FEDERAL REGISTER

Vol. 78 Monday

No. 213 November 4, 2013

OFFICE OF THE FEDERAL REGISTER

UNITED STATES GOVERNMENT PRINTING OFFICE

FEDERAL REGISTER

Vol. 78 Monday,
No. 213 November 4, 2013

Pages 65869–66248

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com*.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche — **202–512–1800**

Assistance with public subscriptions — **202–512–1806**

General online information — **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche — **202–512–1800**

Assistance with public single copies — **1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche — **202–741–6005**

Assistance with Federal agency subscriptions — **202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 19, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 78, No. 213

Monday, November 4, 2013

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

Proposed Rules:

245 65890

10 CFR

Proposed Rules:

51 65903
429 66202
430 66202
431 66202

14 CFR

39 (2 documents) 65869, 65871

21 CFR

Proposed Rules:

20 65904
310 65904
314 65904
600 65904
1308 65923

26 CFR

Proposed Rules:

300 65932

29 CFR

Proposed Rules:

1910 65932
1926 65932

33 CFR

117 (3 documents) 65873, 65874
165 65874

40 CFR

52 (2 documents) 65875, 65877

Proposed Rules:

63 66108

44 CFR

64 65882

45 CFR

170 65884

Proposed Rules:

1613 65933

50 CFR

223 66140
224 66140
300 65887
648 65888

Proposed Rules:

17 (2 documents) 65936, 65938
21 (2 documents) 65953, 65955
226 65959

Rules and Regulations

Federal Register
Vol. 78, No. 213
Monday, November 4, 2013

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0929; Directorate Identifier 2013–CE–031–AD; Amendment 39–17646; AD 2013–22–14]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for any DG Flugzeugbau GmbH Model DG–1000T glider equipped with a Solo Kleinmotoren Model 2350 C engine. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as engine shaft failure and consequent propeller detachment. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective November 25, 2013.

We must receive comments on this AD by December 19, 2013.

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

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

For information about the technical content of the requirements in this AD, contact Solo Kleinmotoren GmbH, Postfach 60 01 52, D 71050 Sindelfingen, Germany; telephone: +49 07031–301–0; fax: +49 07031–301–136; email: *aircraft@solo-germany.com;* Internet: *http://aircraft.solo-online.com/.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2013–0217–E, dated September 16, 2013 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> An occurrence of Solo 2350 C engine shaft failure and consequent propeller detachment was reported. The preliminary investigation revealed that the failed shaft was earlier modified in accordance with an approved method.
>
> This condition, if not corrected, could lead to additional cases of release of the propeller from the engine, possibly resulting in damage to the sailplane, or injury to persons on the ground.
>
> For the reasons described above, this AD prohibits operation of the engine.
>
> This AD is considered to be a temporary measure and further AD action will follow.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0929.

FAA's Determination and Requirements of the AD

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

We will work with the type certificate holder and EASA to evaluate information and to develop an engine modification. Based on this, we may initiate further rulemaking action to address the unsafe condition identified in this AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because engine shaft failure and consequent propeller detachment could cause damage to the glider and could cause injury to persons on the ground. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0929; Directorate Identifier 2013–CE–031–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic,

environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about .5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $85, or $42.50 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–22–14 DG Flugzeugbau GmbH: Amendment 39–17646; Docket No. FAA–2013–0929; Directorate Identifier 2013–CE–031–AD.

(a) Effective Date

This AD is effective November 25, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to DG Flugzeugbau GmbH Model DG–1000T gliders, all serial numbers, that are:

(1) equipped with a Solo Kleinmotoren Model 2350 C engine; and

(2) certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 72: Engine.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as engine shaft failure and consequent propeller detachment. We are issuing this AD to prevent engine shaft failure and propeller detachment, which could result in damage to the glider and injury to persons on the ground.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (f)(3) of this AD.

(1) As of November 25, 2013 (the effective date of this AD), do not operate the engine unless the engine is modified following instructions that are approved by the FAA specifically for this AD. Contact the FAA office identified in paragraph (g)(1) of this AD to get more information about obtaining such instructions.

(2) As of November 25, 2013 (the effective date of this AD), place a copy of this AD into the limitations section of the aircraft flight manual (AFM).

(3) Modifying the engine following instructions approved by the FAA specifically for this AD removes the prohibited engine operation required in paragraph (f)(1) of this AD and removes the requirement to incorporate this AD into the limitations section of the AFM.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any glider to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 013–0217–E, dated September 16, 2013, for related information. For information about the technical content of the requirements in this AD, contact Solo Kleinmotoren GmbH, Postfach 60 01 52, D 71050 Sindelfingen, Germany; telephone: +49 07031–301–0; fax: +49 07031–301–136; email: *aircraft@solo-germany.com;* Internet: *http://aircraft.solo-online.com*. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0929.

Issued in Kansas City, Missouri, on October 24, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–25954 Filed 11–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0479; Directorate Identifier 2011–SW–070–AD; Amendment 39–17649; AD 2013–22–17]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This AD requires inspecting the intermediate gearbox (IGB) fairing for a crack and inspecting the IGB fairing gutter (gutter), if installed, for a crack, separation, or interference. This AD is prompted by reports of cracks, separation of the IGB fairing from the gutter and attachment supports, and subsequent interference with the tail rotor (T/R) inclined drive shaft. These actions are intended to detect a crack and prevent separation of the IGB fairing, which could result in interference with the T/R inclined drive shaft and subsequent loss of control of the helicopter.

DATES: This AD is effective December 9, 2013.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the foreign authority's AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On June 5, 2013, at 78 FR 33764, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters with an intermediate gearbox (IGB) fairing, part number (P/N) 332A24–0303–0501, P/N 332A24–0303–0601, P/N 332A081391.00, or P/N 332A081391.01 installed. The NPRM proposed to require, for helicopters with an IGB fairing with a gutter, repetitively inspecting the gutter, IGB fairing, and attachment supports for a crack, separation, or interference. For helicopters with an IGB fairing without a gutter, the NPRM proposed to require repetitively inspecting the IGB fairing and attachment supports for a crack. If during any inspection there is a crack, interference, or separation, the NPRM proposed replacing the cracked or damaged part with an airworthy part. The proposed requirements were intended to detect a crack and prevent separation of the IGB fairing, which could result in interference with the T/R inclined drive shaft and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2011–0189–E, dated September 21, 2011 (AD 2011–0189–E), issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA advises of cracks along the rivet line joining the IGB fairing to the gutter and in the associated attachment points, which have caused some fairings to separate and interfere with the T/R inclined drive shaft. EASA issued AD 2011–0189–E to require inspecting the IGB fairing gutter and also require inspecting the IGB fairing and attachment supports for cracks every 15 flight hours.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 33764, June 5, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

Eurocopter has issued one emergency alert service bulletin (ASB) with three numbers, revision 4, dated September 27, 2011: ASB No. 53.01.47 for Model AS 332 series helicopters, ASB No. 53.00.48 for Model AS532 series helicopters, and ASB No. 53A001 for Model EC225 and EC725 helicopters. The ASB requires inspecting the IGB fairings and their attachment supports and replacing any cracked or damaged parts every 15 flight hours.

Costs of Compliance

We estimate that this AD will affect 10 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Inspecting the IGB fairing and attachment supports require about 0.5 work hours at an average labor rate of $85 per work hour, for a total cost per helicopter of $43 per inspection cycle. The total cost to the U.S. operator fleet will be $430 per inspection cycle. Replacing a cracked IGB fairing would require about 2 work hours at an average labor rate of $85 per work hour, and required parts would cost $1,905, for a total cost per helicopter of $2,075. Replacing a damaged T/R inclined drive shaft tube would require about 2 work hours, and required parts would cost $16,726, for a total cost per helicopter of $16,896. Replacing a damaged hydraulic pipe would require about 2 work hours and required parts would cost $1,202, for a total cost per helicopter of $1,372. Replacing a damaged flight control component would require about 2 work hours, and required parts would cost $440, for a total cost per helicopter of $610.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–22–17 Eurocopter France: Amendment 39–17649; Docket No. FAA–2013–0479; Directorate Identifier 2011–SW–070–AD.

