possible the offended party, in this case the lessor, for the damage resulting from a breach where a precise financial loss would be difficult to establish. This situation occurs when a lessee fails to comply with the operating and reporting requirements. The rules, therefore, establish uniform estimates for the damages sustained, depending on the nature of the breach.

53 FR 5384, 5387 (Feb. 20, 1987).

All of the immediate assessments under this proposed rule would be set at \$1,000 per violation. The BLM chose the \$1,000 figure because it generally approximates what it would cost the agency to identify and document each of the violations in question and verify remedial action and compliance.

#### *Change in Violation, Corrective Action, and Abatement Compliance*

This proposal would remove the enforcement, corrective action, and abatement period provisions of Order 4. In their place the BLM will develop an internal handbook for inspection and enforcement. The handbook would provide direction to BLM inspectors on how to classify a violation—as major or minor—what corrective action should be applied, and what timeframes for correction should be applied. The handbook will be in place by the effective date of the final rule. The proposed rule would take the approach that a violation's severity and corrective action timeframes should be decided on a case-by-case basis, using the definitions in the regulations. In deciding how severe a violation is, BLM inspectors would take into account whether a violation could result in "immediate, substantial, and adverse impacts on production accountability, or royalty income." (Definition of "major violation" 43 CFR 3160.0–5.) The AO would use the inspection and enforcement handbook in conjunction with 43 CFR subpart 3163, which provides for assessments and civil penalties when lessees and operators fail to remedy their violations in a

timely fashion, and for immediate assessments for certain other violations. The BLM is asking the public to comment specifically on this proposal for dealing with violations and corrective actions, particularly the approach that a violation's severity and corrective action timeframes should be decided on a case-by-case basis as opposed to establishing a fixed schedule for penalties or corrective actions.

None of the changes proposed in this rule would in any way diminish existing enforcement authority.

#### *Miscellaneous Changes to Other BLM Regulations in 43 CFR Part 3160*

Because this proposed rule would replace Order 4, the BLM is proposing two related changes to provisions in 43 CFR part 3160.

1. Section 3162.7–2, Measurement of oil, would be rewritten to reflect this proposed rule.

2. Section 3164.1, Onshore Oil and Gas Orders, the table would be revised to remove the reference to Order 4.

#### **V. Onshore Order Public Meetings, April 24–25, 2013**

On April 24 and 25, 2013, the BLM held a series of public meetings to discuss draft proposed revisions to Orders 3, 4, and 5. The meetings were webcast so tribal members, industry, and the public across the country could participate and ask questions either in person or over the Internet. Following the forum, the BLM opened a 36-day informal comment period, during which 13 comment letters were submitted. The following summarizes comments relating to Order 4:

1. *Electronic run tickets.* The BLM received numerous comments suggesting that electronic run tickets should be allowed in lieu of paper run tickets in order to accommodate paperless transactions. The BLM agrees with this comment and has added language to the proposed rule that would allow either paper or electronic records to be submitted, as long as certain requirements are met.

2. *Automatic tank gauging.* Several comments suggested that the BLM include automatic tank gauging as an accepted method of measuring oil sold from tanks because manual tank gauging requires opening the thief hatch, thereby releasing vapors into the atmosphere and exposing personnel to potentially dangerous vapor inhalation and fire hazards. The BLM considered adding provisions for automatic tank gauging in the proposed rule, including the incorporation by reference of API MPMS Chapter 3, Section 1B, "Standard Practice for Level Measurement of

Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging," Second Edition, June 2001. However, because the BLM has not seen any test data to confirm that their certainty, bias, and verifiability would meet the specific measurement performance objectives in proposed § 3174.3, or the accuracy standards for manual tank gauging in proposed § 3174.6(b)(5)(iii), the BLM did not include an automatic tank gauging provision in the proposed rule. In order to more fully understand the issues surrounding automatic tank gauging, the BLM is specifically asking the public to comment on this issue and provide test and field data demonstrating that automatic tank gauging would meet or exceed the proposed standards for manual tank gauging. If the BLM decides to include automatic tank gauging in the final rule, we may also consider approvals of specific types of equipment, including the makes, models, and sizes for which test data demonstrate their ability to meet the BLM's minimum standards.

3. *Modifications to existing LACTs.* One comment suggested that existing LACTs using automatic temperature/gravity compensators should be exempt from the proposed requirement that prohibits their use (proposed § 3174.7(g)). The BLM did not accept this suggestion because the estimated number of existing LACTs at FMPs that are equipped with automatic temperature/gravity compensators is small, but the potential for lost royalty could be significant. Absent further information to the contrary, the BLM believes that retrofitting these LACTs to conform to the proposed rule would not be a significant cost burden to operators.

4. *Coriolis Meters.* The BLM received one comment suggesting that the minimum pulse output for a Coriolis meter should be 8,400 pulses per barrel, not 10,000 pulses per barrel as presented at the meeting. The reason given is that, especially for high-volume meters, a pulse output of 10,000 pulses per barrel could exceed the maximum frequency output of the Coriolis meter or the frequency input for the tertiary device. The BLM agrees and has incorporated this suggestion into the proposed rule.

5. *CMS non-resettable totalizer.* The BLM received one comment objecting to the requirement for a non-resettable totalizer on a CMS for volume at metered conditions because the flow computer on a CMS will automatically calculate corrected volume using the meter factor, CPL, and CTL. While the BLM agrees that the calculation of corrected oil volume at standard conditions is possible with a flow

computer, the BLM requires access to the raw values going into the calculation for the purpose of independent verification. No changes to the proposed rule were made as a result of this comment.

6. *Uncertainty limits—high volume.* One commenter suggested that the proposed uncertainty limit for high-volume oil measurement of  $\pm 0.35$  percent (proposed § 3174.3(a)(1)) is too restrictive and, instead, should be based on published API documents. As explained above, the BLM believes that the  $\pm 0.35$  percent uncertainty in the proposed rule is reasonable, based on the BLM's experience with current equipment capabilities and industry standard practices and procedures. The BLM would consider changing this limit if specific data and uncertainty analyses were presented in the comments to this proposed rule that support the use of a different value.

7. *Uncertainty limits—low volume.* Another commenter suggested that the BLM should establish a third uncertainty tier of  $\pm 3$  percent for very low volumes of less than 500 barrels per month. The BLM agrees with the premise of this suggestion; however, upon review of uncertainty data, the BLM is proposing a third uncertainty tier of  $\pm 2.5$  percent for low volumes of less than 100 barrels per month. Data indicates that for a typical 400 bbl tank measuring by manual tank gauging, the uncertainty level increases as lower volumes of oil are removed, achieving the highest uncertainty level of  $\pm 2.5$  percent. Based on current information, the BLM believes that an uncertainty level of  $\pm 2.5$  percent and a less than 100 bbl per month threshold to be achievable without additional investment, and that attempts to achieve a lower uncertainty standard could become uneconomical for a typical low-volume operation. The BLM is interested in comments and data related to this proposed uncertainty level and volume threshold.

8. *Meter proving frequency.* The BLM received one comment objecting to the proposed requirement of a LACT/CMS proving frequency every 50,000 barrels or quarterly, whichever is more frequent. However, the objection was based on coordination with the pipeline company that may own the meter, not on the lack of need to perform the proving. Because no data was submitted to justify a different frequency, we did not change the proposed requirement. While the BLM would consider a different proving frequency, it would have to be justified by specific data submitted during the public comment period for this rule. The proposed rule

was not revised as a result of this comment.

9. *Allocation meters.* The BLM received one comment suggesting that the BLM should establish less rigid standards for allocation meters. The BLM did not change the proposed rule based on this comment. Inaccurate or unverifiable measurement will affect royalty payment regardless of whether the measurement is used to determine a percentage of a commingled measurement (allocation) or is used directly to determine royalty-bearing volume and quality. The proposed rule was not revised based on this comment.

10. *Vapor-tight tanks.* The BLM received one comment objecting to the cost of maintaining vapor-tight tanks. Although the existing Order 4 does not explicitly require vapor-tight tanks, the requirement of a pressure-vacuum thief hatch or vent line valve implies that other components of the tank must be vapor tight. The proposed rule would clear up this ambiguity. The BLM does not believe that this is a change from the existing requirement in Order 4 that tanks must be vapor-tight. The BLM did not make any changes to the proposed rule based on this comment.

11. *LACT/CMS run tickets.* The BLM received one comment suggesting that run tickets generated for oil volume measured by LACT or CMS be prepared monthly, not every time the LACT or CMS was activated. The BLM agrees with this comment. A run ticket would be opened at the beginning of every calendar month and whenever a meter proving was conducted.

## VI. Procedural Matters

### *Executive Orders 12866 and 13563, Regulatory Planning and Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is significant because it would raise novel legal or policy issues.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that

the rulemaking process must allow for public participation and an open exchange of ideas. The BLM has developed this rule in a manner consistent with these requirements.

### *Regulatory Flexibility Act*

The BLM certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act and those size standards can be found at 13 CFR 121.201. Small entities for mining, including the extraction of crude oil and natural gas, are defined by the SBA as an individual, limited partnership, or small company considered being at "arm's length" from the control of any parent companies, with fewer than 500 employees.

Of the 6,628 domestic firms involved in onshore oil and gas extraction, 99 percent (or 6,530) had fewer than 500 employees. There are another 10,160 firms involved in drilling and other support functions. Of the firms providing support functions, 99 percent of those firms had fewer than 500 employees. Based on this national data, the preponderance of firms involved in developing oil and gas resources are small entities as defined by the SBA. As such, it appears a number of small entities potentially could be affected by this proposed rule. Using the best available data, the BLM estimates there are approximately 3,700 lessees/operators conducting oil operations on Federal and Indian lands that could be affected by this rule.

In addition to determining whether a number of small entities are likely to be affected by this rule, the BLM must also determine whether the rule is anticipated to have a significant economic impact on those small entities. On an ongoing basis, we estimate the proposed changes to the LACT meter proving frequency requirements based on volume throughput would increase the regulated community's annual costs by less than \$258,000, and would affect approximately 74 of the highest-volume LACT systems. In addition, there would be a one-time cost to retrofit 20 percent of existing LACT systems of about \$1.4 million, or a one-time average cost of about \$4,000 to approximately 346 existing LACT systems. New paperwork requirements would also increase operators' one-time costs by about \$700,000 for submitting revised tank calibration tables to the BLM. New

annual paperwork costs would amount to about \$300,000. All of the proposed provisions would apply to entities regardless of size. However, entities with the greatest activity would likely experience the greatest increase in compliance costs.

Based on the available information, we conclude that the proposed rule would not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

### *Small Business Regulatory Enforcement Fairness Act*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule would not have an annual effect on the economy of \$100 million or more. As explained under the preamble discussion concerning Executive Order 12866, Regulatory Planning and Review, proposed changes to Order 4, Measurement of Oil, would increase, by about \$558,000 annually, the cost associated with the development and production of crude oil resources under Federal and Indian oil and gas leases. There would also be a one-time cost estimated to be \$2.1 million.

This rule proposes to replace Order 4 to ensure that crude oil produced from Federal and Indian oil and gas leases is accurately measured and accounted for. Based on the cost figures above, the estimated annual increased cost to each entity that produces oil from all Federal and Indian leases for implementing these changes would be about \$150 per year, and a one-time average cost of about \$570 per entity for the estimated 3,700 lessees/operators conducting operations on Federal or Indian leases.

This proposed rule:

- Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, tribal, or local government agencies, or geographic regions; and
- Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the BLM finds that:

- This proposed rule would not "significantly or uniquely" affect small governments. A Small Government Agency Plan is unnecessary.

• This proposed rule would not produce a Federal mandate of \$100 million or greater in any single year.

The proposed rule is not a “significant regulatory action” as it would not require anything of any non-Federal governmental entity.

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

Under Executive Order 12630, the proposed rule would not have significant takings implications. A takings implication assessment is not required. This proposed rule would establish the minimum standards for accurate measurement and proper reporting of oil produced from Federal and Indian leases, unit PAs, and CAs, by providing a system for production accountability by operators and lessees. All such actions are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with applicable Federal laws and regulations. The proposed rule conforms to the terms of those Federal leases and applicable statutes, and as such the proposed rule is not a governmental action capable of interfering with constitutionally protected property rights. Therefore, the proposed rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 13132, Federalism*

In accordance with Executive Order 13132, the BLM finds that the proposed rule would not have significant Federalism effects. A Federalism assessment is not required. This proposed rule would not change the role of or responsibilities among Federal, State, and local governmental entities. It does not relate to the structure and role of the States and would not have direct, substantive, or significant effects on States.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Under Executive order 13175, the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), and 512 Departmental Manual 2, the BLM evaluated possible effects of the proposed rule on federally recognized Indian tribes. The BLM approves proposed operations on all Indian onshore oil and gas leases (except Osage Tribe). Therefore, the proposed rule has the potential to affect Indian tribes. In

conformance with the Secretary’s policy on tribal consultation, the BLM held three tribal consultation meetings to which more than 175 tribal entities were invited. The consultations were held in:

- Tulsa, Oklahoma on July 11, 2011;
- Farmington, New Mexico on July 13, 2011; and
- Billings, Montana on August 24, 2011.

In addition, the BLM hosted a tribal workshop and webcast in Washington, DC on April 24, 2013.

The purpose of these meetings was to solicit initial feedback and preliminary comments from the tribes. Comments from the tribes will continue to be accepted and consultation will continue as this rulemaking proceeds. To date, the tribes have expressed concerns about the subordination of tribal laws, rules, and regulations to the proposed rule; representation on the DOI GOMT; and the BLM’s Inspection and Enforcement program’s ability to enforce the terms of this proposed rule. While the BLM will continue to address these concerns, none of the concerns expressed relate to or affect the substance of this proposed rule.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order. The Office of the Solicitor has reviewed the proposed rule to eliminate drafting errors and ambiguity. It has been written to minimize litigation, provide clear legal standards for affected conduct rather than general standards, and promote simplification and burden reduction.

*Executive Order 13352, Facilitation of Cooperative Conservation*

Under Executive Order 13352, the BLM has determined that this proposed rule would not impede facilitating cooperative conservation and would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources. This rulemaking process will involve Federal, tribal, State, and local governments, private for-profit and nonprofit institutions, other nongovernmental entities and individuals in the decision-making via the public comment process. That process would provide that the programs, projects, and activities are consistent with protecting public health and safety.

*Paperwork Reduction Act*

I. Overview

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that 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. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). This proposed rule contains information collection requirements that are subject to review by OMB under the PRA. In accordance with the PRA, the BLM is inviting public comments on proposed new information collection requirements for which the BLM is requesting a new OMB control number.

After promulgating a final rule and receiving approval from the OMB (in the form of a new control number), the BLM intends to ask OMB to combine the activities authorized by the new control number with existing control number 1004–0137, Onshore Oil and Gas Operations (expiration date January 31, 2018).

The information collection activities in this proposed rule are described below along with estimates of the annual burdens. These activities, along with annual burden estimates, do not include activities that are considered usual and customary industry practices. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the proposed information collection requirements.

The information collection request for this proposed rule has been submitted to OMB for review under 44 U.S.C. 3507(d). A copy of the request can be obtained from the BLM by electronic mail request to Jennifer Spencer at [j35spenc@blm.gov](mailto:j35spenc@blm.gov) or by telephone request to 202–912–7146. You may also review the information collection request online at <http://www.reginfo.gov/public/do/PRAMain>.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM’s estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;



3. The quality, utility, and clarity of the information to be collected; and  
 4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

If you want to comment on the information collection requirements of this proposed rule, please send your comments directly to OMB, with a copy to the BLM, as directed in the **ADDRESSES** section of this preamble. Please identify your comments with "OMB Control Number 1004-XXXX." OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by October 30, 2015.

II. Summary of Proposed Information Collection Requirements

*Title:* Measurement of Oil.

*OMB Control Number:* Not assigned. This is a new collection of information.

*Description of Respondents:* Holders of Federal and Indian (except Osage Tribe) oil and gas leases, operators, purchasers, transporters, and any other person directly involved in producing, transporting, purchasing, or selling, including measuring, oil or gas through the point of royalty measurement or the point of first sale.

*Respondents' Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Abstract:* The proposed rule includes new information collection requirements that are necessary in order to update the BLM's regulations on measurement of oil produced from Federal and Indian (except Osage Tribe)

onshore oil and gas leases, and from units or communitized areas that include Federal or Indian leases.

*Estimated Total Annual Burden Hours:* The proposed rule would result in an estimated 26,290 responses and 14,696 burden hours annually.

III. Proposed Information Collection Requirements

Proposed § 3174.5(c) would require submission of tank calibration tables to the BLM within 30 days after calibration. This provision would ensure that BLM personnel would have the latest tables when conducting inspections or audits.

Proposed § 3174.7(e)(1) would require the operator to notify the BLM within 24 hours of any LACT system failures or equipment malfunctions which may have resulted in measurement error.

Proposed § 3174.10(d) would require the operator to notify the BLM within 24 hours of any changes to any Coriolis meter internal calibration factors.

Proposed § 3174.10(i), (j), and (k) would establish minimum requirements for the information about Coriolis Measurement Systems (CMSs) that the operator would need to maintain on-site, information that must be retained for an audit trail, and requirements for protecting the retained data in the CMS unit's memory. This information is necessary for the BLM to ensure compliance with these regulations and conduct production audits.

Proposed § 3174.11(c) would require the operator to have available on-site, for review by the BLM, a valid certificate of calibration for the meter prover that is used to determine the meter factor.

Proposed 3174.11(j) would require the operator to provide a meter proving report no later than 14 days after a meter

proving. The following information would be required:

- All meter-proving and volume adjustments after any LACT system or CMS malfunction;
- FMP number;
- Lease number, CA number, or unit PA number;
- The temperature from the test thermometer and the temperature from the temperature averager or tertiary device;
- For CMS, the pressure applied by the pressure test device and the pressure reading from the tertiary device at the three points required under paragraph (h)(3) of this section; and
- The "as left" fluid flow rate and fluid pressure, if the back-pressure valve is adjusted after proving.

Proposed 3174.13 would require prior BLM approval for any method of oil measurement other than manual tank gauging, LACT system, or CMS at a Facility Measurement Point. Any operator requesting approval to use alternative oil measurement equipment would be required to submit to the BLM:

- Performance data;
- Actual field test results;
- Laboratory test data; or
- Any other supporting data or evidence that demonstrates that the proposed alternative oil measurement equipment would meet or exceed the objectives of the applicable minimum requirements at proposed subpart 3174 and would not affect royalty income or production accountability.

IV. Burden Estimates

The following table details the information elements and respective annual hour burdens of the request for a new control number:

A. Type of response	B. Number of responses	C. Hours per response	D. Total hours
Tank Calibration Tables (43 CFR 3174.5(c)) .....	22,000	0.5	11,000
Notification of LACT System Failure (43 CFR 3174.7(e)(1)) .....	100	1	100
Notification of Changes to Internal Meter Calibration Factors (43 CFR 3174.10(d)) .....	10	1	10
Requirements for Coriolis Measurement Systems (43 CFR 3174.10(i), (j), and (k)) .....	2,200	1	2,200
Meter Prover Calibration Certification Documentation (43 CFR 3174.11(c)) .....	985	0.5	493
Meter Proving Reports (43 CFR 3174.11(j)) .....	985	0.5	493
Oil Measurement by Other Methods (43 CFR 3174.13) .....	10	40	400
<b>Totals</b> .....	<b>26,290</b>	<b>.....</b>	<b>14,696</b>

National Environmental Policy Act (NEPA)

The BLM has prepared a draft environmental assessment (EA) that concludes that this proposed rule would not have a significant impact on the

quality of the environment under NEPA, 42 U.S.C. 4332(2)(C), therefore a detailed statement under NEPA is not required. A copy of the draft EA can be viewed at [www.regulations.gov](http://www.regulations.gov) (use the search term 1004-AE16, open the

Docket Folder, and look under Supporting Documents) and at the address specified in the **ADDRESSES** section.

The proposed rule would not impact the environment significantly. For the

most part, the proposed rule would in substance update the provisions of Order 4 and would involve changes that are of an administrative, technical, or procedural nature that would apply to the BLM's and the lessee's or operator's administrative processes. For example, the proposed rule would update the step-by-step procedure required by the BLM for performing tank gauging operations. The rule would also establish new requirements for the specific types of information that should be included in a measurement ticket that must be submitted to the BLM after performing oil measurement operations. Additionally, the rule would establish new standards for meters, including an increased proving frequency established by the BLM. These changes will enhance the agency's ability to account for the oil and gas produced from Federal and Indian lands, but should have minimal to no impact on the environment. Some of these proposed standards, such as those associated with proposed new standards for storage tanks, LACT systems, and meter-proving, may result in increased human presence and traffic on existing disturbed surfaces, but these activities are expected to have a negligible impact on the quality of the human environment, as discussed in the draft EA. We will consider any new information we receive during the public comment period for the proposed rule that may inform our analysis of the potential environmental impacts of the rule.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Although this proposed rule would amend the BLM's oil production regulations, it would not have a substantial direct effect on the nation's energy supply, distribution, or use, including a shortfall in supply or price increases. Changes in this proposed rule would strengthen the BLM's accountability requirements for operators holding Federal and Indian oil leases. As discussed previously, these changes would increase recordkeeping requirements and establish national requirements for operators who wish to use CMSs. All of the changes would increase the regulated community's annual costs by about \$558,000, or about \$150 per entity per year.

We expect that the proposed rule would not result in a net change in the quantity of oil that is produced from Federal and Indian leases.

*Information Quality Act*

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554, Appendix C Title IV, 515, 114 Stat. 2763A-153).

*Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?
2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?
5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

*Authors*

The principal authors of this proposed rule are Mike McLaren of the BLM Pinedale, Wyoming Field Office; Steve Klimetz of the U.S. Forest Service Region 8 Office, Atlanta, Georgia (formerly of the BLM); Tom Zelenka of the BLM New Mexico State Office; Chris DeVault from the BLM Montana State Office; Val Jamison of the BLM Farmington, New Mexico Field Office; assisted by Faith Bremner, BLM, Division of Regulatory Affairs, Washington Office; Mike Wade, BLM, Washington Office; Rich Estabrook, BLM, Washington Office; and Geoffrey Heath, Office of the Solicitor, Department of the Interior.

**List of Subjects**

*43 CFR Part 3160*

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3170*

Administrative practice and procedure, Immediate assessments, Incorporation by reference, Indians-lands, Mineral royalties, Oil and gas measurement, Public lands—mineral resources.

Dated: September 16, 2015.

**Janice M. Schneider,**

*Assistant Secretary, Land and Minerals Management.*

**43 CFR Chapter II**

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR part 3160 and, as proposed to be added on July 13, 2015 (80 FR 40768), 43 CFR part 3170, as follows:

**PART 3160—ONSHORE OIL AND GAS OPERATIONS**

- 1. The authority citation for part 3160 continues to read as follows:

**Authority:** 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

- 2. Revise § 3162.7-2 to read as follows:

**§ 3162.7-2 Measurement of oil.**

All oil removed or sold from a lease, communitized area, or unit participating area must be measured under subpart 3174 of this title. All measurement must be on the lease, communitized area, or unit from which the oil originated and must not be commingled with oil originating from other sources unless approved by the authorized officer under the provisions of subpart 3173 of this title.

**§ 3164.1 [Amended]**

- 3. Amend § 3164.1(b) by removing the fourth entry in the table, Order No. 4, Measurement of Oil.

**PART 3170—ONSHORE OIL AND GAS PRODUCTION**

- 4. The authority citation is added to part 3170, proposed to be added on July 13, 2015 (80 FR 40768), to read as follows:

**Authority:** 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

- 5. Add subpart 3174 to part 3170, proposed to be added on July 13, 2015 (80 FR 40768), to read as follows:

**Subpart 3174—Measurement of Oil**

Sec.

3174.1 Definitions and acronyms.

3174.2 General requirements.

3174.3 Specific measurement performance requirements.

- 3174.4 Incorporation by reference.  
 3174.5 Oil measurement by manual tank gauging—general requirements.  
 3174.6 Oil measurement by manual tank gauging—procedures.  
 3174.7 LACT systems—general requirements.  
 3174.8 LACT systems—components and operating requirements.  
 3174.9 Coriolis measurement systems (CMS)—general requirements and components.  
 3174.10 Coriolis measurement systems—operating requirements.  
 3174.11 Meter proving requirements.  
 3174.12 Measurement tickets.  
 3174.13 Oil measurement by other methods.  
 3174.14 Determination of oil volumes by methods other than measurement.  
 3174.15 Immediate assessments.

#### § 3174.1 Definitions and acronyms.

(a) As used in this subpart, the term: *Barrel (bbl)* means 42 standard United States gallons.

*Base pressure* means atmospheric pressure or the vapor pressure of the liquid at 60 °F, whichever is higher.

*Base temperature* means 60 °F.

*Certificate of calibration* means a document stating the base prover volume and other physical data required for the calibration of flow meters.

*Composite meter factor* means a meter factor corrected from normal operating pressure to base pressure. The composite meter factor is determined by proving operations where the pressure is considered constant during the measurement period between provings.

*Configuration log* means the list of constant flow parameters, calculation methods, alarm set points, and other values that are programmed into the flow computer in a Coriolis measurement system.

*Coriolis meter* means a device which by means of the interaction between a flowing fluid and oscillation of tube(s), measures mass flow rate and density. The Coriolis meter consists of sensors and a transmitter, which converts the output from the sensors to signals representing volume and density.

*Coriolis measurement system (CMS)* means a metering system using a Coriolis meter in conjunction with a tertiary device, pressure transducer, and temperature transducer in order to derive and report net oil volume. A CMS system provides real-time, on-line measurement of oil.

*Displacement prover* means a prover consisting of a pipe or pipes with known capacities, a displacement device, and detector switches, which sense when the displacement device has reached the beginning and ending points of the calibrated section of pipe. Displacement provers can be portable or fixed.

*Event log* means an electronic record of all exceptions and changes to the flow parameters contained within the configuration log that occur and have an impact on a quantity transaction record.

*Gross standard volume* means a volume of oil corrected to base pressure and temperature.

*Innage gauging* means the level of a liquid in a tank measured from the datum plate or tank bottom to the surface of the liquid.

*Lease automatic custody transfer (LACT) system* means a system of components designed to provide for the unattended custody transfer of oil produced from a lease, unit PA, or CA to the transporting carrier while providing a proper and accurate means for determining the net standard volume and quality, and fail-safe and tamper-proof operations.

*Master meter prover* means a positive displacement meter or Coriolis meter that is selected, maintained, and operated to serve as the reference device for the proving of another meter. A comparison of the master meter to the Facility Measurement Point (FMP) meter output is the basis of the master-meter method.

*Meter factor* means a ratio obtained by dividing the measured volume of liquid that passed through a prover or master meter during the proving by the measured volume of liquid that passed through the meter during the proving, corrected to base pressure and temperature.

*Net standard volume* means the gross standard volume corrected for quantities of non-merchantable substances such as sediment and water.

*Opaque oil* means oil exhibiting the ability to block the passage of light.

*Outage gauging* means the distance from the surface of the liquid in a tank to the reference gauge point of the tank.

*Positive displacement meter* means a meter that registers the volume passing through the meter using a system which constantly and mechanically isolates the flowing liquid into segments of known volume.

*Quantity transaction record (QTR)* means a report generated by CMS equipment that summarizes the daily and hourly gross standard volume calculated by the flow computer and the average or totals of the dynamic data that is used in the calculation of gross standard volume.

*Registered volume* means the uncorrected volume registered by the positive displacement meter in a LACT system or the Coriolis meter in a CMS. For a positive displacement meter, the registered volume is represented by the non-resettable totalizer on the meter

head. For Coriolis meters, the registered volume is the uncorrected (without the meter factor) mass of liquid divided by the density.

*Resistance thermal device (RTD)* means a type of transducer that converts a physical temperature into an electrical resistance (ohms).

*Tertiary device* means, for a CMS, the flow computer and associated memory, calculation, and display functions.

*Turbulent flow* means a type of flow in which random eddying flow patterns are superimposed upon the general flow progressing in a given direction.

*Unity* means an amount taken as 1.0000.

(b) As used in this subpart the following additional acronyms carry the meaning prescribed:

*API RP* means an American Petroleum Institute Recommended Practice.

*API MPMS* means American Petroleum Institute Manual of Petroleum Measurement Standards.

*CPL* means correction for the effect of pressure on a liquid.

*CPS* means correction for the effect of pressure on steel.

*CTL* means correction for the effect of temperature on a liquid.

*CTS* means correction for the effect of temperature on steel.

*NIST* means National Institute of Standards and Technology.

*S&W* means sediment and water.

#### § 3174.2 General requirements.

(a) Oil may be stored only in tanks that meet the requirements of § 3174.5(b) of this subpart.

(b) Oil must be measured on the lease, unit, or CA, unless approval for off-lease measurement is obtained under §§ 3173.21 and 3173.22 of this part.

(c) Oil produced from a lease, unit PA, or CA may not be commingled with production from other leases, unit PAs, or CAs or non-Federal properties before the point of royalty measurement, unless prior approval is obtained under §§ 3173.14 and 3173.15 of this part.

(d) An operator must obtain a BLM-approved FMP number under §§ 3173.12 and 3173.13 of this part for each oil measurement facility where the measurement affects the calculation of the volume or quality of production on which royalty is owed (*i.e.*, oil tank used for manual tank gauging, LACT system, CMS, or other approved metering device).

(e) Except as provided in paragraph (f) of this section, all equipment used to measure the volume of oil for royalty purposes installed after [THE EFFECTIVE DATE OF THE FINAL RULE] must comply with the requirements of this subpart. Equipment

used to measure oil for royalty purposes in use on [THE EFFECTIVE DATE OF THE FINAL RULE] must comply with the requirements of this subpart by [DATE 180 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(f) Meters used for allocation under a commingling and allocation approval under 43 CFR 3173.14 are not required to meet the requirements of this subpart.

### § 3174.3 Specific measurement performance requirements.

(a) *Volume measurement uncertainty levels.* (1) The FMP must achieve the following uncertainty levels:

If the monthly volume averaged over the previous 12 months or the life of the FMP, whichever is shorter, is:	The overall volume measurement uncertainty must be within:
1. Greater than 10,000 bbl/month.	±0.35 percent.
2. Greater than 100 bbl/month and less than 10,000 bbl/month.	±1.0 percent.
3. Less than 100 bbl/month ..	±2.5 percent.

(2) Only a BLM State Director may grant an exception to the uncertainty levels prescribed in paragraph (a)(1) of this section, and only upon:

(i) A showing that meeting the required uncertainty level would involve extraordinary cost or unacceptable adverse environmental effects; and

(ii) Written concurrence of the BLM Director.

(b) *Bias.* The measuring equipment used for volume determination must achieve measurement without statistically significant bias.

(c) *Verifiability.* All FMP equipment must be susceptible to independent verification by the BLM of the accuracy and validity of all inputs, factors, and equations that are used to determine quantity or quality. Verifiability includes the ability to independently recalculate volume and quality based on source records.

(d) *Variances.* The Production Measurement Team (PMT) will make any determination under § 3170.6(a)(4) of this part regarding whether a proposed variance in measurement procedures meets or exceeds the objectives of this section.

### § 3174.4 Incorporation by reference.

(a) Certain material specified in paragraphs (b) and (c) of this section is incorporated by reference into this part with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. Operators must comply with all incorporated standards

and material, as they are in effect as of the effective date of this section. All approved material is available for inspection at the Bureau of Land Management, Division of Fluid Minerals, 20 M Street SE., Washington, DC 20003, 202-912-7162, and at all BLM offices with jurisdiction over oil and gas activities. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/](http://www.archives.gov/federal_register/)

[code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). In addition, the material incorporated by reference is available from the sources of that material, identified in paragraphs (b) and (c) of this section, as follows:

(b) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005; telephone 202-682-8000; API also offers free, read-only access to some of the material at [www.publications.api.org](http://www.publications.api.org).

(1) API Manual of Petroleum Measurement Standards (MPMS) Chapter 2, Section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Tank Strapping Method, 1st Ed., February 1995, Reaffirmed February 2012 (“API 2.2A”), IBR approved for § 3174.5(c).

(2) API MPMS Chapter 3, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, 3rd Ed., August 2013 (“API 3.1A”), IBR approved for §§ 3174.5(b)(7) and 3174.6(b)(5).

(3) API MPMS Chapter 4, Section 1, Introduction, 3rd Ed., February 2005, Reaffirmed June 2014 (“API 4.1”), IBR approved for § 3174.11(d).

(4) API MPMS Chapter 4, Section 2, Displacement Provers, 3rd Ed., September 2003, Reaffirmed March 2011 (“API 4.2,” and “API 4.2, Eq. 12”), IBR approved for §§ 3174.11(c)(2) and 3174.11(c)(4).

(5) API MPMS Chapter 4, Section 5, Master-Meter Provers, 3rd Ed., November 2011 (“API 4.5”), IBR approved for § 3174.11(c)(1).

(6) API MPMS Chapter 4, Section 6, Pulse Interpolation, 2nd Ed., May 1999, Reaffirmed October 2013 (“API 4.6”), IBR approved for § 3174.11(d)(2).

(7) API MPMS Chapter 4, Section 9, Part 2, Methods of Calibration for Displacement and Volumetric Tank Provers, Determination of the Volume of Displacement and Tank Provers by the Waterdraw Method of Calibration, 1st Ed., December, 2005, Reaffirmed September 2010 (“API 4.9.2”), IBR approved for § 3174.11(c)(2).

(8) API MPMS Chapter 5, Section 6, Measurement of oil by Coriolis Meters, 1st Ed., October 2002, Reaffirmed November 2013 (“API 5.6,” “API 5.6.3.2(e),” “API 5.6.8.3,” “API 5.6.9.1.2.1,” and “API 5.6, Eq. 2”), IBR approved for §§ 3174.9(b), 3174.9(d), 3174.9(e)(1), 3174.10(c), 3174.10(f), 3174.11(i), and 3174.11(j).

(9) API MPMS Chapter 6, Section 1, Lease Automatic Custody Transfer (LACT) Systems, 2nd Ed., May 1991, Reaffirmed May 2012 (“API 6.1”), IBR approved for § 3174.7(a).

(10) API MPMS Chapter 7, Temperature Determination, 1st Ed., June 2001, Reaffirmed February 2012 (“API 7” and “API 7.1”), IBR approved for §§ 3174.6(b)(2), 3174.6(c)(1), and 3174.8(b)(11)(i).

(11) API MPMS Chapter 8, Section 1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, 4th Ed., October 2013, (“API 8.1”), IBR approved for § 3174.6(b)(3).

(12) API MPMS Chapter 9, Section 3, Standard Test Method for Density, Relative Density, and API Gravity of Crude Petroleum and Liquid Petroleum Products by Thermohydrometer Method, 3rd Ed., December 2012 (“API 9.3”), IBR approved for § 3174.6(b)(4).

(13) API MPMS Chapter 10 Section 4, Determination of Water and/or Sediment in Crude Oil by the Centrifuge Method (Field Procedure), 4th Ed., October 2013 (“API 10.4,” “10.4.9,” and “10.4.9.2”), IBR approved for §§ 3174.6(b)(6), 3174.6(b)(6)(i), 3174.6(b)(iii)(A), and 3174.6(b)(iii)(B).

(14) API MPMS Chapter 11, Section 1, Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products and Lubricating Oils, 2nd Ed., May 2004, including Addendum 1, September 2007, Reaffirmed August 2013 (“API 11.1”), IBR approved for §§ 3174.6(b)(10)(i), 3174.6(b)(10)(iii), 3174.6(b)(10)(v), and 3174.10(h)(2).

(15) API MPMS Chapter 12, Section 2, Part 1, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, 2nd Ed., May 1995, Reaffirmed March 2014 (“API 12.2.1”), IBR approved for § 3174.10(h)(2).

(16) API MPMS Chapter 12, Section 2, Part 3, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Proving Report, 1st Ed., October 1998, Reaffirmed March 2009 (“API 12.2.3”), IBR approved for §§ 3174.11(d)(5) and 3174.11(j)(1).

(17) API MPMS Chapter 12, Section 2, Part 4, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction

Factors, Calculation of Base Prover Volumes by the Waterdraw Method, 1st Ed., December, 1997, Reaffirmed March 2009 (“API 12.2.4”), IBR approved for § 3174.11(c)(3).

(18) API MPMS Chapter 18, Section 1, Measurement Procedures for Crude Oil Gathered From Small Tanks by Truck, 2nd Ed., April 1997, Reaffirmed February 2012 (“API 18.1”), IBR approved for § 3174.6(a).

(19) API MPMS Chapter 21, Section 2, Electronic Liquid Volume Measurement Using Positive Displacement and Turbine Meters, 1st Ed., June 1998, Reaffirmed August 2011 (“API 21.2,” “API 21.2.10,” “21.2.10.2,” “21.2.10.6,” and “API 21.2.9.2.13.2a”), IBR approved for §§ 3174.8(b)(11)(iii), 3174.10(g)(2), 3174.10(h)(2), 3174.10(j), 3174.10(j)(2), and 3174.10(j)(3).

(20) API Recommended Practice (RP) 12 R1, Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service, 5th Ed., August 1997, Reaffirmed April 2008 (“API RP 12 R1”), IBR approved for § 3174.5(b)(1).

(21) API RP 2556, Correction Gauge Tables For Incrustation, 2nd Ed., August 1993, Reaffirmed August 2013 (“API RP 2556”), IBR approved for § 3174.5(c).

(c) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428; telephone 1-877-909-2786; [www.astm.org/Standard/index.shtml](http://www.astm.org/Standard/index.shtml); ASTM also offers free read-only access to the material at [www.astm.org/READINGLIBRARY/](http://www.astm.org/READINGLIBRARY/).

(1) ASTM D-1250, Table 5A, Generalized Crude Oils Correction of Observed Gravity to API Gravity at 60° F, September 1980 (“ASTM Table 5A”), IBR approved for § 3174.6(b)(10)(i).

(2) ASTM D-1250, Table 6A, Generalized Crude Oils Correction of Volume to 60° F Against API Gravity at 60° F, September 1980 (“ASTM Table 6A”), IBR approved for §§ 3174.6(b)(10)(iii), 3174.6(b)(10)(v), and 3174.10(h)(2).

**Note 1 to § 3174.4(b):** You may also be able to purchase these standards from the following resellers: Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108; telephone 734-780-8000; [www.techstreet.com/api/apigate.html](http://www.techstreet.com/api/apigate.html); IHS Inc., 321 Inverness Drive South, Englewood, CO 80112; 303-790-0600; [www.ihs.com](http://www.ihs.com); SAI Global, 610 Winters Avenue, Paramus, NJ 07652; telephone 201-986-1131; <http://infostore.saiglobal.com/store/>.

**§ 3174.5 Oil measurement by manual tank gauging—general requirements.**

(a) *Measurement objective.* Oil measurement by manual tank gauging must accurately compute the total net standard volume of oil withdrawn from a properly calibrated sales tank by following the proper sequence of activities prescribed in § 3174.6 of this subpart to determine the quantity and quality of oil being removed.

(b) *Oil tank equipment.* (1) Each tank used for oil storage must meet the requirements of API RP 12 R1 (incorporated by reference, see § 3174.4).

(2) Each oil storage tank must be connected, maintained, and operated in compliance with §§ 3173.2, 3173.6, and 3173.7 of this part.

(3) All oil storage tanks, hatches, connections, and other access points must be vapor tight.

(4) Each oil storage tank, unless connected to a vapor recovery system, must have a pressure-vacuum relief valve installed at the highest point in the vent line or connection with another tank. Pressure-vacuum relief valves must provide for normal inflow and outflow venting at an outlet pressure that is less than the thief hatch exhaust pressure and at an inlet pressure that is greater than the thief hatch vacuum setting.

(5) All oil storage tanks must be clearly identified and have a unique number stenciled on the tank and maintained in a legible condition.

(6) Each oil storage tank associated with an approved FMP must be set and maintained level.

(7) Each oil storage tank associated with an approved FMP by tank gauging must be equipped with a distinct gauging reference point, with the height of the reference point stamped on a fixed bench-mark plate or stenciled on the tank near the gauging hatch and must be maintained in a legible condition, consistent with API 3.1A (incorporated by reference, see § 3174.4).

(c) *Sales tank calibrations.* The operator must accurately calibrate each oil storage tank associated with an approved FMP by tank gauging using API 2.2A and API RP 2556 (both incorporated by reference, see § 3174.4). The operator must:

(1) Determine sales tank capacities by tank calibration using actual tank measurements;

(i) The unit volume must be in barrels (bbl); and

(ii) The incremental height measurement must be in 1/8-inch increments;

(2) Recalibrate a sales tank if it is relocated, repaired, or the capacity is changed as a result of denting, damage, installation, removal of interior components, or other alterations; and

(3) Submit sales tank calibration charts (tank tables) to the AO within 30 days after calibration. Tank tables may be in paper or electronic format.

**§ 3174.6 Oil measurement by manual tank gauging—procedures.**

(a) The procedures for oil measurement by manual tank gauging from tanks with capacities of 1,000 bbl or less must comply with API 18.1 (incorporated by reference, see § 3174.4) as outlined in the following table and further described in paragraph (b) of this section. Tanks with capacities greater than 1,000 bbl must also comply as outlined in the following table and further described in paragraph (b) of this section.

Activity	Section reference
Isolate tank for at least 30 minutes. ....	3174.6(b)(1).
Determine opening oil temperature. ....	3174.6(b)(2).
Take upper, middle, and outlet samples. ....	3174.6(b)(3).
Determine observed API gravity. ....	3174.6(b)(4).
Take opening gauge. ....	3174.6(b)(5).
Determine S&W content. ....	3174.6(b)(6).
Break the seal and transfer the oil; then close the valve and reseal the tank. ....	3174.6(b)(7).
Determine closing oil temperature. ....	3174.6(b)(8).
Take closing gauge. ....	3174.6(b)(9).
Complete measurement ticket. ....	3174.6(b)(10).

(b) The operator must take the steps in the order prescribed in the following

paragraphs to manually determine the

quality and quantity of oil measured under field conditions at an FMP.

(1) *Isolate tank.* Isolate the tank for at least 30 minutes to allow contents to settle before proceeding with tank gauging operations. The tank isolating valves must be closed and sealed under § 3173.2 of this part.

(2) *Determine opening oil temperature.* Determination of the temperature of oil contained in a sales tank must comply with paragraphs

(b)(2)(i) through (iv) of this section and API 7 (incorporated by reference, see § 3174.4).

(i) Glass thermometers must be clean, be free of mercury separation, and have a minimum graduation of 1.0° F.

(ii) Portable electronic thermometers must have a minimum graduation of 0.1° F and have an accuracy of ±0.5° F.

(iii) Suspend the cup-case thermometer assembly or portable electronic thermometer in the tank by immersing it at the approximate vertical center of the fluid column, not less than 12 inches from the shell of the tank, for the minimum immersion time prescribed in the following table (API 7, Table 6 (incorporated by reference, see § 3174.4)):

MINIMUM IMMERSION TIMES FOR OIL TEMPERATURE DETERMINATION

API Gravity at 60° F	Minimum Immersion Time		
	Portable Electronic Thermometer	Woodback Cup-Case Assembly	
	In-Motion*	In-Motion*	Stationary
>50 .....	30 Seconds .....	5 Minutes .....	10 Minutes.
40–49 .....	30 Seconds .....	5 Minutes .....	15 Minutes.
30–39 .....	45 Seconds .....	12 Minutes .....	20 Minutes.
20–29 .....	45 Seconds .....	20 Minutes .....	35 Minutes.
<20 .....	75 Seconds .....	35 Minutes .....	60 Minutes.

\* In-Motion means repeatedly raising and lowering the assembly 1 foot above and below the desired depth.

(iv) Record the temperature to the nearest 1.0° F for glass thermometers or 0.1° F for portable electronic thermometers.

(3) *Take oil samples.* Sampling of oil removed from an FMP tank must yield a representative sample of the oil and its physical properties and must comply with paragraphs (b)(3)(i) through (iii) of this section and API 8.1 (incorporated by reference, see § 3174.4).

(i) First, using a clean sampling thief, take an upper sample from the vertical center of the upper one-third of the fluid column. Transfer to a clean centrifuge tube a 100-part sample for 200-part (percent) centrifuge tubes or a 50-milliliter sample for 100-milliliter centrifuge tubes and cork the tube. Use the contents of the tube to determine sediment and water content under paragraph (b)(6) of this section.

(ii) Second, take a middle sample from the vertical center of the middle one-third of the fluid column to determine the observed API oil gravity and temperature. Immediately use this sample to determine oil gravity under paragraph (b)(4) of this section.

(iii) After determining observed API oil gravity, take an outlet sample with the inlet opening of the sample thief at the level of the bottom of the tank outlet. Transfer to a second clean centrifuge tube a 100-part sample for 200-part (percent) centrifuge tubes or a 50-milliliter sample for 100-milliliter centrifuge tubes and cork the tube. Use the contents of the tube to determine sediment and water content under paragraph (b)(6) of this section.

(4) *Determine observed oil gravity.* Tests for oil gravity must comply with

paragraphs (b)(4)(i) through (iv) of this section and API 9.3 (incorporated by reference, see § 3174.4).

(i) The thermohydrometer must be calibrated for an oil gravity range that includes the observed gravity of the oil sample being tested and must be clean, with a clearly legible oil gravity scale and with no loose shot weights.

(ii) Slowly insert the thermohydrometer into the filled sample thief about 2 API gravity divisions below the expected settled position. Release with a slight spin.

(iii) Remove any air bubbles and allow the temperature to stabilize for at least 5 minutes.

(iv) Read and record the observed API oil gravity to the nearest 0.1 degree. For transparent liquids, read to the nearest scale division at the point on the scale at which the surface of the liquid cuts the scale. For opaque oil, read the scale at the top of the meniscus and deduct 0.1 degree gravity from the reading. Read and record the thermohydrometer temperature reading to the nearest 1.0° F.

(5) *Take opening gauge.* Take and record the tank opening gauge only after upper, middle, and outlet samples have been taken. Gauging must comply with paragraphs (b)(5)(i) through (b)(5)(v) of this section and API 3.1A (incorporated by reference, see § 3174.4).

(i) Gauging must use the proper bob for the particular measurement method, *i.e.*, either innage gauging or outage gauging.

(ii) Gauging must use gauging tapes made of steel or corrosion-resistant material with graduation clearly legible.

The gauging tape must not be kinked or spliced.

(iii) Acceptable gauging requires either obtaining two consecutive identical gauging measurements or three consecutive measurements within 1/8-inch of each other, averaging these three measurements to the nearest 1/8 inch.

(iv) A suitable product-indicating paste may be used on the tape to facilitate the reading. The use of chalk or talcum powder is prohibited.

(v) The same tape and bob must be used for both opening and closing gauges.

(6) *Determine S&W content.* Using the oil samples in the centrifuge tubes collected from the upper and outlet fluid column (see paragraph (b)(3) of this section), determine the S&W content of the oil in the sales tanks, according to paragraphs (b)(6)(i) through (iii) of this section and API 10.4 (incorporated by reference, see § 3174.4).

(i) A thoroughly mixed oil sample-solvent combination, prepared in accordance with the procedure described in API 10.4.9.2 (incorporated by reference, see § 3174.4), must be heated to 140° F before centrifuging.

(ii) The heated sample must be whirled in the centrifuge for not less than 5 minutes. At the conclusion of centrifuging, the temperature must be a minimum of 115° F without water-saturated diluents or 125° F with water-saturated diluents.

(iii)(A) For 100-milliliter tubes, refer to API 10.4.9 Figure 1 (incorporated by reference, see § 3174.4). Read and record the volume of both water and sediment in each tube and add the readings

together reporting the sum as the percent of S&W. Record the S&W to three decimal places.

(B) For 200-part (percent) tubes, refer to API 10.4.9 Figure 2 (incorporated by reference, see § 3174.4). The percent of S&W is the average of the values directly read from the tubes. Record the S&W to three decimal places.

(7) *Transfer oil.* Break the tank load line valve seal and transfer oil to the tanker truck. After transfer is complete, close the tank valve and seal the valve under §§ 3173.2 and 3173.5 of this part.

(8) *Determine closing oil temperature.* Determine the closing oil temperature using the procedures in paragraph (b)(2) of this section.

(9) *Take closing gauge.* Take the closing tank gauge using the procedures in paragraph (b)(5) of this section.

(10) *Complete measurement ticket.* The operator, purchaser, or transporter, as appropriate, must complete the measurement ticket (run ticket) as required by paragraphs (b)(10)(i) through (vii) of this section and by § 3174.12(a) of this subpart.

(i) The observed oil gravity must be corrected to 60° F using ASTM Table 5A or API 11.1 (both incorporated by reference, see § 3174.4).

(ii) Use the opening gauge with the tank-specific calibration charts (tank tables) (see paragraph (e) of this section) to compute the total observed volume of oil prior to sales.

(iii) Correct the total observed volume of oil prior to sales to 60° F using the calculated API oil gravity at 60° F (see paragraph (b)(1) of this section) and the opening oil temperature using ASTM Table 6A or API 11.1 (both incorporated by reference, see § 3174.4) to determine the gross standard volume prior to sales.

(iv) Use the closing gauge with the tank-specific calibration charts (tank tables) to compute the total observed volume of oil after sales.

(v) Correct the total observed volume of oil after sales to 60° F using the API oil gravity corrected to 60° F (see paragraph (b)(1) of this section) and the closing oil temperature using ASTM Table 6A or API 11.1 (both incorporated by reference, see § 3174.4) to determine the gross standard volume after sales.

(vi) The gross standard volume sold is the difference between the gross standard volume prior to sales and the gross standard volume after sales.

(vii) The gross standard volume sold must be corrected for quantities of non-merchantable substances such as S&W to determine net standard volume (may be corrected at a later time prior to Oil and Gas Operations Report submission).

**§ 3174.7 LACT system—general requirements.**

(a) A LACT system must meet the construction and operation requirements and minimum standards of this section and § 3174.8 and API 6.1 (incorporated by reference, see § 3174.4).

(b) A LACT system must be proven as prescribed in § 3174.11 of this subpart. Measurement tickets must be completed under § 3174.12(b) of this subpart before conducting proving operations.

(c) The following table lists the requirements under which the operator must measure oil using a LACT system:

**STANDARDS TO MEASURE OIL BY A LACT SYSTEM**

Subject	Section reference
Required LACT system components .....	3174.8(a)
Accessibility of LACT system components to AO .....	3174.7(d)
Notification of LACT system failures or malfunctions adversely affecting accurate measurement .....	3174.7(e)
Oil gravity, temperature, and S&W content testing requirements .....	3174.7(f)
Required LACT system component—charging pump and motor .....	3174.8(b)(1)
Required LACT system component—sampler .....	3174.8(b)(2)
Required LACT system component—composite sample container .....	3174.8(b)(3)
Required LACT system component—mixing system .....	3174.8(b)(4)
Required LACT system component—strainer .....	3174.8(b)(5)
Required LACT system component—air eliminator .....	3174.8(b)(6)
Required LACT system component—S&W monitor .....	3174.8(b)(7)
Required LACT system component—diverter valve or shut-off valve .....	3174.8(b)(8)
Required LACT system component—positive displacement meter .....	3174.8(b)(9)
Required LACT system component—pressure indicating device .....	3174.8(b)(10)
Required LACT system component—electronic temperature averaging device .....	3174.8(b)(11)
Required LACT system component—meter proving connections .....	3174.8(b)(12)
Required LACT system component—back-pressure and check valves .....	3174.8(b)(13)

(d) All components of a LACT system must be accessible for inspection by the AO.

(e)(1) The operator must notify the AO within 24 hours of any LACT system failures or equipment malfunctions which may have resulted in measurement error.

(2) Such system failures or equipment malfunctions include, but are not limited to, electrical, meter, and other failures that affect oil measurement.

(f) Any tests conducted on oil samples extracted from LACT system samplers for determination of temperature, oil gravity, and S&W content must meet the requirements and minimum standards

in §§ 3174.6(b)(2), (4), and (6) of this subpart.

(g) Automatic temperature compensators and automatic temperature and gravity compensators are prohibited.

**§ 3174.8 LACT system—components and operating requirements.**

(a) *LACT system components.* Each LACT system must include all of the following components:

- (1) Charging pump and motor;
- (2) Sampler, composite sample container, and mixing system;
- (3) Strainer;
- (4) Air eliminator;

- (5) S&W monitor;
- (6) Diverter valve or shut-off valve;
- (7) Positive displacement meter;
- (8) Electronic temperature averaging device;
- (9) Meter proving connections; and
- (10) Meter back-pressure valve and check valve.

(b) Operation of all LACT system components must meet the following minimum standards:

(1) *Charging pump and motor.* The LACT system must include an electrically driven pump that has a discharge pressure compatible with the meter used and sized to assure that the turbulent flow in the LACT main stream

piping and that the measurement uncertainty levels in § 3174.3(a) of this subpart are met.

(2) *Sampler*. The sampler probe must extend into the center one-third of the flow piping in a vertical run, at least 3 pipe diameters downstream of any pipe fitting. The probe must always be in a horizontal position.

(3) *Composite sample container*. The composite sample container must be capable of holding the sample under pressure, be equipped with a vapor-proof top closure, and operated to prevent the unnecessary escape of vapor. The container must be emptied and cleaned upon completion of sample withdrawal.