(a) Applicability

This AD applies to Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and EC225LP helicopters with an intermediate gearbox (IGB) fairing, part number (P/N) 332A24–0303–0501, P/N 332A24–0303–0601, P/N 332A081391.00, or P/N 332A081391.01 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the IGB fairing, which could result in separation of the IGB fairing from its attachment supports, resulting in interference with the tail rotor (T/R) inclined driveshaft, failure of the T/R inclined driveshaft, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective December 9, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 15 hours time-in-service (TIS), and thereafter at intervals not to exceed 15 hours TIS:

(1) For all helicopters, inspect the IGB fairing and both attachment supports for a crack. If there is a crack, replace the cracked part with an airworthy part.

(2) For helicopters with an IGB fairing, part number (P/N) 332A24–0303–0501 or P/N 332A24–0303–0601, installed, inspect the IGB fairing gutter (gutter) for a crack. If there is a crack, replace the gutter with an airworthy gutter, and inspect the IGB fairing for separation, or interference between the gutter and the T/R inclined drive shaft, hydraulic pipes, or flight controls.

(i) If there is interference between the gutter and the T/R inclined drive shaft tube, replace the T/R inclined drive shaft tube and the IGB fairing/gutter assembly with an airworthy T/R inclined drive shaft tube and IGB fairing/gutter assembly.

(ii) If there is interference between the gutter and the hydraulic pipes, replace the IGB fairing/gutter assembly with an airworthy IGB fairing/gutter assembly. Inspect the hydraulic pipes for a dent, score, distortion, or chafing. If there is a dent, score, distortion, or chafing, replace the affected hydraulic pipe with an airworthy hydraulic pipe.

(iii) If there is interference between the gutter and the flight controls, replace the IGB fairing/gutter assembly with an airworthy IGB fairing/gutter assembly. Inspect the cables on the left hand side of the pylon, the quadrant on which the cables are coiled, the flight control lever, the rod, and the T/R servo-control operating mechanism for friction, chafing, broken strands, buckling, distortion, or scoring. If there is any friction, chafing, broken strands, buckling, distortion, or scoring, replace the affected flight control component with an airworthy flight control component.

(iv) If there is any separation of the gutter, replace the IBG fairing/gutter assembly with an airworthy fairing/gutter assembly.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Eurocopter Emergency Alert Service Bulletin (EASB) No. 53.01.47 for Model AS 332 helicopters, EASB No. 53.00.48 for Model AS532 helicopters, and EASB No. 53A001 for Model EC225 and EC725 helicopters, all revision 4, dated September 27, 2011, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub*. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD No. 2011–0189–E, dated September 29, 2011. You may view the EASA AD on the internet in Docket No. FAA–2013–0479 at *http://www.regulations.gov*.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5350: Aerodynamic Fairings.

Issued in Fort Worth, Texas, on October 24, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–26052 Filed 11–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2013–0881]

Drawbridge Operation Regulations; Cheesequake Creek, Morgan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the New Jersey Transit Rail Operation (NJTRO) Railroad Bridge across Cheesequake Creek, mile 0.2, at Morgan, New Jersey. Under this temporary deviation, a four hour advance notice for openings on weekdays and one hour advance notice on weekends shall be required for bridge openings to facilitate scheduled bridge painting of the movable span.

DATES: This deviation is effective from November 4, 2013 through December 19, 2013, and has been enforced with actual notice since October 28, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0881] 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 Mr. Joe Arca, Project Officer, First Coast Guard District, *joe.m.arca@uscg.mil*, or (212) 668–7165. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The NJTRO railroad bridge has a vertical clearance of 3 feet at mean high water, and 8 feet at mean low water in the closed position. The existing drawbridge operating regulations are found at 33 CFR 117.709(b).

The bridge owner, NJTRO, requested a four hour and one hour advance notice for bridge openings to facilitate the painting of the movable span of the bridge and allow sufficient time to safely open the bridge.

Under this temporary deviation, the bridge may require a four hour advance notice on weekdays and a one hour advance notice on weekends for bridge openings to facilitate scheduled bridge painting of the movable span.

Cheesequake Creek is predominantly a recreational waterway. The bridge rarely opens during weekdays when this temporary deviation will be in effect.

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

Dated: October 11, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–26210 Filed 11–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0870]

Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, 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 State Highway 4 Drawbridge across Old River, mile 14.8 between Victoria Island and Byron Tract, CA. The deviation is necessary to allow the bridge owner to make critical repairs to the bridge shafts and gears. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from November 4, 2013 through November 8, 2013, and has been enforced with actual notice since October 14, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0870], 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.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: California Department of Transportation has requested a temporary change to the operation of the State Highway 4 Drawbridge, mile 14.8, over Old River, between Victoria Island and Byron Tract, CA. The drawbridge navigation span provides 12 feet vertical clearance above Mean High Water in the closed-to-navigation position. Pursuant to 33 CFR 117.183, 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. and at other times, opening the draw on signal if at least four hours advance notice is given to the drawtender at the Rio Vista drawbridge across the Sacramento River, mile 12.8. Navigation on the waterway is recreational and commercial.

The drawspan will be secured in the closed-to-navigation position from 6 a.m. on October 14, 2013 to 6 p.m. on November 8, 2013, to allow the bridge owner to replace worn out shafts and gears, critical components of the drawbridge. 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 positions may do so at anytime. The bridge will not be able to open for emergencies. An alternative route around Victoria Island may be used for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterways 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: October 8, 2013.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2013–26229 Filed 11–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0889]

Drawbridge Operation Regulations; Mystic River, Charlestown and Everett, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Alford Street (Rt-99) Bridge across the Mystic River, mile 1.4, between Boston and Everett, Massachusetts. The bridge owner, the City of Boston, and Massachusetts Department of Transportation will be performing electrical repairs and structural rehabilitation at the bridge. This deviation allows the bridge to remain in the closed position for six months to facilitate scheduled bridge rehabilitation.

DATES: This deviation is effective from November 1, 2013 through April 29, 2014.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2013–0889 and are available online at *www.regulations.gov*, inserting USCG–2013–0889 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 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 rule, call or email Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364, *john.w.mcdonald@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Alford Street (Rt-99) Bridge, across the Mystic River between Charlestown and Everett, Massachusetts, has a vertical clearance in the closed position of 7 feet above mean high water and 16 feet above mean low water. The bridge operating regulations are listed at 33 CFR 117.609.

The waterway is transited by seasonal recreational vessels of various sizes that normally are in winter storage November through April.

Massachusetts Department of Transportation requested a temporary deviation to facilitate electrical repairs and structural rehabilitation at the bridge.

Under this temporary deviation the Alford Street (Rt-99) Bridge may remain in the closed position from November 1, 2013 through April 29, 2014.

The bridge is being rehabilitated by Massachusetts Department of Transportation for the bridge owner, the City of Boston.

This is the third winter closure for the same time period. No objections were received during the past two winter closure periods. The recreational vessels that normally transit the Alford Street (Rt-99) Bridge are in winter storage during the time period this deviation will be in effect.

We contacted the upstream facilities this fall regarding this proposed 2013–2014 winter closure and no objections were received.

There are no alternate routes for vessel traffic; however, vessels that can pass under the closed draw during this closure may do so at any time. The bridge may be opened in the event of an emergency. The Coast Guard will inform the users of the waterway through our Local and/or 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 bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 15, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–26242 Filed 11–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

RIN 1625–AA00

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at specified times on each day from November 4 through November 8, and again on November 13, 2013. This action is necessary to protect the waterway, waterway users, and vessels from the hazards associated with the U.S. Army Corps of Engineers dispersal barriers performance testing, as well as the Illinois Department of Natural Resources netting and electro-fishing operations.

During any of the enforcement periods listed below, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m. on each day from November 4 through November 8, 2013, and from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m. on November 13, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7148, email address *joseph.p.mccollum@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL,

listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m. on each day from November 4 through November 8, 2013, and from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m. on November 13, 2013.

This enforcement action is necessary because the Captain of the Port, Lake Michigan has determined that the U.S. Army Corps of Engineers dispersal barriers performance testing and the Department of Natural Resources netting and electro-fishing operation poses risks to life and property. Because of these risks, it is necessary to control vessel movement during the operations to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated representative.

Vessels that wish to transit through the safety zone may request permission from the Captain of the Port, Lake Michigan. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on VHF channel 16.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port, Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: October 23, 2013.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2013–26211 Filed 11–1–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0891; FRL–9900–17–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Removal of Gasoline Vapor Recovery From Southeast Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted by the Wisconsin Department of Natural Resources on November 12, 2012, concerning the state's Stage II vapor recovery (Stage II) program in southeast Wisconsin. The revision removes Stage II requirements as a component of the Wisconsin ozone SIP. The submittal also includes a demonstration under section 110(l) of the Clean Air Act (CAA) that addresses emissions impacts associated with the removal of the program.