(4) *Mixing system*. The mixing system must completely blend the sample (inside the sample composite container) into a homogeneous mixture before and during the withdrawal of a portion of a sample for testing.

(5) *Strainer*. The strainer must be constructed so that it may be depressurized, opened, and cleaned. The strainer must be located upstream of the meter and be made of corrosion resistant material of a mesh size no larger than 1/4-inch.

(6) *Air eliminator*. An air eliminator must be installed to prevent air or gas from entering the meter.

(7) *S&W monitor*. The S&W monitor must be an internally plastic-coated capacitance probe mounted in a vertical pipe located upstream from both the meter and the diverter valve or shut-off valve.

(8) *Diverter valve or shut-off valve*. The diverter valve or shut-off valve must be configured to prevent the flow

of oil through the positive displacement meter whenever the S&W monitor detects S&W above a pre-determined limit, usually a contractual value agreed upon by the purchaser and the seller.

(9) *Positive displacement meter*. The meter must register volumes determined by a system which constantly and mechanically isolates the flowing oil into segments of known volume, and must be equipped with a non-resettable totalizer. The meter must include or allow for the attachment of a device which generates at least 8,400 pulses per barrel of registered volume.

(10) *Pressure indicating device*. The system must have a pressure indicating device downstream of the meter, but upstream of meter proving connections.

(11) *Electronic temperature averaging device*. An electronic temperature averaging device must be installed, operated, and maintained as follows:

(i) The temperature sensor must be placed as required under API 7.1 (incorporated by reference, see § 3174.4);

(ii) The electronic temperature averaging device must be flow proportional and take a temperature reading at least once per barrel;

(iii) The average temperature for the measurement ticket must be calculated by the volumetric averaging method using API 21.2.9.2.13.2a (incorporated by reference, see § 3174.4);

(iv) The temperature averaging device must have a reference accuracy of ±0.5 °F, or better; and

(v) The temperature averaging device must include a display of instantaneous temperature and the average temperature calculated since the

measurement ticket was opened. The temperatures must be displayed to the nearest 0.1 °F.

(12) *Meter-proving connections*. All meter-proving connections must be installed downstream from the LACT meter with the line valve(s) between the inlet and outlet of the prover loop having a double block and bleed design feature to provide for leak testing during proving operations.

(13) *Back-pressure and check valves*. The back-pressure valve and check valve must be installed downstream from the meter and meter-proving connections.

**§ 3174.9 Coriolis measurement systems (CMS)—general requirements and components.**

(a) The specific makes, models, and sizes of Coriolis meter and associated software that are identified and described at [www.blm.gov](http://www.blm.gov) are approved for use.

(b) A CMS must meet the operational requirements and minimum standards of this section, § 3174.10 and API 5.6 (incorporated by reference, see § 3174.4).

(c) A CMS system must be proven at the frequency and under the requirements of § 3174.11 of this subpart. Measurement tickets must be completed under § 3174.12(b) of this subpart before conducting proving operations.

(d) The following table lists the requirements and applicable API standards under which an operator must measure oil using a CMS:

**STANDARDS APPLICABLE TO CMS USE**

Subject	Section reference	API Reference (incorporated by reference, see § 3174.4)
Coriolis meter components .....	3174.9(e) .....	API 5.6.
Minimum pulse output .....	3174.10(a) ...	(None).
Specifications .....	3174.10(b) ...	(None).
Orientation .....	3174.10(c) ...	API 5.6.3.2.(e).
Notification of changes .....	3174.10(d) ...	(None).
Non-resettable totalizer .....	3174.10(e) ...	(None).
Verification of meter zero value .....	3174.10(f) .....	API 5.6.8.3.
Determination of net standard volume .....	3174.10(g) ...	(None).
Determination of API oil gravity .....	3174.10(h) ...	(None).
Display requirements .....	3174.10(i)(1)	(None).
Displayed information requirements .....	3174.10(i)(2)	(None).
Onsite information requirements .....	3174.10(i)(3)	(None).
Onsite log information requirements .....	3174.10(i)(4)	(None).
Quantity transaction record .....	3174.10(j)(1)	API 21.2.10.3.
Configuration log .....	3174.10(j)(2)	API 21.2.10.2.
Event log .....	3174.10(j)(3)	API 21.2.10.6.
Alarm log .....	3174.10(j)(4)	(None).
Data protection .....	3174.10(k) ...	(None).



(e) A CMS at an FMP must be installed with the following minimum components listed in order from upstream to downstream:

(1) Charge pump, if necessary to maintain the minimum required pressure under API 5.6.3.2 (incorporated by reference, see § 3174.4) and flow rate to achieve the uncertainty levels required under § 3174.3(a) of this subpart;

(2) Block valve upstream of the meter (for zero value verification);

(3) Air/vapor eliminator upstream of the meter;

(4) Coriolis meter (see § 3174.10(a) through (f) of this subpart);

(5) RTD downstream of the meter, but upstream of the meter-proving connection, with a reference accuracy of  $\pm 0.5$  °F, or better, and on the list of type-tested equipment maintained at [www.blm.gov](http://www.blm.gov);

(6) Pressure transducer downstream of the meter, but upstream of the meter-proving connection, with a reference accuracy of  $\pm 0.25$  psi, or  $\pm 0.25$  percent of reading, or better, whichever is less restrictive, and on the list of type-tested equipment maintained at [www.blm.gov](http://www.blm.gov);

(7) Density measurement verification point;

(8) Sampling system as required in § 3174.8 paragraphs (b)(2) through (4) of this subpart, if S&W is to be used in determining net oil volume. If no sampling system is included, the S&W must be reported as zero (see § 3174.10(g)(3) of this subpart);

(9) Meter-proving connection (block and bleed valves) downstream of the meter;

(10) Back-pressure valve downstream of the meter; and

(11) Check valve downstream of the meter.

#### § 3174.10 Coriolis measurement systems—operating requirements.

(a) *Minimum electronic pulse level.* The Coriolis meter must register the volume of oil passing through the meter as determined by a system which constantly emits electronic pulse signals representing the registered volume measured. The pulse per unit volume must be set at a minimum of 8,400 pulses per barrel.

(b) *Meter specifications.* (1) The Coriolis meter specifications must clearly identify the make and model of the Coriolis meter to which they apply and must include the following:

(i) The reference accuracy for both mass flow rate and density, stated in either percent of reading, percent of full scale, or units of measure;

(ii) The effect of changes in temperature and pressure on both mass

flow and fluid density readings, and the effect of flow rate on density readings. These specifications must be stated in percent of reading, percent of full scale, or units of measure over a stated amount of change in temperature, pressure, or flow rate (e.g., “ $\pm 0.1$  percent of reading per 20 psi”);

(iii) The stability of the zero reading for both mass and volumetric flow rate. The specifications must be stated in percent of reading, percent of full scale, or units of measure;

(iv) Minimum lengths of straight piping upstream and downstream of the meter necessary to achieve the stated reference accuracy;

(v) Design limits for flow rate and pressure; and

(vi) Pressure drop through the meter as a function of flow rate and fluid viscosity.

(2) *Submission of meter specifications.* The operator must submit Coriolis meter specifications to the BLM upon request.

(c) *Meter orientation.* The Coriolis meter must be oriented using API 5.6.3.2.(e) (incorporated by reference, see § 3174.4).

(d) *Changes to calibration factors.* The operator must notify the AO within 24 hours of any changes to any Coriolis meter internal calibration factors including, but not limited to, meter factor, pulse-scaling factor, flow-calibration factor, density-calibration factor, or density-meter factor.

(e) *Non-resettable totalizer.* The Coriolis meter must have a non-resettable internal totalizer for registered volume.

(f) *Verification of meter zero value.* Before proving the meter, or any time the AO requests it, the zero value stored in the meter using API 5.6.8.3 (incorporated by reference, see § 3174.4) must be verified by stopping the flow through the meter and then monitoring the indicated mass flow rate under this condition. If the zero error equals or exceeds the stated zero stability specification of the meter, as calculated by the following equation (API 5.6, Eq. (2) (incorporated by reference, see § 3174.4)), the meter must be zeroed:

$$Err_0 = \frac{q_0}{q_f} \times 100$$

Where:

Err<sub>0</sub> = zero error (percent)

q<sub>0</sub> = observed zero value (flow rate)

q<sub>f</sub> = flow rate during normal operation

(g) *Determination of net standard volume.* The net standard volume on which royalty is due must be calculated as follows:

(1) Calculate the corrected registered volume at the close of each measurement ticket by multiplying the registered volume over the measurement ticket period by the meter factor determined from the most recent proving.

(2) Calculate the gross standard volume at the close of each measurement ticket by multiplying the corrected registered volume by the CPL and CTL determined from the average pressure and average temperature, respectively, taken over the measurement ticket period. The average pressure and temperature must be determined using API 21.2.9.2.13.2a (incorporated by reference, see § 3174.4).

(3) Calculate the net standard volume at the close of each measurement ticket by multiplying the gross standard volume by the quantity of one minus the S&W content (expressed as a fraction) from the composite sample taken over the measurement ticket period. If the CMS does not include a composite sampling system, the S&W content is zero and the net standard volume will equal the gross standard volume.

(h) *Determination of API oil gravity.* The API oil gravity reported for the measurement ticket period must be determined by one of the following methods:

(1) From a composite sample taken under the requirements of § 3174.6(b)(4) of this subpart; or

(2) Calculated from the average density, average temperature, and average pressure as measured by the CMS over the measurement ticket period under API 21.2.9.2.13.2a (incorporated by reference, see § 3174.4). The average density must be corrected to base temperature and pressure using ASTM Table 6A or API 11.1, (both incorporated by reference, see § 3174.4).

(i) *Required on-site information.* (1) The CMS display must be readable without using data collection units, laptop computers, or any special equipment, and must be on-site and accessible to the AO.

(2) For each CMS, the following values and corresponding units of measurement must be displayed:

(i) The instantaneous mass flow rate through the meter (pounds/day);

(ii) The instantaneous density of liquid (pounds/bbl);

(iii) The instantaneous registered volumetric flow rate through the meter (bbl/day);

(iv) The meter factor;

(v) The instantaneous pressure (psi);

(vi) The instantaneous temperature (°F);

(vii) The cumulative gross standard volume through the meter (non-resettable totalizer) (bbl);

(viii) The previous day's gross standard volume through the meter (bbl); and

(ix) The meter alarm conditions.

(3) The following information must be correct, be maintained in a legible condition, and be accessible to the AO at the FMP without the use of data collection equipment, laptop computers, or any special equipment:

(i) The make, model, and size of each sensor; and

(ii) The make, range, calibrated span, and model of the pressure and temperature transducer used to determine gross standard volume.

(4) A log must be maintained of all meter factors, zero verifications, and zero adjustments. For zero adjustments, the log must include the zero value before adjustment and the zero value after adjustment. This log must be located on-site and accessible to the AO.

(j) *Audit trail requirements.* The information specified in paragraphs (j)(1) through (4) of this section must be recorded and retained under the

recordkeeping requirements of § 3170.7 of this part. Audit trail requirements must follow API 21.2.10 (incorporated by reference, see § 3174.4). All data must be available and submitted to the BLM upon request.

(1) *Quantity transaction record (QTR).* Follow the requirements for a CMS measurement ticket in § 3174.12(b) of this subpart.

(2) *Configuration log.* The configuration log must comply with the requirements of API 21.2.10.2 (incorporated by reference, see § 3174.4). The configuration log must contain and identify all constant flow parameters used in generating the QTR.

(3) *Event log.* The event log must comply with the requirements of API 21.2.10.6 (incorporated by reference, see § 3174.4). In addition, the event log must be of sufficient capacity to record all events such that the operator can retain the information under the recordkeeping requirements of § 3170.7 of this part.

(4) *Alarm log.* The type and duration of any of the following alarm conditions must be recorded:

(i) Density deviations from acceptable parameters; and

(ii) Instances in which the flow rate exceeded the manufacturer's maximum recommended flow rate or were below the manufacturer's minimum recommended flow rate.

(k) *Data protection.* Each CMS must have installed and maintained in an operable condition a backup power supply or a nonvolatile memory capable of retaining all data in the unit's memory to ensure that the audit trail information required under paragraph (j) of this section is protected.

**§ 3174.11 Meter proving requirements.**

(a) *Applicability.* This section specifies the minimum requirements for conducting volumetric meter proving for all FMP meters. The FMP meter must not be used for royalty volume determination unless all of the requirements in this section are met.

(b) *Summary.* The following table lists the requirements and minimum standards for proving FMP meters:

**MINIMUM STANDARDS FOR PROVING FMP METERS**

Subject	Section reference
Meter Prover .....	3174.11(c).
Meter Proving Runs .....	3174.11(d).
Minimum Proving Frequency .....	3174.11(e).
Excessive Meter Factor Deviation .....	3174.11(f).
Temperature Verification .....	3174.11(g).
Pressure Verification .....	3174.11(h).
Density Verification .....	3174.11(i).
Meter Proving Reporting Requirements .....	3174.11(j).

(c) *Meter prover.* Acceptable provers are positive displacement master meters, Coriolis master meters, and displacement provers. The operator must ensure that the meter prover used to determine the meter factor has a valid certificate of calibration available for review by the AO on site that shows that the prover, identified by serial number assigned to and inscribed on the prover, was calibrated as follows:

(1) Master meters must have a meter factor within 0.9900 to 1.0100 determined by a minimum of five consecutive prover runs within 0.0002 (0.02 percent repeatability). The master

meter must not be mechanically compensated for oil gravity or temperature; its readout must indicate units of volume without corrections. The certified meter factor must be documented on the calibration certificate and must be calibrated no less frequently than every 90 days under API 4.5 (incorporated by reference, see § 3174.4).

(2) Displacement provers must meet the requirements under API 4.2 (incorporated by reference, see § 3174.4) and be calibrated using the water-draw method under API 4.9.2 (incorporated

by reference, see § 3174.4), at the following frequencies:

(i) Portable provers must be calibrated at least once every 36 months; and

(ii) Permanently installed provers must be calibrated at least once every 60 months.

(3) The base prover volume of a displacement prover must be calculated under API 12.2.4 (incorporated by reference, see § 3174.4).

(4) Displacement provers must be sized to obtain a displacer velocity through the prover that is within the appropriate range during proving as follows:

Prover type	Minimum velocity (ft/sec)	Maximum velocity (ft/sec)
Displacement—unidirectional .....	0.5	10
Displacement—bidirectional .....	0.5	5
Piston (Small volume prover) .....	0.25	5

Fluid velocity is calculated by the following equation (API 4.2., Eq. 12 (incorporated by reference, see § 3174.4)):

$$V_d = \frac{0.286 \times Q}{D_p^2}$$

Where:

$V_d$  = displacer velocity, ft/sec.

$D_p$  = inside diameter of prover, in.

$Q$  = flow rate, barrels per hour (bbl/hr)

(d) *Meter proving runs.* Meter proving must follow the applicable section(s) of API 4.1—Proving Systems (incorporated by reference, see § 3174.4).

(1) Meter proving must be performed under normal operating fluid pressure, fluid temperature, and fluid type and composition, as follows:

(i) The oil flow rate through the LACT or CMS during proving must be within 10 percent of the normal flow rate;

(ii) The absolute pressure as measured by the LACT or CMS during proving must be within 10 percent of the normal operating absolute pressure; and

(iii) The gravity of the oil during proving must be within 5 degrees API of the normal oil gravity.

(iv) If the normal flow rate, pressure, temperature, or oil gravity vary by more than the limits defined in paragraphs (d)(i) through (iii) of this section, meter provings must be conducted under three conditions, namely, at the lower limit of normal operating conditions, at the upper limit of normal operation conditions, and at the midpoint of normal operating conditions.

(2) If each proving run is not of sufficient volume to generate at least 10,000 pulses from the positive displacement meter in a LACT system or the Coriolis meter in a CMS, pulse interpolation must be used in accordance with API 4.6 (incorporated by reference, see § 3174.4).

(3) Proving runs must be made until the calculated meter factor from five consecutive runs match within a tolerance of 0.0005 (0.05 percent) between the highest and the lowest value.

(4) The new meter factor is the arithmetic average of the meter factors calculated from the five consecutive runs.

(5) Meter factor computations must follow the sequence described in API 12.2.3 (incorporated by reference, see § 3174.4).

(6) If multiple meters factors are determined over a range of normal operating conditions, then:

(i) A single meter factor may be calculated as the arithmetic average of the three meter factors determined over

the range of normal operating conditions; or

(ii) The metering system may apply a dynamic meter factor derived from the three meter factors determined over the range of normal operating conditions.

(7) The meter factor must be at least 0.9900 and no more than 1.0100.

(8) The initial meter factor for a new or repaired meter must be at least 0.9950 and no more than 1.0050.

(9) The back-pressure valve may be adjusted after proving only within the normal operating fluid flow rate and fluid pressure as described in paragraph (d)(1) of this section. If the back-pressure valve is adjusted after proving, the operator must document the “as left” fluid flow rate and fluid pressure on the proving report.

(10) If a composite meter factor is calculated, the CPL value must be calculated from the pressure setting of the back-pressure valve or the normal operating pressure at the meter. Composite meter factors must not be used in a CMS.

(e) *Minimum proving frequency.* The operator must prove any FMP meter before removal or sales of production after any of the following events:

(1) Initial meter installation;

(2) Each time the registered volume flowing through the meter, as measured on the non-resettable totalizer from the last proving, increases by 50,000 bbl or quarterly, whichever occurs first;

(3) Meter zeroing (CMS);

(4) Modification of mounting conditions;

(5) A change in fluid temperature outside of the RTD’s calibrated span;

(6) A change in pressure, density, or flow rate that is outside of the operating proving limits;

(7) The mechanical or electrical components of the meter have been opened, changed, repaired, removed, exchanged, or reprogrammed; or

(8) At the request of the AO.

(f) *Excessive meter factor deviation.*

(1) If the difference between meter factors established in two successive provings exceeds  $\pm 0.0025$ , the meter must be immediately removed from service, checked for damage or wear, adjusted or repaired, and re-proved before returning the meter to service.

(2) The arithmetic average of the two successive meter factors must be applied to the production measured through the meter between the date of the previous meter proving and the date of the most recent meter proving.

(3) The proving report submitted under paragraph (j) of this section must clearly show the most recent meter factor and describe all subsequent repairs and adjustments.

(g) *Verification of the temperature averager or RTD.* As part of each required meter proving, the temperature averager for a LACT system and the RTD used in conjunction with a CMS must be verified against a known standard according to the following:

(1) The temperature averager or RTD must be compared with a test thermometer traceable to NIST and with a stated accuracy of  $\pm 0.25$  °F or better.

(2) The temperature reading displayed on the temperature averager or tertiary device must be compared with the reading of the test thermometer using one of the following methods:

(i) The test thermometer must be placed in a test thermometer well located not more than 12” from the probe of the temperature averager or RTD; or

(ii) Both the test thermometer and probe of the temperature averager or RTD must be placed in an insulated water bath. The water bath temperature must be within 10 °F of the normal flowing temperature of the oil.

(3) The displayed reading of instantaneous temperature from the temperature averager or the tertiary device must be compared with the reading from the test thermometer. If they differ by more than 0.5 °F, then:

(i) The temperature averager or tertiary device must be adjusted to match the reading of the test thermometer; or

(ii) The difference in temperatures must be noted on the meter proving report and all temperatures used until the next proving must be adjusted by the difference.

(h) *Verification of the pressure transducer (CMS only).* (1) The pressure transducer must be compared with a test pressure device (dead weight or pressure gauge) traceable to NIST and with a stated accuracy at least two times better than the reference accuracy of the pressure device being tested.

(2) The pressure reading displayed on the tertiary device must be compared with the reading of the test pressure device.

(3) The pressure transducer must be tested at the following three points:

(i) Zero (atmospheric pressure);

(ii) 100 percent of the calibrated span of the pressure transducer; and

(iii) At a point that represents the normal flowing pressure through the Coriolis meter.

(4) If the pressure applied by the test pressure device and the pressure displayed on the tertiary device vary by more than the required accuracy of the pressure transducer, the pressure transducer must be adjusted to read

within the pressure device's stated accuracy of the test pressure device.

(i) *Density verification (CMS only)*. If the API gravity of oil is determined from the average density measured by the Coriolis meter (rather than from a composite sample), then during each proving of the Coriolis meter, the instantaneous flowing density determined by the Coriolis meter must be verified by comparing it with an independent density measurement as specified under API 5.6.9.1.2.1. (incorporated by reference, see § 3174.4). The difference between the indicated density determined from the CMS and the independently determined density must be within the specified density reference accuracy specification of the Coriolis meter.

(j) *Meter proving reporting requirements*. (1) The operator must report to the AO all meter-proving and volume adjustments after any LACT system or CMS malfunction, including excessive meter-factor deviation, using the appropriate form in either API 12.2.3, or API 5.6 (both incorporated by reference, see § 3174.4), or any similar format showing the same information as the API form, provided that the calculation of meter factors maintains the proper calculation sequence and rounding.

(2) In addition to the information required under paragraph (j)(1) of this section, each meter-proving report must also show the:

- (i) FMP number;
- (ii) Lease number, CA number, or unit PA number;
- (iii) The temperature from the test thermometer and the temperature from the temperature averager or tertiary device;
- (iv) For CMS, the pressure applied by the pressure test device and the pressure reading from the tertiary device at the three points required under paragraph (h)(3) of this section; and
- (v) The "as left" fluid flow rate and fluid pressure, if the back-pressure valve is adjusted after proving as described in § 3174.11(d)(9).

(3) The operator must submit the meter-proving report to the AO no later than 14 days after the meter proving.

#### **§ 3174.12 Measurement tickets.**

(a) *Manual tank gauging*. Immediately after oil is measured by manual tank gauging under §§ 3174.5 and 3174.6 of this subpart, the operator, purchaser, or transporter, as appropriate, must complete a uniquely numbered measurement ticket, in either paper or electronic format, with the following information:

- (1) Lease, unit, or communitization agreement number;
  - (2) FMP number;
  - (3) Unique tank number and nominal tank capacity;
  - (4) Opening and closing dates and times;
  - (5) Opening and closing gauges and observed temperatures in °F;
  - (6) Total observed volume prior to sales and after sales;
  - (7) Total gross standard volume removed from the tank;
  - (8) Observed API oil gravity and temperature;
  - (9) API oil gravity at 60 °F;
  - (10) S&W percent;
  - (11) Unique number of each seal removed and installed;
  - (12) Name of the individual performing the manual tank gauging;
  - (13) Name of the operator; and
  - (14) Name of the operator's representative certifying that the measurement is correct.
  - (15) If the operator does not agree with the tank gauger's measurement, the operator must notify the AO within 7 days of the reasons for the operator's disagreement with the tank gauger's measurement.
- (b) *LACT system and CMS*. (1) Before conducting proving operations on a LACT system or CMS and, at a minimum, at the beginning of every month, the operator, purchaser, or transporter, as appropriate, must complete a uniquely numbered measurement ticket, in either paper or electronic format, with the following information:
- (i) Lease, unit, or communitization agreement number;
  - (ii) FMP number;
  - (iii) Opening and closing dates;
  - (iv) Opening and closing totalizer readings of the registered volume;
  - (v) Meter factor from the most recent proving;
  - (vi) Total gross standard volume removed through the LACT system or CMS;
  - (vii) API oil gravity. For API oil gravity determined from a composite sample, the API oil gravity at 60° F and the observed API oil gravity and temperature in °F. For API oil gravity determined from average density (CMS only), the average uncorrected density determined by the CMS;
  - (viii) The average temperature in °F;
  - (ix) The average flowing pressure in psig;
  - (x) S&W percent;
  - (xi) Unique number of each seal removed and installed;
  - (xii) Name of the purchaser's representative;
  - (xiii) Name of the operator; and

(xiv) Name of the operator's representative certifying that the measurement is correct.

(2) If the purchaser or transporter takes the LACT system or CMS measurement, and if the operator does not agree with the measurement, the operator must notify the AO within 7 days of the reasons for the operator's disagreement with the LACT system or CMS measurement.

(3) The accumulators used in the determination of average pressure, average temperature, and average density must be reset to zero whenever a new measurement ticket is opened.

#### **§ 3174.13 Oil measurement by other methods.**

(a) Any method of oil measurement other than manual tank gauging, LACT system, or CMS at an FMP requires BLM approval.

(b)(1) Any operator requesting approval to use alternate oil measurement equipment must submit to the BLM performance data, actual field test results, laboratory test data, or any other supporting data or evidence that demonstrates that the proposed alternate oil equipment would meet or exceed the objectives of the applicable minimum requirements of this subpart and would not affect royalty income or production accountability.

(2) The PMT will review the submitted data to ensure that the alternate oil measurement equipment meets the requirements of this subpart and will make a recommendation to the BLM to approve use of the equipment, disapprove use of the equipment or approve use of the equipment with conditions for its use. If the PMT recommends, and the BLM approves new equipment, the BLM will post the make, model, and range or software version on the BLM Web site [www.blm.gov](http://www.blm.gov) as being appropriate for use at an FMP for oil measurement.

(c) The procedures for requesting and granting a variance under § 3170.6 of this part may not be used as an avenue for approving new technology, methods, or equipment. Approval of alternative oil measurement equipment or methods may be obtained only under this section.

#### **§ 3174.14 Determination of oil volumes by methods other than measurement.**

(a) Under 43 CFR 3162.7-2, when production cannot be measured due to spillage or leakage, the amount of production must be determined by using any method the AO approves or prescribes. This category of production includes, but is not limited to, oil that is classified as slop oil or waste oil.

(b) No oil may be classified or disposed of as waste oil unless the operator can demonstrate to the satisfaction of the AO that it is not economically feasible to put the oil into marketable condition.

(c) The operator may not sell or otherwise dispose of slop oil without

prior written approval from the AO. Following the sale or disposal of slop oil, the operator must notify the AO in writing of the volume sold or disposed of and the method used to compute the volume.

**§ 3174.15 Immediate assessments.**

Certain instances of noncompliance warrant the imposition of immediate assessments upon the BLM's discovery of the violation, as prescribed in the following table. Imposition of any of these assessments does not preclude other appropriate enforcement actions.