DATES: This final rule is effective on December 4, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2012–0891. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Francisco J. Acevedo, Mobile Source Program Manager, at (312) 886–6061, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is being addressed by this document?

On June 11, 2013, at 78 FR 34966, EPA proposed to remove the Stage II requirements under NR 420.045 of the Wisconsin Administrative Code from the state's Federally-approved SIP. The revision included copies of 2011 Wisconsin Act 196 enacted on April 2, 2012, authorizing the termination of Stage II requirements in Wisconsin; a summary of MOVES2010b modeling results and Wisconsin specific calculations based on EPA guidance used to calculate program benefits and demonstrate widespread use of onboard refueling vapor recovery systems in southeast Wisconsin; and a demonstration under section 110(l) of the CAA that includes offset emission credits.

II. What comments did we receive on the proposed SIP revision?

EPA provided a 30 day review and comment period on the proposed action. The comment period closed on July 11, 2013. EPA received no adverse comments. EPA did however, receive one comment supporting EPA's approval of this revision. The commenter also requested that EPA "confirm and identify in the final approval whether Wisconsin intended to voluntarily use more emissions credits than necessary, and if so, identify the fact that the quantity of emission credits that were necessary to offset the shortfall were only those that were equal to the shortfall". EPA notes that nothing in the state's submittal or the proposal was intended to suggest that Wisconsin was using more emissions credits than were necessary to offset the stated shortfall identified by Wisconsin. The column entitled "Difference (Shortfall-Credit)," presented in Table 3 of the proposal, highlights the amount of equivalent VOC emissions credits that remain available to Wisconsin after fully addressing the interim emissions shortfall from the removal of the Stage II program in southeast Wisconsin. They are intended to demonstrate that the available equivalent VOC emissions credits identified by the state are more than adequate to cover the interim Stage II shortfall.

III. What action is EPA taking?

EPA is approving the revision to the Wisconsin ozone SIP submitted on November 12, 2012, concerning the Stage II program in southeast Wisconsin. EPA finds that the revision meets all applicable requirements and will not interfere with reasonable further progress or attainment of any of the national ambient air quality standards.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: July 31, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by revising paragraphs (c)(69)(i)(A) and (c)(73)(i)(C), and by adding paragraph (c)(129) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(69) * * *

(i) * * *

(A) Wisconsin Administrative Code, Chapter NR 420 Control of Organic Compound Emissions from Petroleum and Gasoline Sources; Section 420.02 Definitions, Sections NR 420.02(8m), (24m), (32m), (38m), (39m); Section NR 420.045 Motor Vehicle Refueling; published in Wisc. Admin. Code in January 1993, and took effect on February 1, 1993. Section NR 420.045 was rescinded in 2013 and is removed without replacement; see paragraph (c)(129) of this section.

* * * * *

(73) * * *

(i) * * *

(C) Chapter NR 420: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM PETROLEUM AND GASOLINE SOURCES. NR 420.01 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March, 1, 1990. NR 420.02 and 420.045 as published in the (Wisconsin) Register, January, 1993, No. 445, effective February 1, 1993. NR 420.03 and 420.04 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 420.05 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. Section NR 420.045 was rescinded in 2013 and is removed without replacement; see paragraph (c)(129) of this section.

* * * * *

(129) On November 12, 2012, the Wisconsin Department of Natural Resources submitted a request to remove Wisconsin's Stage II vapor recovery program requirements under NR 420.045 of the Wisconsin Administrative Code from the Wisconsin ozone State Implementation Plan.

(i) [Reserved]

(ii) Additional material. Wisconsin Statutes, section 285.31(5) Gasoline vapor recovery—Termination of Requirements, enacted on April 2, 2012, by 2011 Wisconsin Act 196.

[FR Doc. 2013–26134 Filed 11–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0147; FRL–9902–19–Region 4]

Approval and Promulgation of Implementation Plans; Atlanta, Georgia 1997 8-Hour Ozone Nonattainment Area; Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a state implementation plan (SIP) revision, submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), on October 21, 2009, to address the reasonable further progress (RFP) plan requirements for the Atlanta, Georgia 1997 8-hour ozone national ambient air quality standards (NAAQS) nonattainment area (hereafter referred to as the "Atlanta Area" or "the Area"). The Atlanta Area is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in Georgia. EPA is also finding adequate the motor vehicle emissions budgets (MVEB) for volatile organic compounds (VOC) and nitrogen oxides (NOx) that were included in Georgia's RFP plan. Further, EPA is approving these MVEB. EPA is also responding to comments received on the Agency's May 29, 2013, direct final rulemaking to approve the RFP plan requirements for the Atlanta Area.

DATES: This rule is effective on December 4, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0147. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sara Waterson of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9061. Ms. Sara Waterson can be reached via electronic mail at *waterson.sara@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. This Action

EPA is taking final action to approve Georgia's October 21, 2009, SIP revision to meet RFP plan [1] requirements of the Clean Air Act (CAA or Act) for the Atlanta Area.[2] The RFP plan demonstrates that, during the period of 2002 through 2008, NO_X emissions will be reduced by at least 15 percent for the 13-County portion [3] of the Atlanta Area (hereafter referred to as the "13-County Area") and VOC emissions will be reduced by at least 15 percent for the seven-county portion [4] of the Atlanta Area (hereafter referred to as the "7-County Area"). As part of the RFP, EPA is approving the 2008 VOC MVEB and the 2008 NO_X MVEB, which were included in the October 21, 2009, RFP plan for the Atlanta Area. EPA is taking this action because it is consistent with CAA requirements for RFP. The MVEB for the Atlanta Area, expressed in tons per day (tpd), are provided in Table 1 below. Through this action, EPA is also finding adequate the MVEBs for transportation conformity purposes for the 1997 8-hour standard.

TABLE 1—MVEB FOR THE 1997 8-HOUR OZONE ATLANTA AREA

	VOC	NO_X
2008 20-County MVEB (tpd)		
Total	171.83	272.67

For more detailed information on the RFP plan, please see the direct final rulemaking published on May 29, 2013, at 78 FR 32135.

II. Background

A. General Background

The Atlanta Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004), using 2001–2003 ambient air quality data. *See* 69 FR 23857, April 30, 2004 (codified at 40 CFR 81.311). The Atlanta Area is comprised of the 13 counties of the former 1-hour ozone nonattainment area plus seven additional "ring" counties. On June 23, 2011, EPA determined that the Atlanta Area attained the 1997 8-hour ozone NAAQS. *See* 76 FR 36873. As a result of the determination of attainment, the requirements for the Area to submit an attainment demonstration and associated reasonable available control measures (RACM), RFP plan, contingency measures, and other planning SIP revisions related to attainment of the 1997 8-hour ozone NAAQS were suspended. Despite the determination of attainment, Georgia opted to leave its previously submitted SIP submission related to the RFP requirements for the 1997 8-hour ozone NAAQS before EPA for action. Georgia submitted its RFP plan, as well as two additional SIP revisions under a separate cover letter, on October 21, 2009, related to attainment of the 1997 8-hour ozone NAAQS in the Atlanta Area. Today's rulemaking is approving only the RFP plan submittal, including the associated MVEB. On May 29, 2013 (78 FR 32135), EPA published a direct final rule approving Georgia's October 21, 2009, SIP submission addressing the RFP plan requirements, including NO_X and VOC

[1] For the 1997 8-hour ozone NAAQS, the plan to demonstrate reasonable further progress is known as the RFP plan; whereas the plan to demonstrate reasonable further progress for the 1-hour ozone NAAQS is known as the Rate-of-Progress (ROP) plan.

[2] Georgia previously submitted an ROP plan (also referred to as the 15 Percent VOC Plan) for the portion of the Atlanta Area that was previously designated nonattainment for the former 1-hour ozone NAAQS. EPA approved Georgia's ROP plan for the 1-hour ozone NAAQS for the Atlanta Area on April 26, 1999. *See* 64 FR 20196.

[3] The 13-County portion is comprised of the counties designated nonattainment in the 1-hour ozone nonattainment area: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. *See* 56 FR 56694, November 6, 1991.

[4] Seven additional "ring" counties were added to the original 1-hour ozone nonattainment area for the 8-hour ozone nonattainment designations. These additional counties are: Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton. *See* 69 FR 23857, April 30, 2004.

MVEB, for the Atlanta Area. EPA published an accompanying proposed approval in the event that comments were received such that the direct final rule needed to be withdrawn. Specifically, in the direct final rule, EPA stated that if adverse comments were received by June 28, 2013, the rule would be withdrawn and not take effect, but that the proposed rule would still remain in effect and that an additional public comment period would not be instituted if EPA could sufficiently address any comments received on the direct final rulemaking. On June 28, 2013, EPA received comments from a single commenter and, therefore, EPA withdrew the direct final rule. EPA is now taking action to approve Georgia's October 21, 2009, SIP revision as it relates to the RFP plan requirements for the 1997 8-hour ozone NAAQS.

B. Background for Rate-of-Progress (ROP) Requirements for the 1-Hour Ozone NAAQS

Because Atlanta was classified as a "serious" nonattainment area under the 1-hour ozone NAAQS, Georgia was required to develop a SIP to reduce emissions of VOC in the 13-County Atlanta 1-hour ozone nonattainment area by 15 percent from 1990 to 1996. This plan, also known as Georgia's ROP plan SIP or the 15 Percent VOC Plan, was approved on April 26, 1999. *See* 64 FR 20186.

For the 1-hour ozone NAAQS, the CAA also requires post-1996 emission reductions of VOC and/or NO_X totaling 3 percent per year, averaged over each consecutive three-year period beginning in 1996 and continuing through the attainment date. Georgia chose to rely solely on NO_X emission reductions in its post-1996 ROP SIP (the 9 Percent Plan). This plan was required to describe how Georgia would achieve RFP towards attaining the 1-hour ozone NAAQS between 1996 and 1999, the attainment deadline for serious nonattainment areas. Georgia's 9 Percent Plan was approved on March 19, 1999. *See* 64 FR 13348.

On September 26, 2003, EPA re-classified the 13-county Atlanta 1-hour ozone nonattainment area to "severe." *See* 68 FR 55469. Among other requirements, this reclassification required submission of a severe area post-1999 ROP SIP. Georgia submitted the post-1999 ROP SIP on December 24, 2003. The Atlanta severe area post-1999 ROP SIP contained a description of how the 3 percent per year reductions in ozone precursor emissions, required over the period from November 15, 1999, through November 15, 2004, would be achieved. It also contained MVEB for the Atlanta 1-hour ozone nonattainment area. EPA approved Georgia's post-1999 ROP SIP for the Atlanta Area on July 19, 2004 (69 FR 42880). EPA's approval of Georgia's post-1999 ROP SIP for the Atlanta Area completed the State's ROP obligation for the 1-hour ozone NAAQS.

C. Background for RFP Requirements for the 1997 8-Hour Ozone NAAQS

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published a rule entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline" (hereafter referred to as the Phase 2 Rule). Section 182(b)(1) of the CAA and EPA's Phase 2 Rule[5] require a state, for each 1997 8-hour ozone nonattainment area that is classified as moderate, to submit an emissions inventory and a RFP plan to show how the state will reduce emissions of VOC.

Specifically, in ozone nonattainment areas with air quality classified as "moderate" or worse for the 1997 8-hour ozone NAAQS, the RFP[6] requirement prescribes emission reductions from the baseline totaling 15 percent within six years of the base year (i.e., by the end of 2008). Per 40 CFR part 51.910(a)(1)(iii), moderate and higher classification areas of which a portion has an approved 1-hour ozone 15 Percent VOC Plan can choose to treat the nonattainment area as two parts, each with a separate RFP target, and may substitute reductions in NO_X for VOC in the sub-area with the approved 15 Percent Plan. The 15-percent reduction for the sub-area without an approved 1-hour ozone 15 Percent VOC Plan, however, must be achieved entirely through VOC reductions. As noted previously, seven additional "ring" counties were added to the original 1-hour ozone nonattainment area for the 1997 8-hour ozone nonattainment designations. Georgia relied solely on NO_X emission reductions for the 13-County portion of the Atlanta Area with an approved 15 Percent VOC Plan and relied solely on VOC reductions for the seven "ring" counties.

[5] RFP regulations are at 40 CFR 51.910.

[6] Pursuant to CAA section 172(c)(9), RFP plans must include contingency measures that will take effect without further action by the State or EPA, which includes additional controls that would be implemented if the Area fails to reach the RFP milestones. While the CAA does not specify the type of measures or quantity of emissions reductions required, EPA provided guidance interpreting the CAA that implementation of these contingency measures would provide additional emissions reductions of up to 3 percent of the adjusted base year inventory in the year following the RFP milestone year (i.e., in this case 2008). For more information on contingency measures please see the April 16, 1992, General Preamble (57 FR 13498, 13510) and the November 29, 2005, Phase 2 8-hour ozone standard implementation rule (70 FR 71612, 71650). Finally, RFP plans must also include a MVEB for the precursors for which the plan is developed.

III. Response to Comments

As noted, EPA received comments from a single commenter. A summary of the comments received and EPA's response is provided below.

Comment 1: The Commenter contends that "EPA cannot approve Georgia's RFP plan until the measures which it relies upon can provide measurable and creditable reductions." Specifically, the Commenter asserts that Georgia Rule 391–3–1-.02(2)(jjj) ("Rule (jjj)") serves as the primary basis for achieving more stringent limits on the amount of NO_X emitted by coal-fired electrical power plants. The Commenter believes that because Rule (jjj) does not require maximum heat input for each subject unit, that the rule allows for significant variability in the legally-allowable total amount of NO_X emitted, and as such, emissions reductions associated with this rule are not creditable. The Commenter also asserts that since each coal-fired power plant's "source-specific alternative emission limits" were determined using only one point of reference, those limits may not be representative of the unit's actual emissions at later points in time. Finally, the Commenter claims that title V permits for Georgia coal-fire electrical power plants do not contain enforceable heat input limits.

Response 1: The Commenter's assertion that the Rule (jjj) measures relied on as part of the Georgia RFP plan do not provide for measurable and creditable reductions is incorrect. EPA notes that the Rule (jjj) and the title V permit requirements cited by Commenter are specific to point sources, however, the RFP plan's overall 15 percent reduction from the 2008 adjusted base year emissions inventory may come from any emission source sector (i.e., point, area, nonroad, or mobile emissions), and Georgia projected the majority of its reductions to be from on-road and non-road mobile emissions. Notwithstanding the relatively small contribution of the Rule (jjj) emission reductions to the RFP plan's reductions, the emission reductions associated with Rule (jjj) are creditable in the RFP plan since the rule

is a legally enforceable SIP provision and, as described in the proposed rule, EPA finds the methodology used by GA EPD to estimate the emission reductions from Rule (jjj) to be appropriate. *See* 78 FR 32135, 32138–142. Further, because the six-year RFP plan period has already occurred, EPA has been able to review the Agency's Acid Rain database[7] and verify that the three sources subject to Rule (jjj) in the State did reduce emissions by the quantity estimated in the RFP plan submittal. The actual NO_X emission reductions from May through September 2002 to the comparable period in 2008 are consistent with these estimates.

Finally, EPA notes that the commenter does not explain why a maximum heat input limit[8] would be relevant to this submittal. While the maximum heat input would be relevant in a calculation of allowable emissions, the emissions reductions estimates for purposes of an RFP plan may be based on the expected actual emissions from the facility on a typical summer day.[9] There is no inherent connection between the necessary data used to prepare the RFP plan submittal and the maximum heat input allowed. The maximum heat input, which is a measure of the maximum hourly capacity of a unit to burn fuel, is not appropriate for calculating expected actual emissions because it fails to take into account the expected operation of the emission sources. For instance, many of the coal-fired power plants referenced by the commenter typically operate somewhat below their maximum heat input rate depending on age and condition of the boiler. Further, most units do not operate continuously, so utilization may also be relevant to an expected actual emission projection. Consequently, the typical summer day emission projections employed in Georgia's RFP plan, which are a function of total summer heat input and projected actual operating hours, provide a more appropriate basis for the emissions calculations included with the RFP plan being approved through this notice. As noted above, EPA has also reviewed these projected emission reductions with the actual emission reductions achieved during the RFP plan period and found them to be consistent with the plan's projected emissions.