VIOLATIONS SUBJECT TO AN IMMEDIATE ASSESSMENT

Violation	Assessment amount per violation
1. Missing or nonfunctioning FMP LACT system components as required by § 3174.8(a) of this subpart .....	\$1,000
2. Failure to notify the AO within 24 hours of any FMP LACT system failure or equipment malfunction resulting in use of an unapproved alternate method of measurement as required by § 3174.7(e) of this subpart .....	1,000
3. Missing or nonfunctioning FMP CMS components as required by § 3174.9(e) of this subpart .....	1,000
4. Failure to notify the AO within 7 days of any changes to any CMS internal calibration factors as required by § 3174.10(d) of this subpart .....	1,000
5. Failure to meet the proving frequency requirements for an FMP as required by § 3174.11(e) of this subpart .....	1,000
6. Failure to obtain a written variance approval before using any oil measurement method other than manual tank gauging, LACT system, or CMS at a FMP as required by § 3174.13 of this subpart .....	1,000

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Part V

## Department of Commerce

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National Oceanic and Atmospheric Administration

50 CFR Part 219

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research; Final Rule

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 219**

[Docket No. 120416011–5836–02]

RIN 0648–BB87

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS' Office of Protected Resources, upon request of NMFS' Southwest Fisheries Science Center (SWFSC), hereby issues regulations to govern the unintentional taking of marine mammals incidental to fisheries research conducted in multiple specified geographical regions, over the course of 5 years. These regulations, which allow for the issuance of Letters of Authorization for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective from October 30, 2015, through October 30, 2020.

**ADDRESSES:** A copy of SWFSC's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at:

[www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm). In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

These regulations, under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), establish frameworks for authorizing the take of marine mammals incidental to the SWFSC's fisheries research activities in three separate specified geographical regions (*i.e.*, the California Current Ecosystem, the Eastern Tropical Pacific, and the

Antarctic Marine Living Resources Ecosystem).

The SWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. SWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. A few surveys are conducted onboard commercial fishing vessels, but the SWFSC designs and executes the studies and funds vessel time.

*Purpose and Need for This Regulatory Action*

We received an application from the SWFSC requesting five-year regulations and authorization to take multiple species of marine mammals. Take is anticipated to occur by Level B harassment incidental to the use of active acoustic devices in each of the three specified geographical regions, as well as by visual disturbance of pinnipeds in the Antarctic only, and by Level A harassment, serious injury, or mortality incidental to the use of fisheries research gear in the California Current and Eastern Tropical Pacific only. For each specified geographical region, the regulations are valid for five years from the date of issuance. Please see "Background" below for definitions of harassment.

Section 101(a)(5)(A) of the MMPA directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after notice and public comment, the agency makes certain findings and issues regulations. These regulations would contain mitigation, monitoring, and reporting requirements.

*Legal Authority for the Regulatory Action*

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing the five-year regulations and any subsequent Letters of Authorization.

*Summary of Major Provisions Within the Regulations*

The following provides a summary of some of the major provisions within these regulations for the SWFSC fisheries research activities in the three specified geographical regions. We have determined that the SWFSC's adherence to the mitigation, monitoring, and reporting measures listed below would achieve the least practicable adverse

impact on the affected marine mammals. They include:

- Required monitoring of the sampling areas to detect the presence of marine mammals before deployment of pelagic trawl nets or pelagic longline gear.
- Required use of marine mammal excluder devices on one type of pelagic trawl net and required use of acoustic deterrent devices on all pelagic trawl nets.
- Required implementation of the mitigation strategy known as the move-on rule, which incorporates best professional judgment, when necessary during pelagic trawl and pelagic longline operations.

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

## Summary of Request

On April 25, 2013, we received an adequate and complete request from SWFSC for authorization to take marine mammals incidental to fisheries research activities. We received an initial draft of the request on February 11, 2012, followed by revised drafts on June 29 and December 21, 2012. On May 2, 2013 (78 FR 25703), we published a notice of receipt of SWFSC's application in the **Federal Register**, requesting comments and information related to the SWFSC request for thirty days. We received comments from the Marine Mammal Commission, which we considered in development of the notice of proposed rulemaking (80 FR 8166; February 13, 2015) and which are available on the Internet at: [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm).

SWFSC plans to conduct fisheries research using pelagic trawl gear used at various levels in the water column, pelagic longlines with multiple hooks, bottom-contact trawls, and other gear. If a marine mammal interacts with gear deployed by SWFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.*, any injury that will likely result in mortality), or mortality. However, there is not sufficient information upon which to base a prediction of what the outcome may be for any particular interaction. Therefore, SWFSC has pooled the estimated number of incidents of take resulting from gear interactions, and we have assessed the potential impacts accordingly. SWFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on ice may also occur, in the Antarctic only, as a result of visual disturbance from vessels conducting SWFSC research. These regulations are valid for five years from the date of issuance.

The SWFSC conducts fisheries research surveys in the California Current Ecosystem (CCE), the Eastern Tropical Pacific (ETP), and the Antarctic Marine Living Resources Ecosystem (AMLR). As required by the MMPA, SWFSC's request is considered separately for each specified geographical region. In the CCE, SWFSC requests authorization to take individuals of seventeen species by Level A harassment, serious injury, or mortality (hereafter referred to as M/SI + Level A) and of 34 species by Level B harassment. In the ETP, SWFSC

requests authorization to take individuals of eleven species by M/SI + Level A and of 31 species by Level B harassment. In the AMLR, SWFSC requests authorization to take individuals of seventeen species by Level B harassment. No takes by M/SI + Level A are anticipated in the AMLR.

## Description of the Specified Activity

### Overview

The SWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. SWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. A few surveys are conducted onboard commercial fishing vessels, but the SWFSC designs and executes the studies and funds vessel time. The SWFSC plans to administer and conduct approximately fourteen survey programs over the five-year period. The gear types used fall into several categories: pelagic trawl gear used at various levels in the water column, pelagic longlines, bottom-contact trawls, and other gear. Only use of pelagic trawl and pelagic longline gears are likely to result in interaction with marine mammals. The majority of these surveys also use active acoustic devices.

The federal government has a responsibility to conserve and protect living marine resources in U.S. waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed fishery management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The SWFSC is the research arm of NMFS in the southwest region of the U.S. The SWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the three geographic research areas described below and provides scientific information to support the Pacific Fishery Management Council

and numerous other domestic and international fisheries management organizations.

### Dates and Duration

The specified activity may occur at any time during the five-year period of validity of the regulations. Dates and duration of individual surveys are inherently uncertain, based on congressional funding levels for the SWFSC, weather conditions, or ship contingencies. In addition, the cooperative research program is designed to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects go through an annual competitive selection process to determine which projects should be funded based on proposals developed by many independent researchers and fishing industry participants. SWFSC survey activity does occur during most months of the year; however, trawl surveys occur during May through June and September and longline surveys are completed during June–July and September.

### Specified Geographical Regions

The SWFSC operates within three research areas: the California Current, Eastern Tropical Pacific, and Antarctic. These three areas were described in detail in our notice of proposed rulemaking (80 FR 8166; February 13, 2015); please see that document for further detail.

### Detailed Description of Activities

A detailed description of SWFSC's planned activities was provided in our notice of proposed rulemaking (80 FR 8166; February 13, 2015) and is not repeated here. No changes have been made to the specified activities described therein.

### Comments and Responses

We published a notice of proposed rulemaking in the **Federal Register** on February 13, 2015 (80 FR 8166) and requested comments and information from the public. During the thirty-day comment period, we received letters from the Marine Mammal Commission (Commission) and jointly from The Humane Society of the United States and Whale and Dolphin Conservation (HSUS). The comments and our responses are provided here, and the comments have been posted on the Internet at: [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm). Please



see the comment letters for full rationale behind the recommendations we respond to below.

*Comment 1:* The Commission recommends that we require SWFSC to estimate the numbers of marine mammals taken by Level B harassment incidental to use of active acoustic sources (e.g., echosounders) based on the 120-dB rather than the 160-dB root mean square (rms) threshold. Please see our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for discussion related to acoustic terminology and thresholds. The Commission made the same recommendation in their letter submitted during the 2013 notice of receipt comment period. HSUS reviewed that letter and indicated that they agree and support the Commission's recommendation. The Commission had also previously recommended that we consult with experts in the fields of sound propagation and marine mammal hearing to revise existing acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources.

*Response:* Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Thus, echosounder signals are not continuous sounds but rather intermittent sounds. Intermittent sounds can further be defined as either impulsive or non-impulsive. Impulsive sounds have been defined as sounds which are typically transient, brief (< 1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). Echosounder signals also have durations that are typically very brief (< 1 sec), with temporal characteristics that more closely resemble those of impulsive sounds than non-impulsive sounds, which typically have more gradual rise times and longer decays (ANSI, 1995; NIOSH, 1998). With regard to behavioral thresholds, we consider the temporal and spectral characteristics of echosounder signals to more closely resemble those of an impulse sound than a continuous sound.

The Commission suggests that, for certain sources considered here, the interval between pulses would not be discernible to the animal, rendering them effectively continuous. However, echosounder pulses are emitted in a similar fashion as odontocete

echolocation click trains. Research indicates that marine mammals, in general, have extremely fine auditory temporal resolution and can detect each signal separately (e.g., Au *et al.*, 1988; Dolphin *et al.*, 1995; Supin and Popov, 1995; Mooney *et al.*, 2009), especially for species with echolocation capabilities. Therefore, it is highly unlikely that marine mammals would perceive echosounder signals as being continuous. The Commission provides numerous references purporting to demonstrate behavioral responses by marine mammals to received levels of sound below 160 dB rms from sources with characteristics similar to those used by SWFSC. However, the vast majority of these references concern acoustic deterrent devices, which we do not believe are similar to SWFSC acoustic sources.

In conclusion, echosounder signals are intermittent rather than continuous signals, and the fine temporal resolution of the marine mammal auditory system allows them to perceive these sounds as such. Further, the physical characteristics of these signals indicate a greater similarity to the way that intermittent, impulsive sounds are received. Therefore, the 160-dB threshold (typically associated with impulsive sources) is more appropriate than the 120-dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources. This response represents the consensus opinion of acoustics experts from NMFS' Office of Protected Resources and Office of Science and Technology.

Finally, we agree with the Commission's recommendation to revise existing acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources and are currently in the process of producing such revisions. NOAA recognizes, as new science becomes available, that our current categorizations (*i.e.*, impulse versus continuous) may not fully encompass the complexity associated with behavioral responses (e.g., context) and are working toward addressing these issues in future acoustic guidance.

*Comment 2:* The Commission recommends that we develop criteria and guidance for determining when prospective applicants should request taking by Level B harassment incidental to the use of echosounders, sonars, and subbottom profilers, stating that we should follow a consistent approach in assessing the potential for taking from such active acoustic systems.

*Response:* We agree with the Commission's recommendation. Generally speaking, there has been a lack of information and scientific consensus regarding the potential effects of scientific sonars on marine mammals, which may differ depending on the system and species in question as well as the environment in which the system is operated. We are currently working to ensure that the use of these types of active acoustic sources is considered consistently and look forward to the Commission's advice as we develop guidance as recommended.

*Comment 3:* The Commission notes that we have delineated two categories of acoustic sources, largely based on frequency, with those sources operating at frequencies greater than the known hearing ranges of any marine mammal (*i.e.*, >180 kHz) lacking the potential to cause disruption of behavioral patterns. The Commission recommends that we review the recent scientific literature on acoustic sources with frequencies above 180 kHz (*i.e.*, Deng *et al.*, 2014; Hastie *et al.*, 2014) and incorporate those findings into our criteria and guidance for determining when prospective applicants should request authorization for taking by Level B harassment from the use of echosounders, sonars, and subbottom profilers.

*Response:* We are aware of the referenced literature but did not acknowledge and address those findings in our notice of proposed rulemaking. We appreciate the Commission bringing it to our attention. In general, the referenced work indicates that "sub-harmonics" could be "detectable" by certain species at distances up to several hundred meters. However, this detectability is in reference to ambient noise, not to NMFS' established 160-dB threshold for assessing the potential for incidental take for these sources (see also our response to comment #1). Source levels of the secondary peaks considered in these studies—those within the hearing range of some marine mammals—range from 135–166 dB, meaning that these sub-harmonics would either be below the threshold for behavioral harassment or would attenuate to such a level within a few meters. Beyond these important study details, these high-frequency (*i.e.*, Category 1) sources and any energy they may produce below the primary frequency that could be audible to marine mammals would be dominated by a few primary sources (e.g., EK60) that are operated near-continuously—much like other Category 2 sources considered in our assessment of potential incidental take from SWFSC use of active acoustic sources—and the

potential range above threshold would be so small as to essentially discount them.

*Comment 4:* HSUS expressed concern that we may not be appropriately accounting for behavioral impacts incidental to SWFSC use of active acoustic sources and noted that such impacts could occur at greater distances than considered in our analysis.

*Response:* Beyond consideration of a different threshold for assessing potential behavioral impacts—which we address above for comment #1—it is not clear what additional or different approaches to impact assessment HSUS might recommend. HSUS states that NMFS' current relevant acoustic threshold (*i.e.*, 160 dB rms) is the level at which temporary threshold shift is predicted to occur and does not account for behavioral effects. This statement is inaccurate—while we acknowledge that behavioral effects can and have been documented to occur at received levels below 160 dB rms, depending on behavioral context, the current step-function paradigm espoused by NMFS provides that behavioral reactions that may be considered as “take” under the MMPA occur upon exposure to any received level at or exceeding 160 dB rms. Under the same paradigm, the onset of temporary threshold shift is considered to occur upon receipt of any sound level between 160 dB rms and either 180 or 190 dB rms, for cetaceans and pinnipeds, respectively. Absent a specific recommendation to consider, we believe that our approach to assessing the potential for behavioral harassment incidental to SWFSC use of active acoustics is appropriate.

*Comment 5:* SWFSC proposed to implement a move-on rule, under which they suspend operations or hauling of gear when marine mammals are observed within a certain distance of the vessel. This measure is intended to reduce the potential for marine mammal interactions. One exception to this measure is for California sea lions, for which density is sufficiently high in typical operation areas in the California Current that SWFSC believes implementation of the move-on rule should only be triggered upon observation of more than five sea lions. HSUS states that the basis for determining a numerical threshold for balancing risk to the affected species and practicability for operations (*i.e.*, six sea lions) is not sufficiently explained.

*Response:* We have determined that implementation of the move-on rule, in concert with other measures described below under “Mitigation”, is sufficient to reduce the amount of incidental taking to the level of least practicable

adverse impact, as required by the MMPA. However, for California sea lions, there is a tension between the numbers of individuals observed in many sampling locations versus the amount of historical interactions with SWFSC longline research gear, *i.e.*, historical interactions are rare (seven individual sea lions incidentally captured in nine years) while sightings of California sea lions within 1 nm of survey locations is common. Therefore, the expected result of an absolute move-on rule for California sea lions is that certain survey locations would be effectively eliminated from future surveys, while providing marginal benefit to the stock. It is possible that a move-on rule triggered upon observation of a single sea lion, rather than a group of six or more sea lions, may provide additional benefit in reducing potential impacts to the stock. However, because these areas are important to the survey objectives (*e.g.*, sampling target species) developed in accordance with NMFS' statutory mandates and because implementation of the more restrictive version of the measure for California sea lions is not necessary to reach a finding of negligible impact for California sea lions, we have determined that the measure as described satisfies the standard of least practicable adverse impact. The specific numerical threshold—six or more California sea lions—was based on SWFSC expert knowledge concerning the numbers of California sea lions typically observed in proximity to sampling locations. We will assess this measure on an annual basis during the lifetime of the regulations and would modify the measure through adaptive management should we determine that a more restrictive measure is required to meet the MMPA standard of least practicable adverse impact.

*Comment 6:* SWFSC proposed to prohibit the practice of chumming in order to prevent attractance of marine mammals to longline operations but would allow the practice of discarding spent bait during survey operations. HSUS believes that there is little difference between these two practices and indicates concern that discards of spent bait, in combination with increased densities of sea lions, may result in potential for increased interactions with survey gear. HSUS recommends that we require that bait be retained until all hooks are clear of the water.

*Response:* While we acknowledge that any differentiation between discarding spent bait and chumming may be perceived as a matter of semantics, a

substantive distinction is that chumming is an intentional act to lure or attract animals, whereas SWFSC performs bait discard to increase survey efficiency. Interactions with marine mammals during longline surveys have historically been limited to rare incidents involving no more than a single individual California sea lion in any set. There is no information to suggest that this ongoing practice has resulted in any increase in the overall number of interactions, while it has demonstrably not resulted in an increase in the number of animals per interaction. Therefore, we have determined that a prohibition on bait discards is not necessary to reduce the anticipated taking to the level of least practicable adverse impact. However, we will assess the potential inclusion of such a measure on an annual basis during the lifetime of the regulations and will require it through adaptive management should we determine it necessary to satisfy the statutory requirement.

### Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, “and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.” We provided a full description of the planned mitigation measures, including background discussion related to certain elements of the mitigation plan, in our notice of proposed rulemaking (80 FR 8166; February 13, 2015). Please see that document for more detail.

### General Measures

*Coordination and communication—* We require that the SWFSC take all necessary measures to coordinate and communicate in advance of each specific survey with NOAA's Office of Marine and Aviation Operations (OMAO), or other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve description of all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. SWFSC will coordinate and conduct briefings at the outset of each

survey and as necessary between ship's crew (commanding officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The chief scientist (CS) will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

*Vessel speed*—Vessel speed during active sampling rarely exceeds 5 kn, with typical speeds being 2–4 kn. Transit speeds vary from 6–14 kn but average 10 kn. These low vessel speeds minimize the potential for ship strike. At any time during a survey or in transit, if a crew member standing watch or dedicated marine mammal observer sights marine mammals that may intersect with the vessel course that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

*Other gears*—The SWFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (e.g., plankton nets, video camera and ROV deployments) are not considered to pose any risk to marine mammals and are therefore not subject to specific mitigation measures. In addition, specific aspects of gear design, survey protocols (e.g., number of hooks), and frequency of use indicate that certain types of gears that may otherwise be expected to have the potential to result in take of marine mammals (e.g., bottom longline used in sablefish life history surveys) do not pose significant risk to marine mammals and are not subject to specific mitigation measures. However, at all times when the SWFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

*Handling procedures*—Since the time the notice of proposed rulemaking was published, SWFSC developed marine mammal handling protocols for use in its fisheries and ecosystem research activities that rely on gears that may interact with these species. These protocols draw heavily from existing fisheries observer program placards, training materials and manuals, particularly those using trawl and

longline gears. The SWFSC handling protocols follow a step-wise order: (1) Take actions to ensure the health and safety of crew and scientists on board; (2) depending how and where the animal is hooked or entangled, take specific actions to prevent further injury to the animal; (3) take actions to increase the animal's chances of survival, and (4) record detailed information on the interaction, actions taken and observations of the animal throughout the incident. SWFSC views formalizing this data collection as a key component to evaluating how actual handling compares to handling protocols, and to learning from these incidents both through analysis of interaction reports and through discussions at its annual training sessions.

#### *Trawl Survey Visual Monitoring and Operational Protocols*

The mitigation requirements described here are applicable to all midwater trawl operations conducted by the SWFSC (currently conducted using the Nordic 264 and modified-Cobb nets). Marine mammal watches (visual observation) will be initiated no less than thirty minutes prior to arrival on station to determine if marine mammals are in the vicinity of the planned sample location. Marine mammal watches will be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation will be conducted using the naked eye and available vessel lighting. The visual observation period typically occurs during transit leading up to arrival at the sampling station, rather than upon arrival on station. However, in some cases it may be necessary to conduct a bongo plankton tow or other small net cast prior to deploying trawl gear. In these cases, the visual watch will continue until trawl gear is ready to be deployed. Aside from this required thirty-minute minimum pre-trawl monitoring period, the OOD/CS and crew standing watch will visually scan for marine mammals during all daytime operations.

The primary purpose of conducting the pre-trawl visual monitoring period is to implement the move-on rule. If marine mammals are sighted within 1 nm of the planned set location in the thirty minutes before setting the trawl gear, the vessel will transit to a different section of the sampling area to maintain a minimum set distance of 1 nm from the observed marine mammals. If, after moving on, marine mammals remain within the 1 nm exclusion zone, the CS

or watch leader may decide to move again or to skip the station. However, the effectiveness of visual monitoring may be limited depending on weather and lighting conditions, and it may not always be possible to conduct visual observations out to 1 nm radial distance. The OOD, CS or watch leader will determine the best strategy to avoid potential takes of marine mammals based on the species encountered and their numbers and behavior, position, and vector relative to the vessel, as well as any other factors. In any case, no trawl gear will be deployed if marine mammals have been sighted within 1 nm of the planned set location during the thirty-minute watch period.

In general, trawl operations will be conducted immediately upon arrival on station (and on conclusion of the thirty-minute pre-watch period) in order to minimize the time during which marine mammals (particularly pinnipeds) may become attracted to the vessel. However, in some cases it will be necessary to conduct small net tows (e.g., bongo net) prior to deploying trawl gear in order to avoid trawling through extremely high densities of gelatinous zooplankton that can damage trawl gear.

Once the trawl net is in the water, the OOD, CS, and/or crew standing watch will continue to visually monitor the surrounding waters and will maintain a lookout for marine mammal presence as far away as environmental conditions allow. If marine mammals are sighted before the gear is fully retrieved, the most appropriate response to avoid marine mammal interaction will be determined by the professional judgment of the CS, watch leader, OOD and other experienced crew as necessary. This judgment will be based on past experience operating trawl gears around marine mammals (i.e., best professional judgment) and on SWFSC training sessions that will facilitate dissemination of expertise operating in these situations (e.g., factors that contribute to marine mammal gear interactions and those that aid in successfully avoiding such events). Best professional judgment takes into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (e.g., net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course. We recognize that it is not possible to dictate in advance the exact course of action that the OOD or CS should take in any given event involving the presence of marine mammals in proximity to an ongoing trawl tow, given the sheer number of potential variables, combinations of

variables that may determine the appropriate course of action, and the need to consider human safety in the operation of fishing gear at sea. Nevertheless, we require a full accounting of factors that shape both successful and unsuccessful decisions and these details will be fed back into SWFSC training efforts and ultimately help to refine the best professional judgment that determines the course of action taken in any given scenario (see further discussion in “Monitoring and Reporting”).

If trawling operations have been suspended because of the presence of marine mammals, the vessel will resume trawl operations (when practicable) only when the animals are believed to have departed the 1 nm exclusion zone. This decision is at the discretion of the OOD/CS and is dependent on the situation.

Standard survey protocols that are expected to lessen the likelihood of marine mammal interactions include standardized tow durations and distances. Standard tow durations of not more than thirty minutes at the target depth will be implemented, excluding deployment and retrieval time (which may require an additional thirty minutes, depending on target depth), to reduce the likelihood of attracting and incidentally taking marine mammals. Short tow durations decrease the opportunity for marine mammals to find the vessel and investigate. Trawl tow distances will be less than 3 nm—typically 1–2 nm, depending on the specific survey and trawl speed—which is expected to reduce the likelihood of attracting and incidentally taking marine mammals. In addition, care will be taken when emptying the trawl to avoid damage to marine mammals that may be caught in the gear but are not visible upon retrieval. The gear will be emptied as quickly as possible after retrieval in order to determine whether or not marine mammals are present. The vessel’s crew will clean trawl nets prior to deployment to remove prey items that might attract marine mammals. Catch volumes are typically small with every attempt made to collect all organisms caught in the trawl.

**Marine mammal excluder devices**—Excluder devices are specialized modifications, typically used in trawl nets, which are designed to reduce bycatch by allowing non-target taxa to escape the net. These devices generally consist of a grid of bars fitted into the net that allow target species to pass through the bars into the codend while larger, unwanted taxa (e.g., turtles, sharks, mammals) strike the bars and are ejected through an opening in the net.

Marine mammal excluder devices (MMED) have not been proven to be fully effective at preventing marine mammal capture in trawl nets (e.g., Chilvers, 2008) and are not expected to prevent marine mammal capture in SWFSC trawl surveys. It is difficult to effectively test such devices, in terms of effectiveness in excluding marine mammals as opposed to effects on target species catchability, because realistic field trials would necessarily involve marine mammal interactions with trawl nets. Use of artificial surrogates in field trials has not been shown to be a realistic substitute (Gibson and Isakssen, 1998). Nevertheless, we believe it reasonable to assume that use of MMEDs may reduce the likelihood of a given marine mammal interaction with trawl gear resulting in mortality. We do not infer causality, but note that annual marine mammal interactions with the Nordic 264 trawl net have been much reduced (relative to 2008) since use of the MMED began. For full details of design and testing of the SWFSC MMED designed for the Nordic 264 net, please see Dotson *et al.* (2010).

Two types of nets are used in SWFSC pelagic trawl surveys: The Nordic 264 and the modified-Cobb midwater trawls. All Nordic 264 trawl nets will be fitted with MMEDs specially designed to allow marine mammals caught during trawling operations an opportunity to escape. Modified-Cobb trawl nets are considerably smaller than Nordic 264 trawl nets (80 m<sup>2</sup> versus 380 m<sup>2</sup> net opening), are fished at slower speeds, and have a different shape and functionality than the Nordic 264. Very few marine mammal interactions with SWFSC pelagic trawl gear have involved the modified-Cobb net (five of thirty total incidents from 2006–14). Due to the smaller size and different functionality of the modified-Cobb, there is no suitable MMED yet available. However, the SWFSC plans to perform research and design work to develop an effective excluder, if possible, which will not appreciably affect the catchability of the net and therefore maintain continuity of the fisheries research dataset. Please see “Monitoring and Reporting” for additional discussion.

**Acoustic deterrent devices**—Acoustic deterrent devices (pingers) are underwater sound-emitting devices that have been shown to decrease the probability of interactions with certain species of marine mammals when fishing gear is fitted with the devices. Pingers will be deployed during all pelagic trawl operations and on all types of midwater trawl nets (i.e., the Nordic 264 and modified-Cobb nets), with two

to four pingers placed along the footrope and/or headrope. The vessel’s crew will ensure that pingers are operational prior to deployment. Pingers are manufactured by STM Products (Model DDD–03H), with the following attributes: (1) Operational depth of 10–200 m; (2) tones range from 100 ms to seconds in duration; (3) variable frequency of 5–500 kHz; and (4) maximum source level of 176 dB rms re 1  $\mu$ Pa at 30–80 kHz.

**AMLR bottom trawl surveys**—The SWFSC has no documented interactions with marine mammals in bottom trawl gear used periodically in the AMLR, and standard trawl protocols described above are not required for these surveys. However, SWFSC staff conduct visual and acoustic surveys prior to deploying bottom trawl gear to assess the bathymetry and whether marine mammals are present in the area. These visual and acoustic surveys have resulted in very few detections of marine mammals during trawling operations. Visual and acoustic monitoring will continue as a regular part of future bottom trawl surveys in the AMLR study area, and if detections increase, indicating a higher potential for marine mammal interactions, we will consider the need to implement the standard trawl protocols described above during AMLR bottom trawl surveys.