Comment 2: The Commenter stated "[w]ith respect to the measures meant to address NO_X emissions from EGU's, EPA cannot approve Rule (jjj) unless there are maximum heat inputs incorporated into the rule."

Response 2: As the Commenter noted, EPA has already approved Rule (jjj). *See* 64 FR 67491 and 74 FR 62249. This rulemaking does not contemplate action on Rule (jjj) and thus this comment regarding the approvability is outside of the scope of this rulemaking.

IV. Final Action

EPA is taking final action to approve an October 21, 2009, SIP revision to meet the RFP requirements for the Atlanta Area for the 1997 8-hour ozone NAAQS. Additionally, EPA is approving the NO_X and VOC MVEB for the Atlanta Area that were included in Georgia's RFP plan. These budgets will be available for use by the transportation conformity partners on November 4, 2013. Furthermore, EPA is finding the budgets adequate. These actions are being taken pursuant to section 110 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

[7] *http://ampd.epa.gov/ampd/.*

[8] The maximum heat input is a measure of the maximum hourly capacity of a unit to burn fuel. Generally, this is the maximum rate for the design of the boiler, which typically represents the physical limitation of the boiler.

[9] The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 describes in relevant part EPA's basis for reliance upon the "typical summer day" approach for purposes of projecting expected actual emissions. *See* 57 FR 13498, 13507.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: October 21, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF PLANS

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

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

Subpart II—Georgia

■ 2. Section 52.570(e), is amended by revising the table in paragraph (e) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanation
High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316. High Occupancy Toll (HOT) lane on I–85 from Chamblee-Tucker Road to State Road 316.	Atlanta Metropolitan Area	11/15/93 and amended on 6/17/96 and 2/5/10.	3/18/99, 4/26/99 and 11/5/09.	
Clean Fuel Vehicles Revolving Loan Program.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
Regional Commute Options Program and HOV Marketing Program.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
HOV lanes on I–75 and I–85	Atlanta Metropolitan Area	6/17/96	4/26/99.	
Two Park and Ride Lots: Rockdale County-Sigman at I–20 and Douglas County-Chapel Hill at I–20.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
MARTA Express Bus routes (15 buses).	Atlanta Metropolitan Area	6/17/96	4/26/99.	
Signal preemption for MARTA routes #15 and #23.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
Improve and expand service on MARTA's existing routes in southeast DeKalb County.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
Acquisition of clean fuel buses for MARTA and Cobb County Transit.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
ATMS/Incident Management Program on I–75/I–85 inside I–285 and northern ARC of I–285 between I–75 and I–85.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
Upgrading, coordination and computerizing intersections.	Atlanta Metropolitan Area	6/17/96	4/26/99.	
[Reserved]				
Atlantic Steel Transportation Control Measure.	Atlanta Metropolitan Area	3/29/00	8/28/00.	
Procedures for Testing and Monitoring Sources of Air Pollutants.	Atlanta Metropolitan Area	7/31/00	7/10/01.	
Enhanced Inspection/Maintenance Test Equipment, Procedures and Specifications.	Atlanta Metropolitan Area	9/20/00	7/10/01.	
Preemption Waiver Request for Low-RVP, Low-Sulfur Gasoline Under Air Quality Control Rule 391–3–1–.02(2)(bbb).	Atlanta Metropolitan Area	5/31/00	2/22/02.	
Technical Amendment to the Georgia Fuel Waiver Request of May 31, 2000.	Atlanta Metropolitan Area	11/9/01	2/22/02.	
Georgia's State Implementation Plan for the Atlanta Ozone Nonattainment Area.	Atlanta Metropolitan Area	7/17/01	5/7/02.	
Post-1999 Rate of Progress Plan	Atlanta Metropolitan Area	12/24/03	7/19/04, 69 FR 42884.	
Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area.	Atlanta 1-hour ozone severe nonattainment area.	6/30/04	6/14/05, 70 FR 34358.	

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanation
Atlanta 1-hour ozone attainment area 2015 maintenance plan.	Atlanta severe 1-hour ozone maintenance area.	2/1/05	6/14/05, 70 FR 34660.	
Attainment Demonstration for the Chattanooga Early Action Area.	Walker and Catoosa Counties	12/31/04	8/26/05, 70 FR 50199.	
Attainment Demonstration for the Lower Savannah-Augusta Early Action Compact Area.	Columbia and Richmond Counties.	12/31/04	8/26/05, 70 FR 50195.	
Alternative Fuel Refueling Station/Park and Ride Transportation Center, Project DO–AR–211 is removed.	Douglas County, GA	9/19/06	11/28/06, 71 FR 68743.	
Macon 8-hour Ozone Maintenance Plan.	Macon, GA encompassing a portion of Monroe County.	6/15/07	9/19/07, 72 FR 53432.	
Murray County 8-hour Ozone Maintenance Plan.	Murray County	6/15/07	10/16/07, 72 FR 58538.	
Atlanta Early Progress Plan	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties.	1/12/07	2/20/08, 73 FR 9206.	
Rome; 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Floyd County	10/27/2009	1/12/12, 77 FR 1873.	
Chattanooga; Fine Particulate Matter 2002 Base Year Emissions Inventory.	Catoosa and Walker Counties	10/27/09	2/8/12; 77 FR 6467.	
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Georgia	10/13/2007	2/6/2012, 77 FR 5706.	
Atlanta 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties and portions of Heard and Putnam Counties.	07/06/2010	3/1/2012, 77 FR 12487.	
Macon 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Bibb County and Monroe County.	8/17/2009	3/02/12, 77 FR 12724.	
Atlanta 1997 8-Hour Ozone 2002 Base-Year Emissions Inventory.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties.	10/21/2009	4/24/2012, 77 FR 24399.	
Regional Haze Plan	Statewide	2/11/10	6/28/12, 77 FR 38501.	
Regional Haze Plan Supplement (including BART and Reasonable Progress emissions limits).	Statewide	11/19/10	6/28/12, 77 FR 38501.	
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	7/23/2008	10/25/2012, 77 FR 65125	With the exception of 110(a)(2)(D)(i).
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	10/21/2009	10/25/2012, 77 FR 65125	With the exception of 110(a)(2)(D)(i).
Negative Declaration for Control of VOC Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry (SOCMI) EPA–450/4–91–031, August 1993.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013.	

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanation
Negative Declaration for Control of VOC Emissions from Equipment Leaks from Natural Gas/ Gasoline Processing Plants EPA–450/3–83–007, December 1983.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013.	
Negative Declaration for Control of VOC Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment EPA–450/3–83–006, March 1984.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013.	
Negative Declaration for Control of VOC Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (SOCMI), EPA–450/3–84–015, December 1984.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013.	
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	7/23/2008	4/12/2013	Addressing element 110(a)(2)(D)(i)(II) prong 3 only.
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	10/21/2009	4/12/2013	Addressing element 110(a)(2)(D)(i)(II) prong 3 only.
1997 8-Hour Ozone Reasonable Further Progress Plan for the Atlanta Area.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	11/4/13.	

[FR Doc. 2013–25780 Filed 11–1–13; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8305]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford

Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region V				
Indiana: LaGrange County, Unincorporated Areas.	180125	January 18, 1990, Emerg; February 1, 1994, Reg; November 20, 2013, Susp.	Nov. 20, 2013 ...	Nov. 20, 2013.
Michigan:				
Macomb, Township of, Macomb County ..	260445	December 16, 1977, Emerg; February 4, 1981, Reg; November 20, 2013, Susp.	.....do*	Do.
Ray, Township of, Macomb County	260910	June 9, 1993, Emerg; January 25, 2006, Reg; November 20, 2013, Susp.	.....do	Do.
Shelby, Charter Township of, Macomb County.	260126	March 9, 1973, Emerg; July 16, 1980, Reg; November 20, 2013, Susp.	.....do	Do.
Washington, Charter Township of, Macomb County.	260447	February 12, 1982, Emerg; February 12, 1982, Reg; November 20, 2013, Susp.	.....do	Do.
Wisconsin:				
Baraboo, City of, Sauk County	550392	June 1, 1973, Emerg; August 1, 1979, Reg; November 20, 2013, Susp.	.....do	Do.
Germantown, Village of, Washington County.	550472	July 15, 1975, Emerg; May 3, 1982, Reg; November 20, 2013, Susp.	.....do	Do.
Hartford, City of, Washington County	550473	April 17, 1975, Emerg; December 4, 1984, Reg; November 20, 2013, Susp.	.....do	Do.
Jackson, Village of, Washington County ..	550530	April 2, 1975, Emerg; August 17, 1981, Reg; November 20, 2013, Susp.	.....do	Do.
Kewaskum, Village of, Washington County.	550474	July 7, 1975, Emerg; January 6, 1982, Reg; November 20, 2013, Susp.	.....do	Do.
La Valle, Village of, Sauk County	550395	March 5, 1975, Emerg; September 19, 1984, Reg; November 20, 2013, Susp.	.....do	Do.
Newburg, Village of, Washington County	550056	N/A, Emerg; November 13, 2008, Reg; November 20, 2013, Susp.	.....do	Do.
North Freedom, Village of, Sauk County ..	550399	April 22, 1975, Emerg; September 19, 1984, Reg; November 20, 2013, Susp.	.....do	Do.
Reedsburg, City of, Sauk County	550402	May 21, 1975, Emerg; March 4, 1985, Reg; November 20, 2013, Susp.	.....do	Do.
Richfield, Village of, Washington County ..	550518	N/A, Emerg; September 30, 2008, Reg; November 20, 2013, Susp.	.....do	Do.
Rock Springs, Village of, Sauk County	550403	April 30, 1975, Emerg; September 18, 1985, Reg; November 20, 2013, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Sauk County, Unincorporated Areas	550391	September 7, 1973, Emerg; September 17, 1980, Reg; November 20, 2013, Susp.	.....do	Do.
Slinger, Village of, Washington County	550587	October 16, 1986, Emerg; N/A, Reg; November 20, 2013, Susp.	.....do	Do.
Washington County, Unincorporated Areas.	550471	May 28, 1975, Emerg; September 1, 1983, Reg; November 20, 2013, Susp.	.....do	Do.
West Baraboo, Village of, Sauk County	550407	July 24, 1975, Emerg; September 19, 1984, Reg; November 20, 2013, Susp.	.....do	Do.
West Bend, City of, Washington County	550475	August 15, 1975, Emerg; August 2, 1982, Reg; November 20, 2013, Susp.	.....do	Do.
Region VI				
Texas:				
Leon County, Unincorporated Areas	480903	November 24, 1995, Emerg; N/A, Reg; November 20, 2013, Susp.	.....do	Do.
Normangee, City of, Leon County	480436	October 8, 1976, Emerg; July 6, 1982, Reg; November 20, 2013, Susp.	.....do	Do.
Oakwood, Town of, Leon County	480437	October 13, 1995, Emerg; N/A, Reg; November 20, 2013, Susp.	.....do	Do.
Region VIII				
Colorado: Denver, City and County of	080046	April 16, 1971, Emerg; April 15, 1986, Reg; November 20, 2013, Susp.	.....do	Do.
Region IX				
Nevada: Lander County, Unincorporated Areas.	320013	June 26, 1975, Emerg; April 5, 1983, Reg; November 20, 2013, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 21, 2013

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–26245 Filed 11–1–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 170

RIN 0991–AB91

2014 Edition Electronic Health Record Certification Criteria: Revision to the Definition of "Common Meaningful Use (MU) Data Set"

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period revises one paragraph in the Common Meaningful Use (MU) Data Set definition at 45 CFR 170.102 to allow more flexibility with respect to the representation of dental procedures data for electronic health record (EHR) technology testing and certification.

DATES: *Effective date:* This regulation is effective on December 4, 2013.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 3, 2014.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments, identified by RIN 0991–AB91, by any of the following methods (please do not submit duplicate comments):

- *Federal eRulemaking Portal:* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the instructions for "Comment or Submission" and enter the filecode to find the document accepting comments. Attachments should be in Microsoft Word, Adobe PDF, or Excel; we prefer Microsoft Word.
- *Regular, Express, or Overnight Mail:* Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Attention: Steven Posnack, Patriots Plaza III Building, Suite 310, 355 E Street SW., Washington, DC 20024. Please submit one original and two copies.
- *Hand Delivery or Courier:* Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Attention: Steven Posnack, Patriots Plaza III Building, Suite 310, 355 E Street SW., Washington, DC 20024. Please submit one original and two copies. (Because access to the interior of the Patriots Plaza Building is not readily available to persons without federal government identification, commenters are encouraged to request an escort from an ONC staff member at the security desk in the main lobby of the building.)

FOR FURTHER INFORMATION CONTACT: Steven Posnack, Director, Federal Policy Division, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period will be available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. Please do not include anything in your comment submission that you do not wish to share with the general public. Such information

includes, but is not limited to: a person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; credit or debit card number; any personal health information; or any business information that could be considered to be proprietary. We will post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov*. Follow the search instructions on that Web site to view public comments.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or U.S. Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave. SW., Washington, DC 20201 (call ahead to the contact listed above to arrange for inspection).

I. Background

A. Statutory Basis

1. Standards, Implementation Specifications, and Certification Criteria

The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), was enacted on February 17, 2009. The HITECH Act amended the Public Health Service Act (PHSA) and created "Title XXX—Health Information Technology and Quality" (Title XXX) to improve health care quality, safety, and efficiency through the promotion of health information technology (health IT or HIT) and electronic health information exchange.

Section 3004(b)(3) of the PHSA entitled, "Subsequent Standards Activity," provides that the "Secretary shall adopt additional standards, implementation specifications, and certification criteria as necessary and consistent" with the schedule published by the HIT Standards Committee. We consider this provision in the broader context of the HITECH Act to grant the Secretary the authority and discretion to adopt standards, implementation specifications, and certification criteria that have been recommended by the HIT Standards Committee and endorsed by the National Coordinator for Health Information Technology (National Coordinator), as well as other appropriate and necessary HIT standards, implementation specifications, and certification criteria.

2. HIT Certification Programs

Section 3001(c)(5) of the PHSA provides the National Coordinator with the authority to establish a certification program or programs for the voluntary certification of HIT. Specifically, section 3001(c)(5)(A) specifies that the "National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall keep or recognize a program or programs for the voluntary certification of health information technology as being in compliance with applicable certification criteria adopted under this subtitle" (that is, certification criteria adopted by the Secretary under section 3004 of the PHSA). The certification program(s) must also "include, as appropriate, testing of the technology in accordance with section 13201(b) of the [HITECH] Act."

Section 13201(b) of the HITECH Act requires that with respect to the development of standards and implementation specifications, the Director of the National Institute of Standards and Technology, in coordination with the HIT Standards Committee, "shall support the establishment of a conformance testing infrastructure, including the development of technical test beds." The HITECH Act also indicates that "[t]he development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing."

B. Regulatory History

1. Standards, Implementation Specifications, and Certification Criteria Rules

In the September 4, 2012 **Federal Register** (77 FR 54163), the Secretary issued a final rule (the "2014 Edition Final Rule") that adopted the 2014 Edition EHR certification criteria and a revised Certified EHR Technology (CEHRT) definition. The standards, implementation specifications, and certification criteria adopted by the Secretary established the capabilities that CEHRT must include in order to, at a minimum, support the achievement of meaningful use (MU) by eligible professionals (EPs), eligible hospitals, and critical access hospitals under the Medicare and Medicaid EHR Incentive Programs beginning with the EHR reporting periods in Federal Fiscal Year/Calendar Year 2014.

The 2014 Edition Final Rule adopted a definition for the term *Common MU Data Set* at 45 CFR 170.102. The definition was created to reduce the repetitiveness of certification criteria and to make the certification criteria more concise. The definition includes types of data that are common among five certification criteria (the "view, download, and transmit to a 3rd party," "clinical summary," "transitions of care—receive, display, and incorporate transition of care/referral summaries," "transitions of care—create and transmit transition of care/referral summaries," and "data portability" certification criteria) and meant to mirror the data specified by the Centers for Medicare & Medicaid Services (CMS) in the MU objectives and measures to which these certification criteria correlate.

2. HIT Certification Programs Rules

In the January 7, 2011 **Federal Register** (76 FR 1262), the Secretary issued a final rule establishing the permanent certification program and its requirements. In the 2014 Edition Final Rule mentioned above, ONC made revisions to the permanent certification program, including changing the program's name to the "ONC HIT Certification Program."