#### *Longline Survey Visual Monitoring and Operational Protocols*

Visual monitoring requirements for all pelagic longline surveys are the same as those described above for trawl surveys. Please see that section for full details of the visual monitoring and move-on protocols. These protocols are not required for bottom longline or vertical longline operations, as there have been no documented marine mammal interactions for SWFSC use of these gears and because we believe there is very little risk of interaction even without these measures. In summary, requirements for pelagic longline surveys are to: (1) Conduct visual monitoring for a period not less than thirty minutes prior to arrival on station; (2) implement the move-on rule if marine mammals are observed within a 1-nm exclusion zone around the vessel; (3) deploy gear as soon as possible upon arrival on station (contingent on clearance of the exclusion zone); and (4) maintain visual monitoring effort throughout deployment and retrieval of the longline gear. As was described for trawl gear, the OOD, CS, or watch leader will use best professional judgment to minimize the risk to marine mammals from potential gear interactions during

deployment and retrieval of gear. If marine mammals are detected during setting operations and are considered to be at risk, immediate retrieval or suspension of operations may be warranted. If operations have been suspended because of the presence of marine mammals, the vessel will resume setting (when practicable) only when the animals are believed to have departed the 1-nm exclusion zone. If marine mammals are detected during retrieval operations and are considered to be at risk, haul-back may be postponed. These decisions are at the discretion of the OOD/CS and are dependent on the situation.

There is one exception to these requirements for longline gear. If five or fewer California sea lions are sighted within the 1-nm exclusion zone during the thirty-minute pre-clearance period, longline gear may be deployed (observations of more than five California sea lions would trigger the move-on rule or suspension of gear deployment or retrieval, as appropriate and, for the latter, as indicated by best professional judgment).

As for trawl surveys, some standard survey protocols are expected to minimize the potential for marine mammal interactions. Typical soak times are two to four hours, measured from the time the last hook is in the water to when the first hook is brought out of the water (but may be as long as eight hours when targeting swordfish). SWFSC longline protocols specifically prohibit chumming (releasing additional bait to attract target species to the gear). However, spent bait may be discarded during gear retrieval while gear is still in the water. However, if marine mammal interactions with longline gear increase or if SWFSC staff observe that this practice may contribute to increased potential for interactions, we will consider the need to retain spent bait until all gear is retrieved.

We have carefully evaluated the SWFSC's planned mitigation measures and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the

practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the SWFSC's proposed measures, as well as other measures we considered, we have determined that these mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

#### **Description of Marine Mammals in the Area of the Specified Activity**

We previously reviewed SWFSC's species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for

accuracy and completeness and referred readers to Sections 3 and 4 of SWFSC's application, as well as to NMFS' Stock Assessment Reports (SARs; [www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/)). We also provided information related to all species with expected potential for occurrence in the specified geographical regions where SWFSC plans to conduct the specified activities, summarizing information related to the population or stock, including potential biological removal (PBR). Please see Tables 3–5 in our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for that information, which is not reprinted here.

#### **Potential Effects of the Specified Activity on Marine Mammals and Their Habitat**

We provided a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat in our notice of proposed rulemaking (80 FR 8166; February 13, 2015). Specifically, we considered potential effects to marine mammals from ship strike, physical interaction with various gear types, use of active acoustic sources, and visual disturbance of pinnipeds, as well as effects to prey species and to acoustic habitat. The information is not reprinted here.

#### **Estimated Take by Incidental Harassment, Serious Injury, or Mortality**

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Serious injury means any injury that will likely result in mortality (50 CFR 216.3).

Take of marine mammals incidental to SWFSC research activities are anticipated to occur as a result of (1) injury or mortality due to gear interaction (CCE and ETP only; Level A harassment, serious injury, or mortality); (2) behavioral disturbance resulting from the use of active acoustic sources (Level B harassment only); or (3) behavioral disturbance of pinnipeds on ice resulting from close proximity of research vessels (AMLR only; Level B harassment only).

*Estimated Take Due to Gear Interaction*

In order to estimate the number of potential incidents of take that could occur by M/SI + Level A through gear interaction, we first considered SWFSC's record of past such incidents, and then considered in addition other species that may have similar vulnerabilities to SWFSC midwater trawl and pelagic longline gear as those species for which we have historical interaction records. Historical interactions with SWFSC research gear, which have only occurred in the California Current Ecosystem, were described in Tables 10 and 11 of our notice of proposed rulemaking (80 FR 8166; February 13, 2015). Please see that document for more information. In order to produce the most precautionary take estimates possible, we use here the most recent five years of data that includes 2008 (e.g., 2008–12). As previously noted, there were dramatically more of both interactions and animals captured (41 animals captured in fourteen interactions across both longline and trawl gear) in the year 2008 than in any other year (an average of 4.3 animals captured in 2.8 interactions in all other years). We believe a five-year time frame provides enough data to adequately capture year-to-year variation in take levels, while reflecting recent environmental

conditions and survey protocols that may change over time.

The SWFSC has no recorded interactions with any gear other than midwater trawl and pelagic longline. We do not anticipate any future interactions in any other gears, including the bottom trawl gear periodically employed by the SWFSC in the AMLR. Although some historical interactions resulted in the animal(s) being released alive, no serious injury determinations (NMFS, 2012a; 2012b) were made, and it is possible that some of these animals later died. In order to use these historical interaction records in a precautionary manner as the basis for the take estimation process, and because we have no specific information to indicate whether any given future interaction might result in M/SI versus Level A harassment, we conservatively assume that all interactions equate to mortality.

In order to evaluate the potential vulnerability of additional species to midwater trawl and pelagic longline gear, we consulted NMFS' List of Fisheries (LOF), which classifies U.S. commercial fisheries into one of three categories according to the level of incidental marine mammal M/SI that is known to occur on an annual basis over the most recent five-year period (generally) for which data has been analyzed. We provided this information, as presented in the 2014 LOF (79 FR

14418; April 14, 2014), in Table 13 of our notice of proposed rulemaking (80 FR 8166; February 13, 2015) and do not reproduce it here.

*California Current Ecosystem*—In order to estimate the potential number of incidents of M/SI + Level A that could occur incidental to the SWFSC's use of midwater trawl and pelagic longline gear in the CCE over the five-year period from 2015–19, we first look at the four species described that have been taken historically and then evaluate the potential vulnerability of additional species to these gears. Table 1 shows the five-year annual average captures of these four species and the projected five-year totals for this proposed rule, for both trawl and longline gear. In order to produce precautionary estimates, we calculate the annual average for the designated five-year period (2008–12), round up to the nearest whole number, and assume that this number may be taken in each future year. This is precautionary in part because we include 2008 in the five-year average, which skews the data for all species captured in trawl gear (though not for longline). These estimates are based on the assumption that annual effort (e.g., total annual trawl tow time) over the proposed five-year authorization period will not exceed the annual effort during the period 2008–12.

TABLE 1—ANNUAL AVERAGE CAPTURES (2008–12) AND PROJECTED FIVE-YEAR TOTAL FOR HISTORICALLY CAPTURED SPECIES

Gear	Species	2008	2009	2010	2011	2012	Maximum for any set <sup>1</sup>	Average per year	Projected 5-year total <sup>2</sup>
Trawl .....	Pacific white-sided dolphin .....	15	3	3	7	4	11	6.4	35
	California sea lion .....	15	1	0	1	0	9	3.4	20
	Northern right whale dolphin .....	6	0	0	0	0	6	1.2	10
	Northern fur seal .....	3	0	0	0	0	1	0.6	5
Longline .....	California sea lion .....	2	1	1	0	1	1	1	5

<sup>1</sup> The maximum number of individual animals captured in a single trawl or longline set, 2008–12.

<sup>2</sup> The estimated total is the product of the 2008–12 annual average rounded up to the nearest whole number and multiplied by the five-year timespan of the proposed rule.

In order to estimate a number of individuals that could potentially be captured in SWFSC research gear for those species not historically captured, we first determine which species may have vulnerability to capture in a given gear. As noted above, we provided information about commercial fisheries interactions with gear similar to that used by SWFSC in our notice of proposed rulemaking (80 FR 8166; February 13, 2015). Where there are documented incidents of M/SI incidental to relevant commercial fisheries, we noted whether we believe those incidents provide sufficient basis

upon which to infer vulnerability to capture in SWFSC research gear.

Information related to incidental M/SI in relevant commercial fisheries is not, however, the sole determinant of whether it may be appropriate to authorize M/SI + Level A incidental to SWFSC survey operations. A number of factors (e.g., species-specific knowledge regarding animal behavior, overall abundance in the geographic region, density relative to SWFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) were taken into account to determine whether a

species may have a similar vulnerability to certain types of gear as historically taken species. In some cases, we have determined that species without documented M/SI may nevertheless be vulnerable to capture in SWFSC research gear. Similarly, we have determined that some species groups with documented M/SI are not likely to be vulnerable to capture in SWFSC gear. These decisions were described in detail in our notice of proposed rulemaking and no new information has been presented. Determinations regarding species that may be vulnerable to

capture in SWFSC research gear have not changed.

Of the species determined to be vulnerable to capture in a given gear, we then determine which may have a similar propensity to capture in a given gear as a historically captured species (Table 1) and which likely do not. For the former, we assume that, given similar propensity, it is possible that a worst-case scenario of take in a single trawl tow or longline set could occur while at the same time contending that, absent significant range shifts or changes in habitat usage, capture of a species not historically captured would likely be a very rare event. The former assumption also accounts for the likelihood that, for species that often travel in groups, an incident involving capture of that species is likely to involve more than one individual.

For example, we believe that the Risso's dolphin is potentially vulnerable to capture in midwater trawl gear and may have similar propensity to capture in that gear as does the Pacific white-sided dolphin. Because the greatest number of Pacific white-sided dolphins captured in any one trawl tow was eleven individuals (see Table 2), we assume that eleven Risso's dolphins could also be captured in a single incident. However, in recognition of the fact that any incident involving the capture of Risso's dolphins would likely be a rare event, we authorize a total taking over the five-year period of the

number that may result from a single, worst-case incident (eleven dolphins). While we do not necessarily believe that eleven Risso's dolphins would be captured in a single incident—and that more capture incidents involving fewer individuals could occur, as opposed to a single, worst-case incident—we believe that this is a reasonable approach to estimating potential incidents of M/SI + Level A while balancing what could happen in a worst-case scenario with the potential likelihood that no incidents of capture would actually occur. The historical capture of northern right whale dolphins in 2008 provides an instructive example of a situation where a worst-case scenario (six dolphins captured in a single trawl tow) did occur, but overall capture of this species was very rare (no other capture incidents before or since).

Separately, for those species that we believe may have a vulnerability to capture in given gear but that we do not believe may have a similar propensity to capture in that gear as a historically captured species, we assume that capture would be a rare event that could involve multiple individuals captured in a single incident or one or two individuals captured in one or two incidents. For example, from the LOF we infer vulnerability to capture in trawl gear for the Dall's porpoise but do not believe that this species has a similar propensity for interaction in

trawl gear as any historically captured species. Therefore, we assume that capture would represent a rare event that could occur in any year of the five-year period of authorization and may involve one or more individuals. For these species we authorize a total taking by M/SI + Level A of five individuals over the five-year timespan. These examples are provided to illustrate the process.

It is also possible that a captured animal may not be able to be identified to species with certainty. Certain pinnipeds and small cetaceans are difficult to differentiate at sea, especially in low-light situations or when a quick release is necessary. For example, a captured delphinid that is struggling in the net may escape or be freed before positive identification is made. Therefore, the SWFSC requested the authorization of incidental M/SI + Level A for two unidentified pinnipeds (one each in trawl and longline) and one unidentified small cetacean (in trawl only) over the course of the five-year period of authorization.

Table 2 summarizes total estimated take due to gear interaction in the CCE; these estimates are unchanged from those provided in our notice of proposed rulemaking (80 FR 8166; February 13, 2015). Please see that document for additional detail on the take estimation process and full rationale for determinations regarding species vulnerabilities.

TABLE 2—TOTAL ESTIMATED M/SI + LEVEL A DUE TO GEAR INTERACTION IN THE CCE, 2015–19

Species	Estimated 5-year total, midwater trawl <sup>1</sup>	Estimated 5-year total, pelagic longline <sup>1</sup>	Total, trawl + longline
<i>Kogia</i> spp. <sup>2</sup>		1	1
Bottlenose dolphin (all stocks) <sup>3</sup>		1	1
Bottlenose dolphin (CA/OR/WA offshore) <sup>4</sup>	8		8
Bottlenose dolphin (CA coastal) <sup>4</sup>	3		3
Striped dolphin	11	1	12
Short-beaked common dolphin	11	1	12
Long-beaked common dolphin	11	1	12
Pacific white-sided dolphin	35		35
Northern right whale dolphin	10		10
Risso's dolphin	11	1	12
Short-finned pilot whale		1	1
Harbor porpoise <sup>4</sup>	5		5
Dall's porpoise	5		5
Northern fur seal <sup>5</sup>	5		5
California sea lion	20	5	25
Steller sea lion	9	1	10
Harbor seal <sup>4</sup>	9		9
Northern elephant seal	5		5
Unidentified pinniped	1	1	2
Unidentified cetacean	1		1

<sup>1</sup> Please see Table 1 and preceding text for derivation of take estimates.

<sup>2</sup> We expect that only one *Kogia* spp. may be taken over the five-year timespan and that it could be either a pygmy or dwarf sperm whale.

<sup>3</sup> As a species believed to have similar propensity for capture in trawl gear as that demonstrated by the Pacific white-sided dolphin, we assume that eleven bottlenose dolphins could be captured over the five-year timespan. Total potential take of bottlenose dolphins in trawl gear has been apportioned by stock according to typical occurrence of that stock relative to SWFSC survey locations. We assume that a maximum of one total take of a bottlenose dolphin from either stock may occur in longline gear.

<sup>4</sup> Incidental take may be of animals from any stock, excluding Washington inland waters stocks.

<sup>5</sup> Incidental take may be of animals from either the eastern Pacific or California stocks.

*Eastern Tropical Pacific*—The SWFSC does not currently conduct longline surveys in the ETP, but plans to over the five-year period of authorization. The take estimates presented here reflect that likelihood. Assuming that longline surveys will be conducted in the ETP, the SWFSC anticipates that it will deploy an equal number (or less) of longline sets in the ETP relative to the number of sets currently being deployed in the CCE. The process described above for the CCE was used in determining vulnerability and appropriate take

estimates for species in the ETP. We assume that a similar level of interaction with pelagic longline gear as that demonstrated by the California sea lion in the CCE could occur in the ETP, and also assume that the South American sea lion may have similar propensity for interaction with longline gear as that demonstrated by the California sea lion.

For all other species listed in Table 3, we infer vulnerability to pelagic longline gear in the ETP from the 2014 LOF, and assume that capture would likely be a rare event occurring at most once over the five-year period proposed

for these regulations. We also authorize incidental M/SI + Level A for one unidentified pinniped over the course of the five-year period of authorization. Table 3 summarizes total estimated take due to gear interaction in the ETP; these estimates are unchanged from those provided in our notice of proposed rulemaking (80 FR 8166; February 13, 2015). Please see that document for additional detail on the take estimation process and full rationale for determinations regarding species vulnerabilities.

TABLE 3—TOTAL ESTIMATED M/SI + LEVEL A DUE TO GEAR INTERACTION IN THE ETP, 2015–19

Species	Estimated 5-year total, pelagic longline <sup>1</sup>
Dwarf sperm whale .....	1
Rough-toothed dolphin .....	1
Bottlenose dolphin .....	1
Striped dolphin .....	1
Pantropical spotted dolphin <sup>2</sup> .....	1
Short-beaked common dolphin <sup>2</sup> .....	1
Long-beaked common dolphin .....	1
Risso's dolphin .....	1
False killer whale .....	1
Short-finned pilot whale .....	1
California sea lion .....	5
South American sea lion .....	5
Unidentified pinniped .....	1

<sup>1</sup> Please see Tables 1 and preceding text for derivation of take estimates.

<sup>2</sup> Incidental take may be of animals from any stock.

*Estimated Take Due to Acoustic Harassment*

As described in our notice of proposed rulemaking (80 FR 8166; February 13, 2015; ‘Potential Effects of the Specified Activity on Marine Mammals’), we believe that SWFSC use of active acoustic sources has, at most, the potential to cause Level B harassment of marine mammals. In order to attempt to quantify the potential for Level B harassment to occur, NMFS (including the SWFSC and acoustics experts from other parts of NMFS) developed an analytical framework considering characteristics of the active acoustic systems described in our notice of proposed rulemaking (80 FR 8166; February 13, 2015) under *Description of Active Acoustic Sound Sources*, their expected patterns of use in each of the three SWFSC operational areas, and characteristics of the marine mammal species that may interact with them. We believe that this quantitative assessment benefits from its simplicity and consistency with current NMFS acoustic guidance regarding Level B harassment but caution that, based on a number of deliberately precautionary assumptions, the resulting take estimates should be seen as a likely

substantial overestimate of the potential for behavioral harassment to occur as a result of the operation of these systems.

The assessment paradigm for active acoustic sources used in SWFSC fisheries research is relatively straightforward and has a number of key simplifying assumptions. In particular, we do not consider marine mammal functional hearing ranges, and it is possible that certain species may not hear certain signals produced through SWFSC use of active acoustic sources. Therefore, and due to other simplifying assumptions, these exposure estimates may be conservative. NMFS' current acoustic guidance requires in most cases that we assume Level B harassment occurs when a marine mammal receives an acoustic signal at or above a simple step-function threshold. For use of these active acoustic systems, the appropriate threshold is 160 dB re 1 µPa (rms). Estimating the number of exposures at the specified received level requires several steps:

- (1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;
- (2) The operational areas exposed to levels at or above those associated with

Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or ‘swath width’) of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of individuals for which sound levels exceed the relevant threshold for each area. The number of potential incidents of Level B harassment is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the upper 200 m of the water column versus those that regularly dive deeper during



foraging and transit. We described the approach used (including methods for estimating each of the calculations described above) and the assumptions made that result in conservative

estimates in significant detail in our notice of proposed rulemaking (80 FR 8166; February 13, 2015). There have been no changes made to the approach, the informational inputs, or the results.

Therefore, we do not repeat the discussion here and refer the reader to the notice. Summaries of the results are provided in Tables 4–6 below.

TABLE 4—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE CCE <sup>1</sup>

Species	Shallow	Deep	Area density (animals/km <sup>2</sup> ) <sup>2</sup>	Volumetric density (animals/km <sup>3</sup> ) <sup>3</sup>	Estimated Level B harassment, 0–200 m			Estimated Level B harassment, >200 m		Total
					EK60	ME70	SX90	EK60	SX90	
					Gray whale	X		40.01913	0.09565	
Humpback whale	X		0.00083	0.00415	4	1	9	0	0	14
Minke whale	X		0.00072	0.00360	4	1	8	0	0	13
Sei whale	X		0.00009	0.00045	0	0	1	0	0	1
Fin whale	X		0.00184	0.00920	10	3	20	0	0	33
Blue whale	X		0.00136	0.00680	7	2	15	0	0	24
Sperm whale		X	0.00170	0.00340	4	1	8	41	11	65
<i>Kogia</i> spp.		X	0.00109	0.00218	2	1	5	27	7	42
Cuvier's beaked whale		X	0.00382	0.00764	8	3	17	93	25	146
Baird's beaked whale		X	0.00088	0.00176	2	1	4	21	6	34
Mesoplodont beaked whales		X	0.00103	0.00206	2	1	5	25	7	40
Bottlenose dolphin	X		0.00178	0.00890	9	3	20	0	0	32
Striped dolphin	X		0.01667	0.08335	87	30	184	0	0	301
Long-beaked common dolphin	X		0.01924	0.09620	100	35	213	0	0	348
Short-beaked common dolphin	X		0.30935	1.54675	1,616	555	3,421	0	0	5,592
Pacific white-sided dolphin	X		0.02093	0.10465	109	38	231	0	0	378
Northern right whale dolphin	X		0.00975	0.04875	51	17	108	0	0	176
Risso's dolphin	X		0.01046	0.05230	55	19	116	0	0	188
Killer whale	X		0.00071	0.00355	4	1	8	0	0	13
Short-finned pilot whale		X	0.00031	0.00062	1	0	1	8	2	12
Harbor porpoise	X		<sup>5</sup> 0.03775	0.18873	197	68	417	0	0	682
Dall's porpoise	X		0.07553	0.37765	395	135	835	0	0	1,365
Guadalupe fur seal	X		<sup>4</sup> 0.00741	0.03705	39	13	82	0	0	134
Northern fur seal	X		<sup>4</sup> 0.65239	1.68275	1,758	604	3,721	0	0	11,791
California sea lion	X		<sup>4</sup> 0.29675	1.19000	1,243	427	2,632	0	0	5,363
Steller sea lion	X		<sup>4</sup> 0.06316	0.29165	305	105	645	0	0	1,141
Harbor seal	X		<sup>4</sup> 0.05493	0.25200	263	90	557	0	0	993
Northern elephant seal		X	<sup>4</sup> 0.12400	0.24800	259	89	548	3,023	824	4,743

<sup>1</sup> Please see our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for full details related to elements of this table.

<sup>2</sup> All density estimates from Barlow and Forney (2007) unless otherwise indicated.

<sup>3</sup> Volumetric density estimates derived by dividing area density estimates by 0.2 km (for shallow species) or 0.5 km (for deep species), corresponding with defined depth strata.

<sup>4</sup> Density estimates derived by SWFSC from SAR abundance estimates and notional study area of 1,000,000 km<sup>2</sup>.

<sup>5</sup> ManTech-SRS Technologies (2007) estimated a harbor porpoise density for coastal and inland waters of Washington, which is used as the best available proxy here. There are no known density estimates for harbor porpoises in SWFSC survey areas in the CCE.

TABLE 5—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE ETP <sup>1</sup>

Species	Shallow	Deep	Area density (animals/km <sup>2</sup> ) <sup>2</sup>	Volumetric density (animals/km <sup>3</sup> ) <sup>3</sup>	Estimated Level B harassment, 0–200 m			Estimated Level B harassment, >200 m		Total
					EK60	ME70	SX90	EK60	SX90	
					Humpback whale	X		0.00013	0.00067	
Minke whale	X		<sup>4</sup> 0.00001	0.00003	0	0	0	0	0	0
Bryde's whale	X		0.00049	0.00244	2	0	2	0	0	4
Sei whale	X		0.00000	0.00000	0	0	0	0	0	0
Fin whale	X		0.00003	0.00015	0	0	0	0	0	0
Blue whale	X		<sup>4</sup> 0.00019	0.00097	1	0	1	0	0	2
Sperm whale		X	<sup>4</sup> 0.00019	0.00039	0	0	0	4	0	4

TABLE 5—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE ETP <sup>1</sup>—Continued

Species	Shallow	Deep	Area density (animals/km <sup>2</sup> ) <sup>2</sup>	Volumetric density (animals/km <sup>3</sup> ) <sup>3</sup>	Estimated Level B harassment, 0–200 m			Estimated Level B harassment, >200 m		Total
					EK60	ME70	SX90	EK60	SX90	
Dwarf sperm whale ..		X	<sup>4</sup> 0.00053	0.00105	1	0	1	11	1	14
Cuvier's beaked whale ..		X	<sup>4</sup> 0.00094	0.00187	2	0	1	19	2	24
Longman's beaked whale ..		X	<sup>5</sup> 0.00004	0.00007	0	0	0	1	0	1
Mesoplodont beaked whales ..		X	<sup>4</sup> 0.00119	0.00237	2	0	1	25	2	30
Rough-toothed dolphin ..	X		0.00504	0.02521	25	4	16	0	0	45
Bottlenose dolphin ..	X		0.01573	0.07864	78	13	48	0	0	139
Striped dolphin ..	X		0.04516	0.22582	223	39	139	0	0	401
Pantropical spotted dolphin ..	X		<sup>6</sup> 0.12263	0.61315	606	105	377	0	0	1,088
Spinner dolphin ..	X		<sup>7</sup> 0.04978	0.24889	246	43	153	0	0	442
Long-beaked common dolphin ..	X		0.01945	0.09725	96	17	60	0	0	173
Short-beaked common dolphin ..	X		<sup>8</sup> 0.14645	0.73227	723	126	451	0	0	1,300
Fraser's dolphin ..	X		<sup>4</sup> 0.01355	0.06774	67	12	42	0	0	121
Dusky dolphin ..	X		0.00210	0.01050	10	2	6	0	0	18
Risso's dolphin ..	X		0.00517	0.02587	26	4	16	0	0	46
Melon-headed whale ..	X		<sup>4</sup> 0.00213	0.01063	10	2	7	0	0	19
Pygmy killer whale ..	X		<sup>4</sup> 0.00183	0.00913	9	2	6	0	0	17
False killer whale ..	X		<sup>4</sup> 0.00186	0.00932	9	2	6	0	0	17
Killer whale ..	X		<sup>4</sup> 0.00040	0.00199	2	0	1	0	0	3
Short-finned pilot whale ..		X	<sup>4</sup> 0.02760	0.05520	55	9	34	574	51	723
Guadalupe fur seal ..	X		<sup>9</sup> 0.00741	0.03705	37	6	23	0	0	66
California sea lion ..	X		<sup>10</sup> 0.16262	0.81310	803	139	500	0	0	1,442
South American sea lion ..	X		<sup>10</sup> 0.16262	0.81310	803	139	500	0	0	1,442
Northern elephant seal ..		X	<sup>9</sup> 0.12400	0.24800	245	43	153	2,578	229	3,248

<sup>1</sup> Please see our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for full details related to elements of this table.

<sup>2</sup> Please see footnotes to Table 4 in our notice of proposed rulemaking (80 FR 8166; February 13, 2015); densities calculated by SWFSC from sources listed. Note that values presented here are rounded to five digits, whereas the volumetric densities are calculated from the unrounded values. Densities derived from abundance estimates given in Gerrodette *et al.* (2008) calculated using given abundances divided by ETP area (sum of stratum areas given in first line of Table 1 in that publication). Densities calculated by SWFSC from abundance estimates reported in Wade and Gerrodette (1993) or, for those not reported in that publication, calculated from sighting data collected on board SWFSC cetacean and ecosystem assessment surveys in the ETP during 1998–2000, 2003, and 2006 using number of sightings (n), mean group size (s), total distance on effort (L) and effective strip width (w) (*i.e.*,  $D = n*s/2*w/L$ ).

<sup>3</sup> Volumetric density estimates derived by dividing area density estimates by 0.2 km (for shallow species) or 0.5 km (for deep species), corresponding with defined depth strata.

<sup>4</sup> The most recent abundance estimates are as reported in Table 4 in our notice of proposed rulemaking (80 FR 8166; February 13, 2015). SWFSC considered these species sufficiently rare in the core study area during 2006 survey effort to not warrant attempting to estimate abundance (Gerrodette *et al.*, 2008), but did estimate the unpublished ETP densities reported here.

<sup>5</sup> The most recent abundance estimate was reported in Barlow (2006) (see Table 4 in our notice of proposed rulemaking (80 FR 8166; February 13, 2015)). SWFSC estimated the unpublished ETP density reported here from sighting data collected during SWFSC surveys in 1998–2000, 2003, and 2006.

<sup>6</sup> Given density is for northeastern offshore stock of pantropical spotted dolphins, and is calculated as stock abundance divided by the summed areas of Core, Core2, and N. Coastal strata (Gerrodette *et al.*, 2008). This is the largest density value for the three stocks of spotted dolphin in the ETP and is conservatively used here to calculate potential Level B takes of spotted dolphin in the ETP.

<sup>7</sup> Given density is for the eastern stock of spinner dolphins. This is the largest density value for the three stocks of spinner dolphin in the ETP and is conservatively used here to calculate potential Level B takes of spinner dolphin in the ETP. There is no estimate of abundance for the Central American stock of spinner dolphins.

<sup>8</sup> Abundance estimate from which density estimate is derived includes parts of northern and southern stocks and all of the central stock (Gerrodette *et al.*, 2008). There are no stock-specific abundance estimates.

<sup>9</sup> No abundance information exists for Guadalupe fur seals or northern elephant seals in the ETP. Therefore, we use density estimates from the CCE (Table 4) as a reasonable proxy.

<sup>10</sup> There are no available density estimates for California sea lions or South American sea lions in the ETP. The SWFSC reports that California sea lions are typically observed in the ETP only along the coast of Baja California, Mexico. Therefore, we estimate density for the California sea lion in the ETP using the upper bound of abundance for western Baja California (87,000; Lowry and Maravilla-Chavez, 2005) divided by the area of the N. Coastal stratum from Gerrodette *et al.*, (2008). In the absence of other information, we use this value as a reasonable proxy for the South American sea lion.

TABLE 6—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE AMLR <sup>1</sup>

Species	Shallow	Deep	Area density (animals/km <sup>2</sup> )	Volumetric density (animals/km <sup>3</sup> ) <sup>2</sup>	Estimated Level B harassment, 0–200 m	Estimated Level B harassment, >200 m	Total
					EK60	EK60	
Southern right whale	X		<sup>3</sup> 0.0008	0.004	1	0	1
Humpback whale	X		<sup>3</sup> 0.0676	0.338	92	0	92
Antarctic minke whale	X		<sup>3</sup> 0.0043	0.0215	6	0	6
Fin whale	X		<sup>3</sup> 0.08391	0.41955	114	0	114
Blue whale	X		<sup>4</sup> 0.00012	0.0006	0	0	0
Sperm whale		X	<sup>4</sup> 0.00065	0.0013	0	3	3
Arnoux' beaked whale		X	<sup>5</sup> 0.0065	0.013	4	33	37
Southern bottlenose whale		X	<sup>3</sup> 0.0065	0.013	4	33	37
Hourglass dolphin	X		<sup>3</sup> 0.0086	0.043	12	0	12
Killer whale	X		<sup>3</sup> 0.0077	0.0385	11	0	11
Long-finned pilot whale		X	<sup>3</sup> 0.00757	0.01514	4	39	43
Spectacled porpoise	X		<sup>6</sup> 0.0086	0.043	12	0	12
Antarctic fur seal	X		<sup>3</sup> 0.09996	0.4998	136	0	136
Southern elephant seal		X	<sup>3</sup> 0.0006	0.0012	0	3	3
Weddell seal	X		<sup>3</sup> 0.0007	0.0035	1	0	1
Crabeater seal	X		<sup>3</sup> 0.0013	0.0065	2	0	2
Leopard seal	X		<sup>3</sup> 0.0009	0.0045	1	0	1

<sup>1</sup> Please see our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for full details related to elements of this table.

<sup>2</sup> Volumetric density estimates derived by dividing area density estimates by 0.2 km (for shallow species) or 0.5 km (for deep species), corresponding with defined depth strata.

<sup>3</sup> Densities are the largest values recorded during AMLR surveys from 2006/07 through 2010/11. Please see Table 24.

<sup>4</sup> See footnotes to Table 5; densities calculated by SWFSC from sources listed.

<sup>5</sup> There is no available information for this species; therefore, we use the southern bottlenose whale as source of proxy information. However, this species is considered uncommon relative to the southern bottlenose whale (Taylor *et al.*, 2008); therefore, this is a conservative estimate.

<sup>6</sup> There is no available information for this species; therefore, we use the hourglass dolphin as source of proxy information. However, although considered to potentially have a circumpolar sub-Antarctic distribution, this species is seen only rarely at sea (Hammond *et al.*, 2008) and use of this value likely produces a conservative estimate.

*Estimated Take Due to Physical Disturbance, Antarctic*

Estimated take due to physical disturbance could potentially happen in the AMLR only as a result of the unintentional approach of SWFSC vessels to pinnipeds hauled out on ice,

and would result in no greater than Level B harassment. During Antarctic ecosystem surveys conducted in the austral winter (*i.e.*, June 1 through August 31), it is expected that shipboard activities may result in behavioral disturbance of some pinnipeds. It is likely that some pinnipeds on ice will

move or flush from the haul-out into the water in response to the presence or sound of SWFSC survey vessels. Behavioral responses may be considered according to the scale shown in Table 7. We consider responses corresponding to Levels 2–3 to constitute Level B harassment.

TABLE 7—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Head orientation in response to disturbance. This may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals over short distances to hurried retreats many meters in length.
3	Flight	All retreats (flushes) to the water, another group of seals, or over the ice.

The SWFSC has estimated potential incidents of Level B harassment due to physical disturbance (Table 8) using the vessel distance traveled (20,846 km) during a typical AMLR survey, an effective strip width of 200 m (animals are assumed to react if they are less than 100 m from the vessel; see below), and the estimated population density for each species (Table 6). Although there is likely to be variation between individuals and species in reactions to a passing research vessel—that is, some

animals assumed to react in this calculation will not react, and others assumed not to react because they are outside the effective strip width may in fact react—we believe that this approach is a reasonable effort towards accounting for this potential source of disturbance and have no information to indicate that the approach is biased either negatively or positively. SWFSC used an effective strip width of 200 m (*i.e.*, 100 m on either side of a passing vessel) to be consistent with the regional

marine mammal viewing guidelines that NMFS has established for Alaska, which restrict approaches to marine mammals to a distance of 100 m or greater in order to reduce the potential to cause inadvertent harm. Alaska is believed to have the most similar environment to the Antarctic of all regions for which NMFS has established viewing guidelines. Each estimate is the product of the species-specific density, annual line-kilometers, and the effective strip-width.

TABLE 8—ESTIMATED ANNUAL LEVEL B HARASSMENT OF PINNIPEDS ASSOCIATED WITH AMLR VESSEL TRANSECTS

Species	Density (animals/km <sup>2</sup> )	Estimated Level B harassment
Antarctic fur seal .....	0.09996	417
Southern elephant seal .....	0.0006	3
Weddell seal .....	0.0007	3
Crabeater seal .....	0.0013	5
Leopard seal .....	0.0009	4

Summary of Estimated Incidental Take

Here we provide summary tables detailing the total incidental take

authorization on an annual basis for each specified geographical region, as

well as other information relevant to the negligible impact analyses.

TABLE 9—SUMMARY INFORMATION RELATED TO ANNUAL TAKE AUTHORIZATION IN THE CCE, 2015–19

Species <sup>1</sup>	Total annual Level B harassment authorization	Percent of estimated population	Total M/SI + Level A authorization, 2015–19	Estimated maximum annual M/SI + Level A <sup>2</sup>	PBR <sup>3</sup>	% PBR <sup>4</sup>	Stock trend <sup>5</sup>
Gray whale .....	346	1.8	0	0	n/a	—	↑
Humpback whale .....	14	0.7	0	0	n/a	—	↑
Minke whale .....	13	2.7	0	0	n/a	—	?
Sei whale .....	1	0.8	0	0	n/a	—	?
Fin whale .....	33	1.1	0	0	n/a	—	↑
Blue whale .....	24	1.5	0	0	n/a	—	?
Sperm whale .....	65	6.7	0	0	n/a	—	?
<i>Kogia</i> spp. ....	42	7.3	1	0.2	2.7	7.4	?
Cuvier's beaked whale .....	146	2.2	0	0	n/a	—	↓
Baird's beaked whale .....	34	4.0	0	0	n/a	—	?
Mesoplodont beaked whales	40	5.7	0	0	n/a	—	↓
Bottlenose dolphin (all stocks) <sup>6</sup> .....	32	n/a	1	n/a	n/a	—	n/a
Bottlenose dolphin (CA/OR/WA offshore) <sup>6</sup> .....	32	<sup>9</sup> 3.2	8	2	5.5	36.4	?
Bottlenose dolphin (CA coastal) <sup>6</sup> .....	32	<sup>9</sup> 9.9	3	1	2.4	41.7	→
Striped dolphin .....	301	2.8	12	2.6	82	3.2	?
Long-beaked common dolphin .....	348	0.3	12	2.6	610	0.4	↑
Short-beaked common dolphin .....	5,592	1.4	12	2.6	3,440	0.1	?
Pacific white-sided dolphin ..	378	1.4	35	7.2	171	4.2	?
Northern right whale dolphin	176	2.1	10	2.2	48	4.6	?
Risso's dolphin .....	188	3.0	12	2.6	39	6.7	?
Killer whale <sup>7</sup> .....	13	15.3	0	0	n/a	—	?
Short-finned pilot whale .....	12	1.6	1	0.2	4.6	4.3	?
Harbor porpoise <sup>7</sup> .....	682	23.4	5	1.2	21	5.7	?
Dall's porpoise .....	1,365	3.3	5	1.2	257	0.5	?
Guadalupe fur seal .....	134	1.8	0	0	n/a	—	↑
Northern fur seal <sup>7</sup> (PI/EP) ...	<sup>8</sup> 11,555	1.8	5	1.2	403	0.3	↑
Northern fur seal <sup>7</sup> (CA) .....	<sup>8</sup> 236	1.8					
California sea lion .....	5,363	1.8	25	5.4	9,200	0.1	↑
Steller sea lion .....	1,141	<sup>10</sup> 1.8	10	2.4	1,552	0.2	↑
Harbor seal <sup>7</sup> .....	993	4.0	9	2	1,343	0.1	↑/→
Northern elephant seal .....	4,743	3.8	5	1.2	4,382	0.03	↑
Unidentified cetacean .....	n/a	n/a	1	n/a	n/a	—	n/a
Unidentified pinniped .....	n/a	n/a	2	n/a	n/a	—	n/a

Please see preceding text and tables and our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for details.

<sup>1</sup> For species with multiple stocks in CCE or for species groups (*Kogia* spp. and Mesoplodont beaked whales), indicated level of take could occur to individuals from any stock or species (not including Washington inland waters stocks of harbor porpoise and harbor seal).

<sup>2</sup> This column represents the total number of incidents of M/SI + Level A that could potentially accrue to the specified species or stock and is the number carried forward for evaluation in the negligible impact analysis (later in this document). To reach this total, we add one to the total for each pinniped or cetacean that may be captured in trawl gear and one to the total for each pinniped that may be captured in longline gear. This represents the potential that the take of an unidentified pinniped or small cetacean could accrue to any given stock captured in that gear. The take authorization is formulated as a five-year total; the annual average is used only for purposes of negligible impact analysis. We recognize that portions of an animal may not be taken in a given year.

<sup>3</sup> See Table 3 in our notice of proposed rulemaking (80 FR 8166; February 13, 2015) and following discussion for more detail regarding PBR.

<sup>4</sup> Estimated maximum annual M/SI + Level A expressed as a percentage of PBR.

<sup>5</sup> See relevant SARs for more information regarding stock status and trends. Interannual increases may not be interpreted as evidence of a trend. For harbor seals, the CA stock is increasing, while the OR/WA coastal stock may have reached carrying capacity and appears stable. There are no evident trends for any harbor porpoise stock or for offshore killer whales.

<sup>6</sup> Total potential take of bottlenose dolphins in trawl gear has been apportioned by stock according to typical occurrence of that stock relative to SWFSC survey locations. We assume that only one total take of a bottlenose dolphin from either stock may occur in longline gear; therefore the estimated annual maximum numbers for bottlenose dolphin reflect the stock-specific trawl estimate plus one for the longline take plus one for the potential take of an unidentified cetacean.

<sup>7</sup> These species have multiple stocks in the CCE. Values for “percent of estimated population” and “PBR” (where relevant) calculated for the stock with the lowest population abundance and/or PBR (as appropriate). This approach assumes that all indicated takes would accrue to the stock in question, which is a very conservative assumption. Stocks in question are the southern resident killer whale, Morro Bay harbor porpoise, California northern fur seal, and OR/WA coastal harbor seal.

<sup>8</sup> Calculated on the basis of relative abundance; *i.e.*, of 6,083 total estimated incidents of Level B harassment, we would expect on the basis of relative abundance in the study area that 98 percent would accrue to the Pribilof Islands/Eastern Pacific stock and two percent would accrue to the California stock.

<sup>9</sup> Calculated assuming that all 32 estimated annual incidents of Level B harassment occur to a given stock.

<sup>10</sup> A range is provided for Steller sea lion abundance. We have used the lower bound of the given range for calculation of this value.

TABLE 10—ANNUAL TAKE AUTHORIZATION IN THE ETP, 2015–19

Species <sup>1</sup>	Total annual Level B harassment authorization	Percent of estimated population <sup>1</sup>	Total M/SI + Level A authorization, 2015–19	Estimated maximum annual M/SI + Level A <sup>2</sup>	PBR <sup>3</sup>	% PBR <sup>4</sup>
Humpback whale	1	0.04	0	0	n/a	—
Minke whale .....	0	0	0	0	n/a	—
Bryde’s whale .....	4	0.04	0	0	n/a	—
Sei whale .....	0	0	0	0	n/a	—
Fin whale .....	0	0	0	0	n/a	—
Blue whale .....	2	0.1	0	0	n/a	—
Sperm whale .....	4	0.1	0	0	n/a	—
Dwarf sperm whale .....	14	0.1	1	0.2	88 (0.2)	0.2
Cuvier’s beaked whale .....	24	0.1	0	0	n/a	—
Longman’s beaked whale .....	1	0.1	0	0	n/a	—
Mesoplodont beaked whales	30	0.1	0	0	n/a	—
Rough-toothed dolphin .....	45	0.04	1	0.2	897 (0.02)	0.02
Bottlenose dolphin	139	0.04	1	0.2	2,850 (0.01)	0.01
Striped dolphin .....	401	0.04	1	0.2	8,116 (0.002)	0.002
Pantropical spotted dolphin .....	1,088	<sup>5</sup> 0.4	1	0.2	12,334 (0.002)	0.002
Spinner dolphin .....	442	<sup>5</sup> 0.1	0	0	n/a	—
Long-beaked common dolphin .....	173	0.05	1	0.2	2,787 (0.01)	0.01
Short-beaked common dolphin .....	1,300	0.04	1	0.2	25,133 (0.001)	0.001
Fraser’s dolphin .....	121	0.04	0	0	n/a	—
Dusky dolphin .....	18	0.04	0	0	n/a	—
Risso’s dolphin .....	46	0.04	1	0.2	831 (0.02)	0.02
Melon-headed whale .....	19	0.04	0	0	n/a	—
Pygmy killer whale	17	0.04	0	0	n/a	—
False killer whale	17	0.04	1	0.2	244 (0.1)	0.1
Killer whale .....	3	0.04	0	0	n/a	—
Short-finned pilot whale .....	723	0.1	1	0.2	4,751 (0.004)	0.004
Guadalupe fur seal	66	<sup>6</sup> 0.9	0	0	n/a	—
California sea lion	1,442	1.4	5	1.2	1,050 (0.1)	0.1
South American sea lion .....	1,442	1.0	5	1.2	1,500 (0.1)	0.1
Northern elephant seal .....	3,248	<sup>6</sup> 2.6	0	0	n/a	—
Unidentified pinniped .....	n/a	n/a	1	n/a	n/a	—

Please see preceding text and tables and our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for details.

<sup>1</sup> For species with multiple stocks in ETP or for species groups (Mesoplodont beaked whales), indicated level of take could occur to individuals from any stock or species.

<sup>2</sup> This column represents the total number of incidents of M/SI + Level A that could potentially accrue to the specified species and is the number carried forward for evaluation in the negligible impact analysis (later in this document). To reach this total, we add one to the total for each pinniped that may be captured in longline gear. This represents the potential that the take of an unidentified pinniped could accrue to any given species captured in that gear. The take authorization is formulated as a five-year total; the annual average is used only for purposes of negligible impact analysis. We recognize that portions of an animal may not be taken in a given year.

<sup>3</sup> For M/SI + Level A resulting from gear interaction, a five-year take estimate was developed. Annual take estimate presented for reference; we recognize that portions of animals may not be captured or entangled in gear. For purposes of negligible impact analysis (later in this document), we add authorized takes for unidentified pinnipeds to total for all relevant species.

<sup>4</sup> PBR values calculated by SWFSC; a pooled PBR was calculated for all stocks of the pantropical spotted dolphin (see Table 4 in our notice of proposed rulemaking (80 FR 8166; February 13, 2015)).

<sup>5</sup> Estimated maximum annual M/SI + Level A expressed as a percentage of PBR.

<sup>6</sup> Evaluated against the stock with the lowest estimated abundance. For spinner dolphin, there is no abundance estimate for the Central American stock.

<sup>7</sup> There are no abundance estimates for these species in the ETP. We use the CCE abundance estimates as proxies in these calculations.

TABLE 11—ANNUAL TAKE AUTHORIZATION IN THE AMLR, 2015–19

Species	Estimated annual Level B harassment (acoustic exposure)	Estimated annual Level B harassment (on-ice disturbance)	Total annual Level B harassment authorization	Percent of estimated population <sup>1</sup>
Southern right whale .....	1	0	1	0.1
Humpback whale .....	92	0	92	1.0
Antarctic minke whale .....	6	0	6	0.03
Fin whale .....	114	0	114	2.4
Blue whale .....	0	0	0	0
Sperm whale .....	3	0	3	0.02
Arnoux' beaked whale <sup>2</sup> .....	37	0	37	n/a
Southern bottlenose whale .....	37	0	37	0.1
Hourglass dolphin .....	12	0	12	0.01
Killer whale .....	11	0	11	0.04
Long-finned pilot whale .....	43	0	43	0.02
Spectacled porpoise <sup>2</sup> .....	12	0	12	n/a
Antarctic fur seal .....	136	417	553	0.02
Southern elephant seal .....	3	3	6	0.001
Weddell seal .....	1	3	4	<sup>3</sup> 0.001
Crabeater seal .....	2	5	7	<sup>3</sup> 0.0001
Leopard seal .....	1	4	5	<sup>3</sup> 0.002

Please see preceding text and tables and our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for details.

<sup>1</sup> See Table 5 in our notice of proposed rulemaking (80 FR 8166; February 13, 2015) for abundance information.

<sup>2</sup> There is no available abundance information for these species. See “Small Numbers Analyses” below for further discussion.

<sup>3</sup> A range is provided for these species’ abundance. We have used the lower bound of the given range for calculation of these values.

**Analyses and Determinations**

Here we provide separate negligible impact analyses and small numbers analyses for each of the three specified geographical regions for which we issue regulations. We received no public comments or new information indicating any deficiencies in our preliminary determinations, as provided in our notice of proposed rulemaking (80 FR 8166; February 13, 2015). Those determinations and associated analyses are reproduced here.

*Negligible Impact Analyses*

NMFS has defined “negligible impact” in 50 CFR 216.103 as “. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.*, intensity, duration), the context of any such responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat. We also evaluate the number, intensity,

and context of estimated takes by evaluating this information relative to population status. The impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.*, as reflected in the density/distribution and status of the species, population size and growth rate).

To avoid repetition, the majority of our analysis applies to all the species listed in Tables 3–5 of the notice of proposed rulemaking (80 FR 8166; February 13, 2015), given that the anticipated effects of SWFSC’s research activities on marine mammals are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

In 1988, Congress amended the MMPA, with provisions for the incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to set allowable take levels incidental to commercial fishing operations led NMFS to suggest a new and simpler conceptual means for assuring that incidental take does not cause any marine mammal species or stock to be reduced or to be maintained

below the lower limit of its Optimum Sustainable Population (OSP) level. That concept (Potential Biological Removal; PBR) was incorporated in the 1994 amendments to the MMPA, wherein Congress enacted MMPA sections 117 and 118, establishing a new regime governing the incidental taking of marine mammals in commercial fishing operations and stock assessments.

PBR, which is defined by the MMPA (16 U.S.C. 1362(20)) as “the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population,” is one tool that can be used to help evaluate the effects of M/SI on a marine mammal stock. OSP is defined by the MMPA (16 U.S.C. 1362(9)) as “the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.” A primary goal of the MMPA is to ensure that each stock of marine mammal either does not have a level of human-caused M/SI that is likely to cause the stock to be reduced below its OSP level or, if the stock is depleted (*i.e.*, below its OSP level), does not have a level of human-caused mortality and serious injury that is likely to delay restoration of the stock to OSP level by more than ten percent in comparison with recovery time in the absence of human-caused M/SI.

PBR appears within the MMPA only in section 117 (relating to periodic stock assessments) and in portions of section 118 describing requirements for take reduction plans for reducing marine mammal bycatch in commercial fisheries. PBR was not designed as an absolute threshold limiting human activities, but as a means to evaluate the relative impacts of those activities on marine mammal stocks. Specifically, assessing M/SI relative to a stock's PBR may signal to NMFS the need to establish take reduction teams in commercial fisheries and may assist NMFS and existing take reduction teams in the identification of measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below a stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather may prioritize working with a take reduction team to further mitigate the effects of fishery activities via additional bycatch reduction measures.

Since the introduction of PBR, NMFS has used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA, including those within section 101(a)(5)(E) related to the taking of ESA-listed marine mammals incidental to commercial fisheries (64 FR 28800; May 27, 1999). The MMPA requires that PBR be estimated in stock assessment reports and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.*, the take reduction planning process described in section 118 of the MMPA), but nothing in the MMPA requires the application of PBR outside the management of commercial fisheries interactions with marine mammals. Although NMFS has not historically applied PBR outside the context of sections 117 and 118, NMFS recognizes that as a quantitative tool, PBR may be useful in certain instances for evaluating the impacts of other human-caused activities on marine mammal stocks. In this analysis, we consider incidental M/SI relative to PBR for each affected stock, in addition to considering the interaction of those removals with incidental taking of that stock by harassment, within our evaluation of the likely impacts of the proposed activities on marine mammal stocks and in determining whether those impacts are likely to be negligible. Our use of PBR in this case does not make up the entirety of our impact assessment, but

rather is being utilized as a known, quantitative metric for evaluating whether the proposed activities are likely to have a population-level effect on the affected marine mammal stocks. For the purposes of analyzing this specified activity, NMFS acknowledges that some of the fisheries research activities use similar gear and may have similar effects, but on a smaller scale, as marine mammal take by commercial fisheries. The application of PBR for this specified activity of fisheries research allows NMFS to inform the take reduction team process which uses PBR to evaluate marine mammal bycatch in commercial fisheries due to the similarities of both activities.

*California Current Ecosystem*—Please refer to Table 9 for information relating to this analysis. As described in greater depth previously (see “Acoustic Effects”, in our notice of proposed rulemaking (80 FR 8166; February 13, 2015)), we do not believe that SWFSC use of active acoustic sources has the likely potential to cause any effect exceeding Level B harassment of marine mammals. In addition, for the majority of species, the authorized annual take by Level B harassment is very low in relation to the population abundance estimate (less than ten percent) for each stock.

We have produced what we believe to be conservative estimates of potential incidents of Level B harassment. The procedure for producing these estimates, described in detail in our notice of proposed rulemaking (80 FR 8166; February 13, 2015) and summarized above in “Estimated Take Due to Acoustic Harassment”, represents NMFS’ best effort towards balancing the need to quantify the potential for occurrence of Level B harassment due to production of underwater sound with a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment and to a meaningful understanding of marine mammal perception of these signals and occurrence in the areas where SWFSC operates. The sources considered here have moderate to high output frequencies (10 to 180 kHz), generally short ping durations, and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (*e.g.*, energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and

potential impacts on marine mammals in comparison with the quantitative estimates that guide our proposed take authorization.

In particular, low-frequency hearing specialists (*i.e.*, mysticetes) and certain pinnipeds (*i.e.*, otariids) are less likely to perceive or, given perception, to react to these signals than the quantitative estimates indicate. These groups have reduced functional hearing at the higher frequencies produced by active acoustic sources considered here (*e.g.*, primary operating frequencies of 40–180 kHz) and, based purely on their auditory capabilities, the potential impacts are likely much less (or non-existent) than we have calculated as these relevant factors are not taken into account.

However, for purposes of this analysis, we assume that the take levels proposed for authorization will occur. As described previously, there is some minimal potential for temporary effects to hearing for certain marine mammals (*i.e.*, odontocete cetaceans), but most effects would likely be limited to temporary behavioral disturbance. Effects on individuals that are taken by Level B harassment will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity (*e.g.*, Southall *et al.*, 2007). There is the potential for behavioral reactions of greater severity, including displacement, but because of the directional nature of the sources considered here and because the source is itself moving, these outcomes are unlikely and would be of short duration if they did occur. Although there is no information on which to base any distinction between incidents of harassment and individuals harassed, the same factors, in conjunction with the fact that SWFSC survey effort is widely dispersed in space and time, indicate that repeated exposures of the same individuals would be very unlikely.

We now consider the level of taking by M/SI + Level A proposed for authorization. First, it is likely that required injury determinations will show some undetermined number of gear interactions to result in Level A harassment rather than serious injury and that, therefore, our authorized take numbers are overestimates with regard solely to M/SI. In addition, we note that these take levels are likely precautionary overall when considering that: (1) Estimates for historically taken species were developed assuming that the annual average number of takes from 2008–12, which is heavily influenced by

inclusion of a year where dramatically more marine mammals were incidentally taken than any other year on record, would occur in each year from 2015–19; and that (2) the majority of species for which take authorization is proposed have never been taken in SWFSC surveys.