II. Issue Addressed by This Interim Final Rule

A. Background

The *Common MU Data Set* definition adopted at 45 CFR 170.102 identifies sixteen kinds of data and (where applicable) associated vocabulary standards. The definition's fifteenth paragraph (Paragraph 15) identifies the required and optional vocabulary standards for representing "procedures" data for the purposes of testing and certification.

Paragraph 15 requires that (in all certification criteria in which this definition is referenced) EHR technology must demonstrate for testing and certification that it can represent procedures in "[a]t a minimum, the version of the standard specified in § 170.207(a)(3) or § 170.207(b)(2)." In other words, procedures can be represented in Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT®) or the combination of Health Care Financing Administration Common Procedure Coding System (HCPCS) and Current Procedural Terminology, Fourth Edition (CPT–4) vocabularies.

In Paragraph 15, we also provide the option for EHR technology developers to represent procedures in either the Current Dental Terminology (CDT) (the standard specified at § 170.207(b)(3)) or International Classification of Diseases, 10th Revision, Procedure Coding

System (ICD–10–PCS) (the standard specified at § 170.207(b)(4)) in addition to, but not in lieu of, the required vocabulary standards mentioned above.

B. Revision to Common MU Data Set Definition

In the 2014 Edition Final Rule (77 FR54178), we responded to a commenter who recommended that we should adopt CDT to represent dental procedures. Instead of accepting the commenter's suggestion, we designated CDT as an "optional" standard so that it could be used for testing and certification but only in addition to, and not in lieu of, SNOMED CT® or CPT–4/HCPCS. As discussed below, we have determined after further consideration that this "optional" designation does not appropriately reflect that CDT is best suited to represent dental procedures in EHR technology. The revision to the Common MU Data Set definition made by this interim final rule is intended to improve regulatory flexibility and remove an unintended burden on EHR technology developers who develop products for customers that need a precise and comprehensive standard in which to record dental procedures.

On July 29, 2013, the HIT Standards Committee transmitted a recommendation to the National Coordinator stating that we should adopt CDT as a "required" vocabulary standard for EHR technology testing and certification.[1] It is our understanding that this recommendation sought to emphasize that the EHR technology testing and certification process should support and make available as a pathway for certification the representation of dental procedures using CDT alone, rather than its current "optional" designation as a standard to be used in addition to SNOMED CT® or CPT–4/HCPCS. In consideration of that recommendation, we conducted fact-finding with experts in CDT and EHR technology developers who develop products that use this terminology to better understand how our decision to designate CDT as "optional" has impacted EHR technology testing and certification. We also sought to determine whether either of the two required vocabulary standards adopted to represent procedures (namely, SNOMED CT® or CPT–4/HCPCS) is sufficiently equivalent to CDT such that a regulatory change would be unnecessary.

[1] *http://www.healthit.gov/facas/FACAS/health-it-standards-committee/health-it-stondords-committee-recommendotions-nationol-coordinotor.*

Our fact-finding uncovered two important points. First, stakeholders confirmed that CDT is specifically designed for and used to represent dental procedures. Additionally, they stated that although SNOMED CT® and CPT–4/HCPCS as clinical terminologies are best for most other medical settings, those standards sparingly include dental procedure codes. Stakeholders indicated that CDT was far and above the best-suited standard to represent dental procedures because of its depth, breadth, and specific focus on these unique types of procedures. Second, they indicated that the current wording of Paragraph 15(i) in the Common MU Data Set definition would cause undue burden, and unnecessary work and costs for EHR technology developers who develop EHR technologies primarily to record dental procedures. Additionally, they asserted that the revision of this portion of the Common MU Data Set definition would significantly improve their ability to complete the testing and certification process in a timely manner. Further, stakeholders indicated that because Paragraph 15(i) requires EHR technology (designed either as comprehensive or stand-alone/supplemental offering) to represent procedures using SNOMED CT® or CPT–4/HCPCS, EHR technology developers who primarily develop products for doctors of dental surgery and dental medicine would have to build those standards into their products, even though CDT would be more appropriate to represent dental procedures and better support these customers' specific coding needs.

Given the HIT Standards Committee's recommendation and the related fact-finding we conducted, we have decided to revise Paragraph 15 in the *Common MU Data Set* definition. This revision will allow EHR technology that has been primarily developed to record dental procedures to be tested and certified to CDT alone (for either a Complete EHR or EHR Module certification), rather than in addition to SNOMED CT® or CPT–4/HCPCS. Moreover, this change will enable EHR technology developers who serve customers with a need to record specific dental procedures to develop and seek testing and certification for EHR technologies without the previously mentioned burden and cost associated with supporting additional and less precise standards in their products. We emphasize, however, that this limited revision to the regulation is intended only for EHR technology that has been primarily developed to record dental procedures. In all other cases, EHR technology must continue to be tested and certified using SNOMED CT® or CPT–4/HCPCS to represent procedures.

Accordingly, we have revised Paragraph 15 of the *Common MU Data Set* definition at § 170.102 to include CDT in Paragraph 15(i) as a vocabulary standard to which EHR technology can be tested and certified to represent dental procedures (instead of SNOMED CT® or CPT–4/HCPCS) in the limited circumstance where EHR technology is primarily developed to record dental procedures. ICD–10–PCS (now Paragraph 15(ii)) continues to be designated optional for testing and certification.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the rule take effect in accordance with section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)). However, we can waive the notice and comment procedure if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of the finding and the reasons in the final notice or rule that is issued (5 U.S.C. 553(b)(3)(B)).

Based on the HITSC's recommendation and our own fact-finding discussed above, we believe it would be contrary to the public interest to undergo notice and comment rulemaking to revise Paragraph 15 of the *Common MU Data Set* definition at § 170.102. It is our understanding from stakeholders that if this revision is not made in a timely manner, some EHR technology developers may not be able to achieve certification at all for their products and, as a result, may forgo seeking certification altogether. Such a result could significantly curtail the market for certified EHR technology developed to meet the needs of certain types of health care professionals (for example, doctors of dental surgery and dental medicine). Additionally, in cases where these EHR technology developers would forge ahead to get their products certified based on the current Common MU Data Set definition, we anticipate that they would incur unnecessary costs (which potentially could be passed on to customers) associated with incorporating SNOMED CT® or CPT–4/HCPCS into their products solely because they must demonstrate compliance with these standards for certification. This change to the regulation will relieve a burden on some

developers by allowing their products to be certified to CDT alone.

From the broader perspective of the Medicare and Medicaid EHR Incentive Programs, we believe that this revision to the Common MU Data Set definition will mitigate the risk that some EHR technology developers would limit or cease development of EHR technology specifically designed for doctors of dental surgery and dental medicine. If certified EHR technology designed to meet their specific needs is not available, these EPs may not qualify for EHR incentive payments and could be subject to future downward payment adjustments under Medicare. Additionally, the expected time it would take to complete the notice and comment rulemaking process could compromise the timely availability of 2014 Edition certified EHR technologies for doctors of dental surgery and dental medicine seeking to participate for the first time or continue their participation in the Medicare and Medicaid EHR Incentive Programs.

For the reasons stated, we believe that a notice and comment period would be contrary to the public interest. We therefore find good cause for waiving the notice and comment period to revise the Common MU Data Set definition.

IV. Response to Comments

Because of the number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

We have examined the impact of this interim final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), and Executive Order 13132 on Federalism (August 4, 1999).

In following Executive Orders 12866 and 13563, we have determined that this interim final rule does not reach the economic threshold ($100 million or more in any one year) such that a regulatory impact analysis (RIA) needs to be prepared. Thus, this rule is not considered a major rule and an RIA has not been prepared. This rule is not being treated as a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

Similarly, with respect to the RFA, we do not believe that the change in this interim final rule with comment period alters any of the prior analyses we performed for the 2014 Edition Final Rule; and therefore, the Secretary certifies that this interim final rule with comment period will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a final rule (including an interim final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. Because this interim final rule with comment period does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. The current inflation-adjusted statutory threshold is approximately $141 million.

This interim final rule with comment period will not impose an unfunded mandate on state, local, and tribal governments or on the private sector that will reach the threshold level.

List of Subjects in 45 CFR Part 170

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Health care, Health information technology, Health records, Hospitals, Reporting and recordkeeping requirements, Public health.

For the reasons set forth in the preamble, the Department amends 45 CFR subtitle A, subchapter D, part 170 as follows:

PART 170—HEALTH INFORMATION TECHNOLOGY STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA AND CERTIFICATION PROGRAMS FOR HEALTH INFORMATION TECHNOLOGY

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 42 U.S.C. 300jj–11; 42 U.S.C. 300jj–14; 5 U.S.C. 552.