However, assuming that all of the takes proposed for authorization actually occur, we assess these quantitatively by comparing to the calculated PBR for each stock. Estimated M/SI for all stocks is significantly less than PBR (below ten percent, even when making the unlikely assumption that all takes for species with multiple stocks would accrue to the stock with the lowest PBR) with the exception of the two bottlenose dolphin stocks. The annual average take by M/SI + Level A for these stocks—which for each assumes that the single take of a bottlenose dolphin in longline gear that is proposed for authorization occurs for that stock, as well as that the single take of an unidentified cetacean proposed for authorization occurs—is, however, well below the PBR (takes representing 36 and 42 percent). We also note that, for the California coastal stock, the PBR is likely biased low because the population abundance estimate, which is based on photographic mark-recapture surveys, does not reflect that approximately 35 percent of dolphins encountered lack identifiable dorsal fin marks (Defran and Weller, 1999). If 35 percent of all animals lack distinguishing marks, then the true population size (and therefore PBR) would be approximately 450–500 animals (*i.e.*, approximately forty–fifty percent larger than the current estimate) (Carretta *et al.*, 2015). The California coastal stock is believed to be stable, based on abundance estimates from 1987–89, 1996–98, and 2004–05 (Dudzik *et al.*, 2006), and current annual human-caused M/SI is considered to be insignificant and approaching zero (Carretta *et al.*, 2015). No population trends are known for the offshore stock. However, these proposed levels of take do not take into consideration the potential efficacy of the mitigation measures proposed by the SWFSC. Although potentially confounded by other unknown factors, incidental take of marine mammals in SWFSC survey gear (particularly trawl nets) has decreased significantly from the high in 2008 since the measures proposed here were implemented in 2009. We believe this demonstrates the likely potential for reduced takes of any species, including bottlenose dolphins, relative to these take estimates which are formulated

based on the level of taking that occurred in 2008.

For certain species of greater concern, we also evaluate the proposed take authorization for Level B harassment in conjunction with that proposed for M/SI + Level A. For the bottlenose dolphin, if all acoustic takes occurred to a single stock, it would comprise 9.9 percent of the California coastal stock and only 3.2 percent of the offshore stock. However, it is unlikely that all of these takes would accrue to a single stock and the significance of this magnitude of Level B harassment is even lower. We do not consider the proposed level of acoustic take for bottlenose dolphin to represent a significant additional population stressor when considered in context with the proposed level of take by M/SI + Level A. Harbor porpoise are known to demonstrate increased sensitivity to acoustic signals in the frequency range produced by some SWFSC active acoustic sources (see discussion above under “Acoustic Effects”). The total annual taking by Level B harassment proposed for authorization for harbor porpoise would likely be distributed across all five stocks of this species that occur in the CCE. Moreover, because the SWFSC does not regularly operate the surveys described above within the confines of Morro Bay, Monterey Bay, or San Francisco Bay, and because SWFSC survey effort is sparsely distributed in space and time, we would expect any incidents of take occurring to animals of those stocks to be transient events, largely occurring to individuals of those populations occurring outside those bays but within the general limit of harbor porpoise occurrence (*i.e.*, the 200-m isobath). Finally, approximately 95 percent of annual SWFSC line-kilometers traveled using active acoustic sources are beyond the 200-m isobaths. This was not taken into account in the calculation of acoustic take estimates; therefore, these estimates are likely substantial overestimates of the number of incidents of Level B harassment that may occur for harbor porpoise.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned mitigation measures, we find that the total marine mammal take from SWFSC’s fisheries research activities will have a negligible impact on the affected marine mammal species or stocks in the California Current Ecosystem. In summary, this finding of negligible impact is founded on the following factors: (1) The possibility of

injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices consist of, at worst, temporary and relatively minor modifications in behavior; (3) the predicted number of incidents of combined Level A harassment, serious injury, and mortality are at insignificant levels relative to all affected stocks but two; (4) the predicted number of incidents of both Level B harassment and potential M/SI likely represent overestimates; and (5) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact. In addition, no M/SI is proposed for authorization for any species or stock that is listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors demonstrate that the specified activity will have only short-term effects on individuals (resulting from Level B harassment) and that the total level of taking will not impact rates of recruitment or survival sufficiently to result in population-level impacts.

*Eastern Tropical Pacific*—Please refer to Table 10 for information relating to this analysis. The entirety of the qualitative discussion provided above for the California Current Ecosystem is applicable to SWFSC use of active acoustic sources in the ETP, and is not repeated here. As for the CCE, we compare the maximum annual take estimate to the calculated PBR level. However, proposed take by M/SI + Level A is substantially less than one percent (in most cases, less than a tenth of a percent) of population abundance for all species for which such take is proposed to be authorized and, as for the CCE, these proposed levels of take are likely overestimates. We do propose to authorize one occurrence of M/SI over five years for the pantropical spotted dolphin; two of the three stocks of this species in the ETP are considered depleted under the MMPA. Therefore, although the maximum annual take estimate for this species is extremely low relative to the PBR level (0.002 percent), we provide additional discussion.

In the ETP, yellowfin tuna are known to associate with several species of dolphin, including spinner, spotted, and common dolphins. As the ETP tuna purse-seine fishery began in the late 1950s, incidental take of dolphins increased to very high levels and continued through the 1960s and into the 1970s (Perrin, 1969). Through a



series of combined actions, including passage of the MMPA in 1972, subsequent amendments, regulations, and mitigation measures, dolphin bycatch in the ETP has since decreased 99 percent in the international fishing fleet, and was eliminated by the U.S. fleet (Gerrodette and Forcada, 2005). However, the northeastern offshore and coastal stocks of spotted dolphin are believed to have declined roughly eighty and sixty percent, respectively, from pre-exploitation abundance estimates (Perrin, 2009). Although incidental take by the international fishing fleet is believed to have declined to the low hundreds of individuals annually (Perrin, 2009), the populations have not grown toward recovery as rapidly as expected (*e.g.*, the population trend for the northeastern offshore stock is flat; Wade *et al.*, 2007). Continued (non-lethal) chase and capture in the fishery may have an indirect effect on fecundity or survival, or there may have been a change in carrying capacity of the ecosystem for this species (Archer *et al.*, 2004; Gerrodette and Forcada, 2005; Wade *et al.*, 2007; Perrin, 2009). Nevertheless, the proposed authorized take of a single pantropical spotted dolphin over five years—which could occur to either the northeastern offshore or coastal stocks, or the non-depleted western and southern offshore stock—represents a negligible impact to any of these stocks, even when considered in context with incidental take in international commercial fisheries (the total taking, which is known only approximately, would likely be around one percent of the total abundance). The taking proposed here represents an insignificant incremental increase over any incidental take occurring in commercial fisheries.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned mitigation measures, we find that the total marine mammal take from SWFSC's fisheries research activities will have a negligible impact on the affected marine mammal species or stocks in the Eastern Tropical Pacific. In summary, this finding of negligible impact is founded on the following factors: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices consist of, at worst, temporary and relatively minor modifications in behavior; (3) the

predicted number of incidents of combined Level A harassment, serious injury, and mortality are at insignificant levels relative to all affected stocks; (4) the predicted number of incidents of both Level B harassment and potential M/SI likely represent overestimates; and (5) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact. In addition, no M/SI is proposed for authorization for any species or stock that is listed under the ESA. In combination, we believe that these factors demonstrate that the specified activity will have only short-term effects on individuals (resulting from Level B harassment) and that the total level of taking will not impact rates of recruitment or survival sufficiently to result in population-level impacts.

*Antarctic Marine Living Resources Ecosystem*—Please refer to Table 11 for information relating to this analysis. No take by Level A harassment, serious injury, or mortality is proposed for authorization in the AMLR. The entirety of the qualitative discussion provided above for the California Current Ecosystem is applicable to SWFSC use of active acoustic sources in the AMLR, and is not repeated here. Given the limited spatio-temporal footprint of SWFSC survey activity in the Antarctic—survey activity only occurs within a limited area of Antarctic waters and only for a few months in any given year—we believe that the level of taking by Level B harassment proposed for authorization represents a negligible impact to these species.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned mitigation measures, we find that the total marine mammal take from SWFSC's fisheries research activities will have a negligible impact on the affected marine mammal species or stocks in the Antarctic Marine Living Resources Ecosystem. In summary, this finding of negligible impact is founded on the following factors: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices consist of, at worst, temporary and relatively minor modifications in behavior; (3) no incidental take by Level A harassment, serious injury, or mortality is proposed; (4) the predicted number of incidents of Level B harassment likely represent

overestimates; and (5) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact. In combination, we believe that these factors demonstrate that the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

#### *Small Numbers Analyses*

*California Current Ecosystem*—Please see Table 9 for information relating to this small numbers analysis. The total amount of taking proposed for authorization is less than ten percent for all stocks, with the exception of certain species-wide totals when evaluated against the stock with the smallest abundance. The total taking for killer whales represents approximately fifteen percent of the southern resident stock; however, given the limited range of this stock relative to SWFSC survey operations, it is extremely unlikely that all takes would accrue to that stock. The total taking represents less than ten percent of the population abundance for other stocks of killer whale. The total species-wide taking by Level B harassment for harbor porpoise represents approximately 23 percent of the Morro Bay stock of harbor porpoise, which has the smallest population abundance of five harbor porpoise stocks in the CCE. Although this value is within the bounds of takings that NMFS has considered to be small in the past, it is likely that the taking will be distributed in some fashion across the five stocks; and therefore, the amount of take occurring for any one stock would be much less than 23 percent.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks in the California Current Ecosystem.

*Eastern Tropical Pacific*—Please refer to Table 10 for information relating to this analysis. The total amount of taking proposed for authorization is less than three percent for all stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation measures, we find that small numbers of marine mammals

will be taken relative to the populations of the affected species or stocks in the Eastern Tropical Pacific.

*Antarctic Marine Living Resources Ecosystem*—Please refer to Table 11 for information relating to this analysis. The total amount of taking proposed for authorization is less than three percent for all stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks in the Antarctic Marine Living Resources Ecosystem.

### Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth “requirements pertaining to the monitoring and reporting of such taking.” The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving, or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of an individual; or (2) population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.

- Mitigation and monitoring effectiveness.

SWFSC plans to make more systematic its training, operations, data collection, animal handling and sampling protocols, etc. in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. It is in this spirit that the monitoring requirements described below were crafted.

### Visual Monitoring

Marine mammal watches are a standard part of conducting fisheries research activities, and are implemented as described previously in “Mitigation”. Dedicated marine mammal visual monitoring occurs as described (1) for a minimum of thirty minutes prior to deployment of midwater trawl and pelagic longline gear; (2) throughout deployment and active fishing of all research gears; (3) for a minimum of thirty minutes prior to retrieval of pelagic longline gear; and (4) throughout retrieval of all research gear. This visual monitoring is performed by trained SWFSC personnel with no other responsibilities during the monitoring period. Observers record the species and estimated number of animals present and their behaviors, which may be valuable information towards an understanding of whether certain species may be attracted to vessels or certain survey gears. Separately, marine mammal watches are conducted by watch-standers (those navigating the vessel and other crew; these will typically not be SWFSC personnel) at all times when the vessel is being operated. The primary focus for this type of watch is to avoid striking marine mammals and to generally avoid navigational hazards. These watch-standers typically have other duties associated with navigation and other vessel operations and are not required to record or report to the scientific party data on marine mammal sightings, except when gear is being deployed or retrieved.

In the Antarctic only, the SWFSC will monitor any potential disturbance of pinnipeds on ice, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance will be recorded according to the three-point scale, representing increasing seal response to disturbance, shown in Table 7.

### Marine Mammal Excluder Device

The SWFSC plans to evaluate development of an MMED suitable for use in the modified-Cobb midwater trawl. Modified-Cobb trawl nets are considerably smaller than Nordic 264 trawl nets, are fished at slower speeds, and have a different shape and functionality than the Nordic 264. Due to the smaller size of the modified-Cobb net, this gear does not yet have a suitable marine mammal excluder device but research and design work are currently being performed to develop effective excluders that will not appreciably affect the catchability of the net and therefore maintain continuity of the fisheries research dataset.

A reduction in target catch rates is an issue that has arisen from preliminary analyses of MMED use in Nordic 264 gear. Although sample sizes are small, these results have cast some doubt as to whether the MMED would be suitable for surveys with a primary objective of estimating abundance, as opposed to collecting biological samples. If data collected during testing of the modified-Cobb MMED continues to indicate reduced catch rates, SWFSC would continue testing to explore whether it is possible to calculate reliable conversion factors to equate catches when using the MMED to catches when it was not. If this is not possible, then use of the MMED for certain surveys may compromise primary research objectives. Therefore, use of the MMED may be considered not practicable.

### Analysis of Bycatch Patterns

In addition, SWFSC plans to explore patterns in past marine mammal bycatch in its fisheries research surveys to better understand what factors (*e.g.*, oceanographic conditions) might increase the likelihood of take. SWFSC staff have been using predictive machine-learning methods (classification trees) for various applications; using similar methods, the SWFSC plans to examine research trawl data for any link between trawl variables and observed marine mammal bycatch. Some of the variables SWFSC is currently considering for this analysis are: moon phase, sky cover, pinger presence, trawl speed, vessel sonar use during trawl, use of deck lights, etc. SWFSC staff will also review historical fisheries research data to determine whether sufficient data exist for similar analysis. If take patterns emerge, the SWFSC will focus future research on reducing or eliminating high-risk factors in ways that enable scientifically important surveys to continue with minimized environmental impact.

### Training

SWFSC anticipates that additional information on practices to avoid marine mammal interactions can be gleaned from training sessions and more systematic data collection standards. The SWFSC will conduct annual trainings for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations (relevant to AMLR surveys), completion of datasheets, and use of equipment. Some of these topics may be familiar to SWFSC staff, who may be professional biologists; the SWFSC shall determine the agenda for these trainings and ensure that all relevant staff have necessary familiarity with these topics. The first training, to be conducted in 2015, will include three primary elements.

First, the course will provide an overview of the purpose and need for the authorization, including research gears that have historically resulted in incidental capture of protected species, mandatory mitigation measures by gear and the purpose for each, and species that SWFSC is authorized to incidentally take.

Second, the training will provide detailed descriptions of reporting, data collection, and sampling protocols. This portion of the training will include instruction on how to complete new data collection forms such as the marine mammal watch log, the incidental take form (e.g., specific gear configuration and details relevant to an interaction with protected species), and forms used for species ID and biological sampling. The biological data collection and sampling training module will include the same sampling and necropsy training that is used for the West Coast Regional Observer training.

SWFSC will also dedicate a portion of training to discussion of best professional judgment (which is recognized as an integral component of mitigation implementation; see "Mitigation"), including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful. We recognize that many factors come into play regarding decision-making at sea and that it is not practicable to simplify what are inherently variable and complex situational decisions into rules that may

be defined on paper. However, it is our intent that use of best professional judgment be an iterative process from year to year, in which any at-sea decision-maker (i.e., responsible for decisions regarding the avoidance of marine mammal interactions with survey gear through the application of best professional judgment) learns from the prior experience of all relevant SWFSC personnel (rather than from solely their own experience). The outcome should be increased transparency in decision-making processes where best professional judgment is appropriate and, to the extent possible, some degree of standardization across common situations, with an ultimate goal of reducing marine mammal interactions. It is the responsibility of the SWFSC to facilitate such exchange.

### Handling Procedures and Data Collection

Improved standardization of handling procedures were discussed previously in "Mitigation". In addition to the benefits implementing these protocols are believed to have on the animals through increased post-release survival, SWFSC believes adopting these protocols for data collection will also increase the information on which "serious injury" determinations (NMFS, 2012a, b) are based and improve scientific knowledge about marine mammals that interact with fisheries research gears and the factors that contribute to these interactions. SWFSC personnel will be provided standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water and log activities pertaining to the interaction.

SWFSC will record interaction information on either existing data forms created by other NMFS programs (e.g., see Appendix B.2 of SWFSC's application) or will develop their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines (NMFS, 2012a, b), researchers will also answer a series of supplemental questions on the details of marine mammal interactions (see Appendix B.3 of SWFSC's application).

Finally, for any marine mammals that are killed during fisheries research activities, scientists will collect data and samples pursuant to the SWFSC MMPA and ESA research and salvage permit and to the "Detailed Sampling Protocol for Marine Mammal and Sea Turtle

Incidental Takes on SWFSC Research Cruises" (see Appendix B.4 of SWFSC's application).

### Reporting

As is normally the case, SWFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. The SWFSC will follow a phased approach with regard to the cessation of its activities and/or reporting of such events, as described in the proposed regulatory texts following this preamble. In addition, Chief Scientists (or cruise leader, CS) will provide reports to SWFSC leadership and to the Office of Protected Resources (OPR). As a result, when marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling SWFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The SWFSC will submit annual summary reports to OPR including: (1) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant (see "Estimated Take by Acoustic Harassment" for further discussion), specific to each region; (2) summary information regarding use of all longline (including bottom and vertical lines) and trawl (including bottom trawl) gear, including number of sets, hook hours, tows, etc., specific to each region and gear; (3) accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why; (4) summary information related to any on-ice disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to the three-point scale shown in Table 7, and distance of closest approach; (5) a written evaluation of the effectiveness of SWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any; and (6) updates as appropriate regarding the development/implementation of MMEDs and analysis

of bycatch patterns. The period of reporting will be annually, beginning one year post-issuance, and the report must be submitted not less than ninety days following the end of a given year. Submission of this information is in service of an adaptive management framework allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the five-year period of validity for these regulations.

NMFS has established a formal incidental take reporting system, the Protected Species Incidental Take (PSIT) database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS leadership and other relevant staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been inputted to the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools, but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc.

SWFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for marine mammals that are released alive. SWFSC will require that the CS complete data forms (already developed and used by commercial fisheries observer programs) and address supplemental questions, both of which have been developed to aid in SI determinations. SWFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the SWFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

#### **Adaptive Management**

The final regulations governing the take of marine mammals incidental to SWFSC fisheries research survey operations in three specified geographical regions contain an adaptive management component. The inclusion of an adaptive management component is valuable and necessary within the context of five-year regulations for activities that have been associated with marine mammal mortality.

The reporting requirements associated with these rules are designed to provide

OPR with monitoring data from the previous year to allow consideration of whether any changes are appropriate. OPR and the SWFSC will meet annually to discuss the monitoring reports and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows OPR to consider new information from different sources to determine (with input from the SWFSC regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

#### **Changes to the Proposed Regulations**

As a result of clarifying discussions with SWFSC, we made certain changes to the proposed regulations as described here. These changes are considered minor and do not affect any of our preliminary determinations.

#### *Specified Geographical Region*

We clarify that the California Current Ecosystem specified geographical region extends outside of the U.S. Exclusive Economic Zone (EEZ), from the Mexican EEZ (not including Mexican territorial waters) north into the Canadian EEZ (not including Canadian territorial waters). We further clarify that the Eastern Tropical Pacific specified geographical region extends into the EEZs of the various ETP nations (not including the territorial waters of ETP nations). The MMPA's authority does not extend into foreign territorial waters.

#### *Mitigation*

We have eliminated reference to specific operational protocols (e.g., tow distance, soak duration; 219.5(b)(6)) in the regulations. Those protocols, as described in the preamble as well as in the proposed regulations, were intended to acknowledge that certain SWFSC operational protocols that are defined elements of survey design (i.e., not

specified for purposes of mitigation) have the added benefit of reducing the likelihood of marine mammal interactions (e.g., limiting tow or soak durations results in a shorter period of time when gear is in the water). However, it is not our intent to restrict SWFSC ability to design new or alter existing survey protocols during the period of validity of these regulations.

#### *Monitoring*

We have removed the requirement to log passive acoustic data prior to midwater trawling in the California Current (219.6(b) in the proposed regulations). Inclusion of this requirement stemmed from a misunderstanding of certain language in SWFSC's request for authorization and would require substantial effort for uncertain benefit. In addition, we made the following minor changes:

- Added a stipulation relating to coordination of training efforts with NMFS' Northwest Fisheries Science Center (219.6 (d)(3))
- Removed requirement for SWFSC to submit reports for each survey leg or cruise (previously 219.6(g)(2)). We believe that the incident-specific NMFS PSIT reporting in concert with required annual reporting is sufficient.
- Clarified that SWFSC must submit a revised annual report following resolution of any comments on the draft report; changed the reporting period to one-year period rather than calendar year; clarified that pro-rated estimates of actual take relating to use of active acoustic sources must be submitted; and added requirements to report on waiver of move-on rule due to presence of five or fewer California sea lions when there is a relevant interaction, the ongoing practice of spent bait discard, and annual trainings and coordination.
- Requirements relating to reporting of injured or dead marine mammals have been revised to clarify that SWFSC may make an immediate decision regarding continuation of research activity in the event that such activity results in a prohibited take. The decision will be subject to concurrence from OPR.

#### **Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by these actions, in any of the three specified geographical regions for which we are issuing regulations. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act (ESA)**

There are multiple marine mammal species listed under the ESA with confirmed or possible occurrence in the specified geographical regions. The authorization of incidental take pursuant to the SWFSC's specified activity would not affect any designated critical habitat. OPR requested initiation of consultation with NMFS' West Coast Regional Office (WCRO) under section 7 of the ESA on the promulgation of five-year regulations and the subsequent issuance of LOAs to SWFSC under section 101(a)(5)(A) of the MMPA.

On August 31, 2015, the WCRO issued a biological opinion to OPR and to the SWFSC (concerning the conduct of the specified activities) which concluded that the issuance of the authorizations is not likely to jeopardize the continued existence of any listed species and is not likely to adversely affect any listed marine mammal species. The opinion also concluded that the issuance of the authorizations would not affect any designated critical habitat.

**National Environmental Policy Act (NEPA)**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), SWFSC prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the described research activities. OPR made SWFSC's EA available to the public for review and comment, in relation to its suitability for adoption by OPR in order to assess the impacts to the human environment of issuance of regulations and subsequent Letters of Authorization to SWFSC. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, OPR has reviewed SWFSC's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) on August 31, 2015. SWFSC's EA and OPR's FONSI for this action may be found on the Internet at [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm).

**Classification**

It has been determined that this rule is not significant under Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the

Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number. This rule contains collection-of-information requirements subject to the requirements of the PRA. These collection-of-information requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

**List of Subjects in 50 CFR Part 219**

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: September 22, 2015.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set forth in the preamble, NMFS amends 50 CFR Chapter II, Subchapter C, by adding part 219 to read as follows:

**PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS****Subpart A—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research in the California Current**

Sec.

- 219.1 Specified activity and specified geographical region.
- 219.2 Effective dates.
- 219.3 Permissible methods of taking.
- 219.4 Prohibitions.
- 219.5 Mitigation requirements.
- 219.6 Requirements for monitoring and reporting.
- 219.7 Letters of Authorization.
- 219.8 Renewals and modifications of Letters of Authorization.
- 219.9 [Reserved]
- 219.10 [Reserved]

**Subpart B—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research in the Eastern Tropical Pacific**

Sec.

- 219.11 Specified activity and specified geographical region.
- 219.12 Effective dates.
- 219.13 Permissible methods of taking.
- 219.14 Prohibitions.
- 219.15 Mitigation requirements.
- 219.16 Requirements for monitoring and reporting.
- 219.17 Letters of Authorization.
- 219.18 Renewals and modifications of Letters of Authorization.
- 219.19 [Reserved]
- 219.20 [Reserved]

**Subpart C—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research in the Antarctic**

Sec.

- 219.21 Specified activity and specified geographical region.
- 219.22 Effective dates.
- 219.23 Permissible methods of taking.
- 219.24 Prohibitions.
- 219.25 Mitigation requirements.
- 219.26 Requirements for monitoring and reporting.
- 219.27 Letters of Authorization.
- 219.28 Renewals and modifications of Letters of Authorization.
- 219.29 [Reserved]
- 219.30 [Reserved]

Authority: 16 U.S.C. 1361 *et seq.*

**Subpart A—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research in the California Current****§ 219.1 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Southwest Fisheries Science Center (SWFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by SWFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the California Current Ecosystem.

**§ 219.2 Effective dates.**

Regulations in this subpart are effective October 30, 2015, through October 30, 2020.

**§ 219.3 Permissible methods of taking.**

(a) Under LOAs issued pursuant to § 216.106 and § 219.7 of this chapter, the Holder of the LOA (hereinafter "SWFSC") may incidentally, but not intentionally, take marine mammals within the area described in § 219.1(b)

of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 219.1(a) of this chapter is limited to the indicated number of takes on an annual basis (by Level B harassment) or over the five-year period of validity of these regulations (by mortality) of the following species:

- (1) Level B harassment:
- (i) Cetaceans:
- (A) Gray whale (*Eschrichtius robustus*)—346;
- (B) Humpback whale (*Megaptera novaeangliae*)—14;
- (C) Minke whale (*Balaenoptera acutorostrata*)—13;
- (D) Sei whale (*Balaenoptera borealis*)—1;
- (E) Fin whale (*Balaenoptera physalus*)—33;
- (F) Blue whale (*Balaenoptera musculus*)—24;
- (G) Sperm whale (*Physeter macrocephalus*)—65;
- (H) Pygmy or dwarf sperm whale (*Kogia spp.*)—42;
- (I) Cuvier's beaked whale (*Ziphius cavirostris*)—146;
- (J) Baird's beaked whale (*Berardius bairdii*)—34;
- (K) Hubbs', Blainville's, ginkgo-toothed, Perrin's, lesser, or Stejneger's beaked whales (*Mesoplodon spp.*)—40;
- (L) Bottlenose dolphin (*Tursiops truncatus*)—32;
- (M) Striped dolphin (*Stenella coeruleoalba*)—301;
- (N) Long-beaked common dolphin (*Delphinus capensis*)—348;
- (O) Short-beaked common dolphin (*Delphinus delphis*)—5,592;
- (P) Pacific white-sided dolphin (*Lagenorhynchus obliquoidens*)—378;
- (Q) Northern right whale dolphin (*Lissodelphis borealis*)—176;
- (R) Risso's dolphin (*Grampus griseus*)—188;
- (S) Killer whale (*Orcinus orca*)—13;
- (T) Short-finned pilot whale (*Globicephala macrorhynchus*)—12;
- (U) Harbor porpoise (*Phocoena phocoena*)—682; and
- (V) Dall's porpoise (*Phocoenoides dalli*)—1,365.
- (ii) Pinnipeds:
- (A) Guadalupe fur seal (*Arctocephalus philippii townsendi*)—134;
- (B) Northern fur seal (*Callorhinus ursinus*), California stock—236;
- (C) Northern fur seal, Pribilof Islands/Eastern Pacific stock—11,555;
- (D) California sea lion (*Zalophus californianus*)—4,302;
- (E) Steller sea lion (*Eumetopias jubatus*)—1,055;

(F) Harbor seal (*Phoca vitulina*)—910; and

(G) Northern elephant seal (*Mirounga angustirostris*)—4,743.

(2) Mortality (midwater trawl gear only):

- (i) Cetaceans:
- (A) Bottlenose dolphin (California, Oregon, and Washington offshore stock)—8;
- (B) Bottlenose dolphin (California coastal stock)—3;
- (C) Striped dolphin—11;
- (D) Long-beaked common dolphin—11;
- (E) Short-beaked common dolphin—11;
- (F) Pacific white-sided dolphin—35;
- (G) Northern right whale dolphin—10;
- (H) Risso's dolphin—11;
- (I) Harbor porpoise—5;
- (J) Dall's porpoise—5;
- (K) Unidentified cetacean (Family Delphinidae or Family Phocoenidae)—1.

(ii) Pinnipeds:

(A) Northern fur seal—5;

(B) California sea lion—20;

(C) Steller sea lion—9;

(D) Harbor seal—9;

(E) Northern elephant seal—5; and

(F) Unidentified pinniped—1.

(3) Mortality (pelagic longline gear only):

- (i) Cetaceans:
- (A) Pygmy or dwarf sperm whale—1;
- (B) Bottlenose dolphin—1;
- (C) Striped dolphin—1;
- (D) Long-beaked common dolphin—1;
- (E) Short-beaked common dolphin—1;
- (F) Risso's dolphin—1; and
- (G) Short-finned pilot whale—1.
- (ii) Pinnipeds:
- (A) California sea lion—5;
- (B) Steller sea lion—1; and
- (C) Unidentified pinniped—1.

#### § 219.4 Prohibitions.

Notwithstanding takings contemplated in § 219.1 of this chapter and authorized by a LOA issued under §§ 216.106 and 219.7 of this chapter, no person in connection with the activities described in § 219.1 of this chapter may:

- (a) Take any marine mammal not specified in § 219.3(b) of this chapter;
- (b) Take any marine mammal specified in § 219.3(b) of this chapter in any manner other than as specified;
- (c) Take a marine mammal specified in § 219.3(b) of this chapter if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal;
- (d) Take a marine mammal specified in § 219.3(b) of this chapter if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 and 219.7 of this chapter.

#### § 219.5 Mitigation requirements.

When conducting the activities identified in § 219.1(a) of this chapter, the mitigation measures contained in any LOA issued under §§ 216.106 and 219.7 of this chapter must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) SWFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon.

(2) SWFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) SWFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, SWFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(5) SWFSC shall implement handling and/or disentanglement protocols as specified in guidance provided to SWFSC survey personnel.

(b) Midwater trawl survey protocols:

(1) SWFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station.

(2) SWFSC shall initiate marine mammal watches (visual observation) no less than thirty minutes prior to sampling. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye

and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) SWFSC shall implement the move-on rule. If one or more marine mammals are observed within 1 nm of the planned location in the thirty minutes before setting the trawl gear, SWFSC shall transit to a different section of the sampling area to maintain a minimum set distance of 1 nm from the observed marine mammals. If, after moving on, marine mammals remain within 1 nm, SWFSC may decide to move again or to skip the station. SWFSC may use best professional judgment in making this decision but may not elect to conduct midwater trawl survey activity when animals remain within the 1-nm zone.

(4) SWFSC shall maintain visual monitoring effort during the entire period of time that midwater trawl gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, SWFSC shall take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If trawling operations have been suspended because of the presence of marine mammals, SWFSC may resume trawl operations when practicable only when the animals are believed to have departed the 1 nm area. SWFSC may use best professional judgment in making this determination.

(6) SWFSC shall implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval. Trawl nets must be cleaned prior to deployment.

(7) SWFSC must install and use a marine mammal excluder device at all times when the Nordic 264 trawl net or other net for which the device is appropriate is used.

(8) SWFSC must install and use acoustic deterrent devices whenever any midwater trawl net is used, with two to four devices placed along the footrope and/or headrope of the net. SWFSC must ensure that the devices are operating properly before deploying the net.

(c) Pelagic longline survey protocols:

(1) SWFSC shall deploy longline gear as soon as is practicable upon arrival at the sampling station.

(2) SWFSC shall initiate marine mammal watches (visual observation)

no less than thirty minutes prior to both deployment and retrieval of the longline gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) SWFSC shall implement the move-on rule. If one or more marine mammals are observed within 1 nm of the planned location in the thirty minutes before gear deployment, SWFSC shall transit to a different section of the sampling area to maintain a minimum set distance of 1 nm from the observed marine mammals. If, after moving on, marine mammals remain within 1 nm, SWFSC may decide to move again or to skip the station. SWFSC may use best professional judgment in making this decision but may not elect to conduct pelagic longline survey activity when animals remain within the 1-nm zone. Implementation of the move-on rule is not required upon observation of five or fewer California sea lions.

(4) SWFSC shall maintain visual monitoring effort during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, SWFSC shall take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If deployment or retrieval operations have been suspended because of the presence of marine mammals, SWFSC may resume such operations when practicable only when the animals are believed to have departed the 1 nm area. SWFSC may use best professional judgment in making this decision.

(6) SWFSC shall implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

#### **§ 219.6 Requirements for monitoring and reporting.**

(a) Visual monitoring program:

(1) Dedicated marine mammal visual monitoring, conducted by trained SWFSC personnel with no other responsibilities during the monitoring period, shall occur:

(i) For a minimum of thirty minutes prior to deployment of midwater trawl and pelagic longline gear;

(ii) Throughout deployment of gear and active fishing of midwater trawl gear;

(iii) For a minimum of thirty minutes prior to retrieval of pelagic longline gear; and

(iv) Throughout retrieval of all research gear.

(2) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated.

(b) Marine mammal excluder device (MMED)—SWFSC shall conduct an evaluation of the feasibility of MMED development for the modified-Cobb midwater trawl net.

(c) Analysis of bycatch patterns—SWFSC shall conduct an analysis of past bycatch patterns in order to better understand what factors might increase the likelihood of incidental take in research survey gear. This shall include an analysis of research trawl data for any link between trawl variables and observed marine mammal bycatch, as well as a review of historical fisheries research data to determine whether sufficient data exist for similar analysis.

(d) Training:

(1) SWFSC must conduct annual training for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. SWFSC may determine the agenda for these trainings.

(2) SWFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) SWFSC shall coordinate with NMFS' Northwest Fisheries Science Center (NWFSC) regarding surveys conducted in the California Current Ecosystem, such that training and guidance related to handling procedures and data collection is consistent.

(e) Handling procedures and data collection:

(1) SWFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS' Office of Protected Resources (OPR).

(2) When practicable, for any marine mammal interaction involving the release of a live animal, SWFSC shall collect necessary data to facilitate a serious injury determination.

(3) SWFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) SWFSC shall record such data on standardized forms, which will be subject to approval by OPR. SWFSC shall also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(f) Reporting:

(1) SWFSC shall report all incidents of marine mammal interaction to NMFS' Protected Species Incidental Take database within 48 hours of occurrence, and shall provide supplemental information to OPR upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) Annual reporting:

(i) SWFSC shall submit an annual summary report to OPR not later than ninety days following the end of a given year. SWFSC shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of all longline (including bottom and vertical lines) and trawl (including bottom trawl) gear, including number of sets, hook hours, tows, etc., specific to each gear;

(C) Accounts of all incidents of marine mammal interactions, including circumstances of the event, descriptions of any mitigation procedures implemented or not implemented and why, and, for interactions due to use of pelagic longline, whether the move-on rule was waived due to the presence of five or fewer California sea lions;

(D) A written evaluation of the effectiveness of SWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any, and an assessment of the practice of discarding

spent bait relative to interactions with pelagic longline, if any;

(E) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive;

(F) Updates as appropriate regarding the development/implementation of MMEDs and analysis of bycatch patterns; and

(G) A summary of all relevant training provided by SWFSC and any coordination with NWFS or NMFS' West Coast Regional Office.

(g) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 219.1(a) of this chapter clearly causes the take of a marine mammal in a prohibited manner, SWFSC personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the SWFSC Director (or designee). The incident must be reported immediately to OPR and the West Coast Regional Stranding Coordinator, NMFS. OPR will review the circumstances of the prohibited take and work with SWFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The immediate decision made by SWFSC regarding continuation of the specified activity is subject to OPR concurrence. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s).

(2) In the event that SWFSC discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), SWFSC shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in § 219.6(g)(1) of this section. Activities may continue while OPR reviews the circumstances of the

incident. OPR will work with SWFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that SWFSC discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 219.1(a) of this chapter (e.g., previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), SWFSC shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. SWFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR.

**§ 219.7 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, SWFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, SWFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SWFSC must apply for and obtain a modification of the LOA as described in § 219.8 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

**§ 219.8 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§ 216.106 and 219.7 of this chapter for the activity identified in § 219.1(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the



anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 219.8(c)(1) of this chapter), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 219.8(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 219.7 of this chapter for the activity identified in § 219.1(a) of this chapter may be modified by OPR under the following circumstances:

(1) Adaptive Management—OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SWFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from SWFSC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 219.2(b) of this chapter, an LOA may be modified without prior notice or opportunity for public

comment. Notice would be published in the **Federal Register** within thirty days of the action.

#### § 219.9 [Reserved]

#### § 219.10 [Reserved]

### Subpart B—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research in the Eastern Tropical Pacific

#### § 219.11 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Southwest Fisheries Science Center (SWFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by SWFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the Eastern Tropical Pacific.

#### § 219.12 Effective dates.

Regulations in this subpart are effective October 30, 2015, through October 30, 2020.

#### § 219.13 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 and 219.17 of this chapter, the Holder of the LOA (hereinafter "SWFSC") may incidentally, but not intentionally, take marine mammals within the area described in § 219.11(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 219.11(a) of this chapter is limited to the indicated number of takes on an annual basis (by Level B harassment) or over the five-year period of validity of these regulations (by mortality) of the following species:

(1) Level B harassment:

(i) Cetaceans:

(A) Humpback whale (*Megaptera novaeangliae*)—1;

(B) Bryde's whale (*Balaenoptera edeni*)—4;

(C) Blue whale (*Balaenoptera musculus*)—2;

(D) Sperm whale (*Physeter macrocephalus*)—4;

(E) Dwarf sperm whale (*Kogia sima*)—14;

(F) Cuvier's beaked whale (*Ziphius cavirostris*)—24;

(G) Longman's beaked whale (*Indopacetus pacificus*)—1;

(H) Blainville's, ginkgo-toothed, or lesser beaked whales (*Mesoplodon* spp.)—30;

(I) Rough-toothed dolphin (*Steno bredanensis*)—45;

(J) Bottlenose dolphin (*Tursiops truncatus*)—139;

(K) Striped dolphin (*Stenella coeruleoalba*)—401;

(L) Pantropical spotted dolphin (*Stenella attenuata*)—1,088;

(M) Spinner dolphin (*Stenella longirostris*)—442;

(N) Long-beaked common dolphin (*Delphinus capensis*)—173;

(O) Short-beaked common dolphin (*Delphinus delphis*)—1,300;

(P) Fraser's dolphin (*Lagenodelphis hosei*)—121;

(Q) Dusky dolphin (*Lagenorhynchus obscurus*)—18;

(R) Risso's dolphin (*Grampus griseus*)—46;

(S) Melon-headed whale (*Peponocephala electra*)—19;

(T) Pygmy killer whale (*Feresa attenuata*)—17;

(U) False killer whale (*Pseudorca crassidens*)—17;

(V) Killer whale (*Orcinus orca*)—3; and

(W) Short-finned pilot whale (*Globicephala macrorhynchus*)—723.

(ii) Pinnipeds:

(A) Guadalupe fur seal (*Arctocephalus philippii townsendi*)—66;

(B) California sea lion (*Zalophus californianus*)—1,442;

(C) South American sea lion (*Otaria byronia*)—1,442; and

(D) Northern elephant seal (*Mirounga angustirostris*)—3,248.

(2) Mortality (pelagic longline gear only):

(i) Cetaceans:

(A) Dwarf sperm whale—1;

(B) Rough-toothed dolphin—1;

(C) Bottlenose dolphin—1;

(D) Striped dolphin—1;

(E) Pantropical spotted dolphin—1;

(F) Long-beaked common dolphin—1;

(G) Short-beaked common dolphin—1;

(H) Risso's dolphin—1;

(I) False killer whale—1; and

(J) Short-finned pilot whale—1.

(ii) Pinnipeds:

(A) California sea lion—5;

(B) South American sea lion—5; and

(C) Unidentified pinniped—1.

#### § 219.14 Prohibitions.

Notwithstanding takings contemplated in § 219.11 of this chapter and authorized by a LOA issued under §§ 216.106 and 219.17 of this chapter, no person in connection with the activities described in § 219.11 of this chapter may:

(a) Take any marine mammal not specified in § 219.13(b) of this chapter;

(b) Take any marine mammal specified in § 219.13(b) of this chapter in any manner other than as specified;

(c) Take a marine mammal specified in § 219.13(b) of this chapter if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Take a marine mammal specified in § 219.13(b) of this chapter if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 and 219.17 of this chapter.

#### § 219.15 Mitigation requirements.

When conducting the activities identified in § 219.11(a) of this chapter, the mitigation measures contained in any LOA issued under §§ 216.106 and 219.17 of this chapter must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) SWFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon.

(2) SWFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) SWFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, SWFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to

marine mammals during use of all research equipment.

(5) SWFSC shall implement handling and/or disentanglement protocols as specified in guidance provided to SWFSC survey personnel.

(b) Pelagic longline survey protocols:

(1) SWFSC shall deploy longline gear as soon as is practicable upon arrival at the sampling station.

(2) SWFSC shall initiate marine mammal watches (visual observation) no less than thirty minutes prior to both deployment and retrieval of the longline gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) SWFSC shall implement the move-on rule. If one or more marine mammals are observed within 1 nm of the planned location in the thirty minutes before gear deployment, SWFSC shall transit to a different section of the sampling area to maintain a minimum set distance of 1 nm from the observed marine mammals. If, after moving on, marine mammals remain within 1 nm, SWFSC may decide to move again or to skip the station. SWFSC may use best professional judgment in making this decision but may not elect to conduct pelagic longline survey activity when animals remain within the 1-nm zone.

(4) SWFSC shall maintain visual monitoring effort during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, SWFSC shall take the most appropriate action to avoid marine mammal interaction. SWFSC may use best professional judgment in making this decision.

(5) If deployment or retrieval operations have been suspended because of the presence of marine mammals, SWFSC may resume such operations when practicable only when the animals are believed to have departed the 1 nm area. SWFSC may use best professional judgment in making this determination.

(6) SWFSC shall implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

#### § 219.16 Requirements for monitoring and reporting.

(a) Visual monitoring program:

(1) Dedicated marine mammal visual monitoring, conducted by trained SWFSC personnel with no other

responsibilities during the monitoring period, shall occur:

(i) For a minimum of thirty minutes prior to deployment of pelagic longline gear;

(ii) Throughout deployment of gear;

(iii) For a minimum of thirty minutes prior to retrieval of pelagic longline gear; and

(iv) Throughout retrieval of all research gear.

(2) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated.

(b) Training:

(1) SWFSC must conduct annual training for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. SWFSC may determine the agenda for these trainings.

(2) SWFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(c) Handling procedures and data collection:

(1) SWFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS' Office of Protected Resources (OPR).

(2) When practicable, for any marine mammal interaction involving the release of a live animal, SWFSC shall collect necessary data to facilitate a serious injury determination.

(3) SWFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) SWFSC shall record such data on standardized forms, which will be subject to approval by OPR. SWFSC shall also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(d) Reporting:

(1) SWFSC shall report all incidents of marine mammal interaction to NMFS' Protected Species Incidental Take database within 48 hours of occurrence, and shall provide supplemental information to OPR upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) Annual reporting:

(i) SWFSC shall submit an annual summary report to OPR not later than ninety days following the end of a given year. SWFSC shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of all longline gear, including number of sets, hook hours, etc.;

(C) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(D) A written evaluation of the effectiveness of SWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any; and an assessment of the practice of discarding spent bait relative to interactions with pelagic longline, if any;

(E) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(F) A summary of all relevant training provided by SWFSC.

(e) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 219.1(a) of this chapter clearly causes the take of a marine mammal in a prohibited manner, SWFSC personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the SWFSC Director (or designee). The incident must be reported immediately to OPR. OPR will review the circumstances of the prohibited take

and work with SWFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The immediate decision made by SWFSC regarding continuation of the specified activity is subject to OPR concurrence. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s).

(2) In the event that SWFSC discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), SWFSC shall immediately report the incident to OPR. The report must include the same information identified in § 219.16(e)(1) of this section.

Activities may continue while OPR reviews the circumstances of the incident. OPR will work with SWFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that SWFSC discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 219.11(a) of this chapter (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), SWFSC shall report the incident to OPR within 24 hours of the discovery. SWFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR.

**§ 219.17 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, SWFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, SWFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SWFSC must apply for and obtain a modification of the LOA as described in § 219.18 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

**§ 219.18 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§ 216.106 and 219.17 of this chapter for the activity identified in § 219.11(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 219.18(c)(1) of this chapter), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 219.18(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 219.17 of this chapter for the activity identified in § 219.11(a) of this chapter may be modified by OPR under the following circumstances:

(1) Adaptive Management—OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SWFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from SWFSC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 219.12(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

#### § 219.19 [Reserved]

#### § 219.20 [Reserved]

### Subpart C—Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research in the Antarctic

#### § 219.21 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Southwest Fisheries Science Center (SWFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by SWFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the Antarctic Marine Living Resources Ecosystem.

#### § 219.22 Effective dates.

Regulations in this subpart are effective October 30, 2015, through October 30, 2020.

#### § 219.23 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 and 219.27 of this chapter, the Holder of the LOA (hereinafter "SWFSC") may incidentally, but not intentionally, take marine mammals within the area described in § 219.21(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 219.21(a) of this chapter is limited to the indicated number of takes on an annual basis of the following species and is limited to Level B harassment:

- (1) Cetaceans:
  - (i) Southern right whale (*Eubalaena australis*)—1;
  - (ii) Humpback whale (*Megaptera novaeangliae*)—92;
  - (iii) Antarctic minke whale (*Balaenoptera bonaerensis*)—6;
  - (iv) Fin whale (*Balaenoptera physalus*)—114;
  - (v) Sperm whale (*Physeter macrocephalus*)—3;
  - (vi) Arnoux' beaked whale (*Berardius arnuxii*)—37;
  - (vii) Southern bottlenose whale (*Hyperoodon planifrons*)—37;
  - (viii) Hourglass dolphin (*Lagenorhynchus cruciger*)—12;
  - (ix) Killer whale (*Orcinus orca*)—11;
  - (x) Long-finned pilot whale (*Globicephala melas*)—43; and
  - (xi) Spectacled porpoise (*Phocoena dioptrica*)—12.
- (2) Pinnipeds:
  - (i) Antarctic fur seal (*Arctocephalus philippii townsendi*)—553;
  - (ii) Southern elephant seal (*Mirounga leonina*)—6;
  - (iii) Weddell seal (*Leptonychotes weddellii*)—4;
  - (iv) Crabeater seal (*Lobodon carcinophaga*)—7; and
  - (v) Leopard seal (*Hydrurga leptonyx*)—5.

#### § 219.24 Prohibitions.

Notwithstanding takings contemplated in § 219.21 of this chapter and authorized by a LOA issued under §§ 216.106 and 219.27 of this chapter, no person in connection with the activities described in § 219.21 of this chapter may:

- (a) Take any marine mammal not specified in § 219.23(b) of this chapter;
- (b) Take any marine mammal specified in § 219.23(b) of this chapter in any manner other than as specified;

(c) Take a marine mammal specified in § 219.23(b) of this chapter if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Take a marine mammal specified in § 219.23(b) of this chapter if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 and 219.27 of this chapter.

#### § 219.25 Mitigation requirements.

When conducting the activities identified in § 219.21(a), the mitigation measures contained in any LOA issued under §§ 216.106 and 219.27 of this chapter must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

- (1) SWFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon.

(2) SWFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) SWFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, SWFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(5) SWFSC shall implement handling and/or disentanglement protocols as specified in guidance provided to SWFSC survey personnel.

(b) Trawl survey protocols—SWFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station.

**§ 219.26 Requirements for monitoring and reporting.**

(a) Visual monitoring program:

(1) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated.

(2) SWFSC shall monitor any potential disturbance of pinnipeds on ice, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance shall be recorded according to a three-point scale representing increasing seal response to disturbance.

(b) Training:

(1) SWFSC must conduct annual training for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations, completion of datasheets, and use of equipment. SWFSC may determine the agenda for these trainings.

(2) SWFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(c) Handling procedures and data collection:

(1) SWFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS' Office of Protected Resources (OPR).

(2) When practicable, for any marine mammal interaction involving the release of a live animal, SWFSC shall collect necessary data to facilitate a serious injury determination.

(3) SWFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) SWFSC shall record such data on standardized forms, which will be subject to approval by OPR. SWFSC

shall also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(d) Reporting:

(1) SWFSC shall report all incidents of marine mammal interaction to NMFS' Protected Species Incidental Take database within 48 hours of occurrence, and shall provide supplemental information to OPR upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) Annual reporting:

(i) SWFSC shall submit an annual summary report to OPR not later than ninety days following the end of a given year. SWFSC shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of all trawl gear, including number of tows, etc.;

(C) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(D) Summary information related to any on-ice disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to a three-point scale of response severity (1 = alert; 2 = movement; 3 = flight), and distance of closest approach;

(E) A written evaluation of the effectiveness of SWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(F) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(G) A summary of all relevant training provided by SWFSC.

(e) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 219.1(a) of this chapter clearly causes the take of a

marine mammal in a prohibited manner, SWFSC personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the SWFSC Director (or designee). The incident must be reported immediately to OPR. OPR will review the circumstances of the prohibited take and work with SWFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The immediate decision made by SWFSC regarding continuation of the specified activity is subject to OPR concurrence. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s).

(2) In the event that SWFSC discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), SWFSC shall immediately report the incident to OPR. The report must include the same information identified in § 219.26(e)(1) of this section. Activities may continue while OPR reviews the circumstances of the incident. OPR will work with SWFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that SWFSC discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 219.21(a) of this chapter (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), SWFSC shall report the incident to OPR within 24 hours of the discovery. SWFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR.

**§ 219.27 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, SWFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, SWFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SWFSC must apply for and obtain a modification of the LOA as described in § 219.28 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

**§ 219.28 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§ 216.106 and 219.27 of this chapter for the

activity identified in § 219.21(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 219.28(c)(1) of this chapter), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 219.28(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 219.27 of this chapter for the activity identified in § 219.21(a) of this chapter may be modified by OPR under the following circumstances:

(1) Adaptive Management—OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SWFSC

regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from SWFSC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 219.22(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

**§ 219.29 [Reserved]****§ 219.30 [Reserved]**

[FR Doc. 2015-24639 Filed 9-29-15; 8:45 am]

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# FEDERAL REGISTER

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No. 189

September 30, 2015

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Part VI

The President

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Proclamation 9329—National Hunting and Fishing Day, 2015

Proclamation 9330—National Public Lands Day, 2015





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**Presidential Documents**

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Title 3—

**Proclamation 9329 of September 25, 2015****The President****National Hunting and Fishing Day, 2015****By the President of the United States of America****A Proclamation**

For centuries, Americans have passed down a love of hunting and fishing to their kids and grandkids, advancing our Nation's independent, pioneering spirit with each generation. To many, these sports represent centuries—old traditions—and to others, they remain a way of life that reflects the resilience of our character. On National Hunting and Fishing Day, we celebrate the ways hunters and fishers contribute to our country and our environment, and we recommit to safeguarding America's natural places for all posterity.

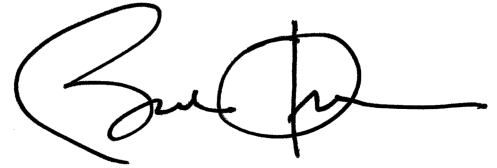
Conserving our forests, fields, and waterways requires the efforts of every American, and I am dedicated to ensuring our people can enjoy our natural bounties and engage in activities like fishing and hunting for decades to come. Through my Administration's America's Great Outdoors Initiative we are promoting conservation priorities and expanding access to some of our Nation's most treasured recreational spaces. I have also called on the Congress to fully fund the Land and Water Conservation Fund to further support these efforts, and tens of millions of dollars for restoration projects have been set aside as part of the "Find Your Park" campaign. Anglers and hunters of all ages enrich our communities and our environmental heritage, and these actions will help ensure our children and grandchildren are able to fish and hunt with theirs.

Hunting and fishing do not just strengthen our culture and the bonds we share—they also drive local economies across our country. These activities exemplify the crucial need for preserving our natural resources and fuel the livelihoods of many Americans. For them—and for our entire Nation—we must commit to protecting the environment that gives us so much bounty.

Today, we acknowledge the unique ways hunting and fishing fortify America, and we pledge our continuing support for those who enjoy and rely on these activities to better their communities and lives. By working together to preserve the lands on which they partake in these professions and pastimes, we can carry forward the timeless traditions of hunting and fishing for untold chapters of the American story.

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 September 26, 2015, as National Hunting and Fishing Day. I call upon all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. 2015-25059  
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## Presidential Documents

Proclamation 9330 of September 25, 2015

### National Public Lands Day, 2015

By the President of the United States of America

#### A Proclamation

America is blessed with the most beautiful landscapes in the world. Natural wonders across our country—from centuries-old glaciers to miles-wide canyons—offer a window into our past and a vision for our future. Among our greatest legacies are our National Parks and public lands, steeped in millennia of living history and shaped by incredible geological force. Today, we join in efforts to protect these timeless treasures and encourage all to enjoy their splendor.

On National Public Lands Day, people from every corner of our country will come together to help preserve our unique natural spaces in all 50 States. In what has become the largest volunteer event for public lands in America, this day offers people the opportunity to play an active role in safeguarding nature's priceless gifts for future generations. From building winding trails that lead to pristine places to planting seeds and saplings that will grow into towering trees, Americans can participate in efforts to maintain our beloved parks and monuments and make a lasting difference in the land we love.

All Americans deserve the chance to enjoy our parks and waters—no matter who they are or where they live. In that spirit, I launched the Every Kid in a Park initiative earlier this year, which provides fourth graders and their families with free admission to our National Parks and other Federal lands and waters. And through the America's Great Outdoors Initiative, we are expanding access to and restoring vibrant landscapes.

In addition to offering majestic views and vistas, our scenic sites provide critical economic benefits to communities across our country. Last year, almost 300 million visitors to our National Parks spent approximately \$16 billion and supported over 275,000 jobs. That is why my Administration has set aside more public lands and waters than any other in history, and why I have established or expanded 19 National Monuments since taking office.

On this day, let us pay tribute to our majestic past by renewing our commitment to maintaining our Nation's public lands and ensuring our national inheritance remains a birthright for generations of Americans to come. I urge all people to "Find Your Park" by visiting [www.FindYourPark.com](http://www.FindYourPark.com) and to take advantage of the National Parks offering free admission today. Together, we can continue to be good stewards of our earth and work to increase access to outdoor opportunities for all.

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 September 26, 2015, as National Public Lands Day. I encourage all Americans to participate in a day of public service for our lands.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. 2015-25060  
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