■ 2. Section 170.102 is amended by revising paragraph (15) of the Common MU Data Set definition to read as follows:

§ 170.102 Definitions.

* * * * *

Common MU Data Set

* * * * *

(15) Procedures—

(i)(A) At a minimum, the version of the standard specified in § 170.207(a)(3) or § 170.207(b)(2); or

(B) For EHR technology primarily developed to record dental procedures, the standard specified in § 170.207(b)(3).

(ii) *Optional.* The standard specified at § 170.207(b)(4).

* * * * *

Dated: October 24, 2013.

Kathleen Sebelius,

Secretary.

[FR Doc. 2013–26290 Filed 11–1–13; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 110620342–1659–03]

RIN 0648–XC922

International Fisheries; Pacific Tuna Fisheries; 2013 Bigeye Tuna Longline Fishery Closure in the Eastern Pacific Ocean

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

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS is closing the U.S. pelagic longline fishery for bigeye tuna in the eastern Pacific Ocean (EPO) as a result of the fishery reaching the 2013 catch limit of 500 metric tons. This action is intended to limit fishing mortality on bigeye tuna caused by

longline fishing in the EPO, and contribute to the long-term conservation of bigeye tuna at levels that support healthy fisheries.

DATES: Effective November 11, 2013 through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Heidi Taylor, NMFS West Coast Region, 562–980–4039.

SUPPLEMENTARY INFORMATION: Pelagic longline fishing in the eastern Pacific Ocean is managed, in part, under the Tuna Conventions Act of 1950 (Act), 16 U.S.C. 951–962. Under the Act, NMFS must publish regulations to carry out recommendations of the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS). The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention) to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area.

The Convention Area for this purpose is defined to include the waters of the eastern Pacific bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. Regulations governing fishing by U.S. vessels in accordance with the Act appear at 50 CFR part 300, subpart C. Those regulations implement recommendations of the IATTC for the conservation and management of highly migratory fish resources in the eastern Pacific Ocean.

The IATTC has recommended, and the DOS approved, annual catch limits of bigeye tuna for U.S. longline vessels. For calendar year 2013, the catch and landing of bigeye tuna by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in overall length is limited to 500 metric tons (76 FR 68332, November 4, 2011, and codified at 50 CFR 300.25).

NMFS monitored the retained catches of bigeye tuna using logbook data submitted by vessel captains and other available information, and determined that the 2013 catch limit is expected to be reached on or by November 8, 2013. In accordance with 50 CFR 300.25(b), this temporary rule serves as advance notification to fishermen, the fishing industry, and the public that the U.S. longline fishery for bigeye tuna in the Convention Area will be closed starting on November 11, 2013, through the end of the 2013 calendar year. The 2014 fishing year is scheduled to open on January 1, 2014.

During the closure, a U.S. fishing vessel over 24 meters in overall length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

- Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective, that is, by November 18, 2013.
- In the case of a vessel that has declared to NMFS that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.
- Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.801.
- A fishing vessel of the United States over 24 meters, other than a vessel for which a declaration has been made to NMFS that the current trip is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect.
- If a vessel over 24 meters that is not on a declared shallow-set trip is used to fish in the Pacific Ocean using longline gear outside the Convention Area, and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing. Specifically, the hooks, branch lines, and floats must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

Classification

There is good cause to waive prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). This action is based on the best available information and is necessary for the conservation and management of bigeye tuna. Compliance with the notice and comment requirement would be impracticable and contrary to the public interest, since NMFS would be unable to ensure that the 2013 bigeye tuna catch limit is not exceeded. The annual catch limit is an important mechanism to ensure that the U.S. complies with its international obligations in preventing overfishing and managing the fishery at optimum yield. Moreover, NMFS previously solicited public comments on the rule that established the catch limit (76 FR 68332, November 4, 2011). For the same reasons, there is good cause to establish an effective date less than 30 days after date of publication of this notice.

This action is required by § 300.25(b) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951–962 *et seq.*

Dated: October 31, 2013.

James P. Burgess,

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

[FR Doc. 2013–26450 Filed 10–31–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130219149–3397–02]

RIN 0648- XC897

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Adjustments for the Common Pool Fishery

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

ACTION: Temporary rule; inseason adjustment of landing limits.

SUMMARY: This temporary rule increases the possession limits for Gulf of Maine cod, Cape Cod/Gulf of Maine yellowtail flounder, Gulf of Maine winter flounder, white hake, and pollock for Northeast multispecies common pool vessels for the remainder of the 2013 fishing year. This action is being taken because catch rates of these stocks are low. Increasing these possession limits is intended to provide additional fishing opportunities and help allow the common pool fishery to catch more of its quota for these stocks.

DATES: Effective October 30, 2013, through April 30, 2014.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Management Specialist, 978–282–8493.

SUPPLEMENTARY INFORMATION:

Regulations governing the Northeast (NE) multispecies fishery are found at 50 CFR part 648, subpart F. The regulations at § 648.86(o) authorize the NE Regional Administrator (RA) to adjust the possession limits for common pool vessels in order to facilitate harvest of, or prevent exceeding the pertinent common pool quotas during the fishing year. Based on data reported through October 16, 2013, the common pool fishery has caught less than 20 percent of its quota for Gulf of Maine (GOM) cod, Cape Cod (CC)/GOM yellowtail flounder, GOM winter flounder, white hake, and pollock.

Table 2 contains the adjustments to the possession limits that are implemented in this action for Category A days-at-sea (DAS) common pool vessels. The regulations also require that the cod possession limits for Handgear A, Handgear B, and Small Vessel Category permits be adjusted relative to the cod trip limits for DAS vessels, and these adjustments are specified in Table 3. These trip limit adjustments for all vessels is effective October 30, 2013, through April 30, 2014. Common pool groundfish vessels that are already at sea when this action becomes effective may land fish at the increased trip limit levels. Catch will continue to be monitored through dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, additional adjustments to common pool management measures may be made.

TABLE 2—COMMON POOL POSSESSION LIMITS FOR FIVE GROUNDFISH STOCKS

Stock	Old DAS limit	New DAS limit
GOM Cod	100 lb (45.4 kg) per DAS, up to 300 lb (136.1 kg) per trip.	650 lb (294.8 kg) per DAS up to 2,000 lb (907.2 kg) per trip.
CC/GOM Yellowtail Flounder	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.	2,000 lb (907.2 kg) per trip.
GOM Winter Flounder	500 lb (226.8 kg) per trip	2,000 lb (907.2 kg) per trip.
White Hake	500 lb (226.8 kg) per trip	1,000 lb (453.6 kg) per DAS up to 3,000 lb (1,361 kg) per trip.
Pollock	10,000 lb (4,536 kg) per trip	Unlimited.

TABLE 3—GOM COD TRIP LIMITS FOR HANDGEAR A AND B AND SMALL VESSEL CATEGORY PERMITS

Permit category	Old trip limit	New trip limit
Handgear A	100 lb (45.4 kg) per trip	300 lb (136.1 kg) per trip.
Handgear B	25 lb (11.3 kg) per trip	75 lb (34.0 kg) per trip.
Small Vessel Category	Maximum of 100 lb (45.4 kg) of GOM cod within the 300-lb (136.1-kg) combined cod/yellowtail flounder trip limit.	Up to 300 lb (136.1 kg) of GOM cod within the 300-lb combined cod/yellowtail trip limit.

Classification

This action is required by 50 CFR part 648, and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest for the reasons stated below. Pursuant to 5 U.S.C. 553(d)(3), the AA also finds good cause to waive the 30-day delayed effectiveness period for the same reasons.

The regulations at § 648.86(o) authorize the RA to adjust the NE multispecies trip limits for common pool vessels in order to prevent the overharvest or underharvest of the common pool quotas. The catch data used as the basis for this action only recently became available, and the trip limit increases implemented through this action reduces the probability of underharvesting the common pool quotas. As a result, the time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent NMFS from implementing the necessary trip limit adjustments for these five stocks in a timely manner, which could undermine management objectives of the NE Multispecies Fishery Management Plan, and cause negative economic impacts to the common pool fishery. There is additional good cause to waive the delayed effective period because this action relieves restrictions on fishing vessels by increasing trip limits.

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

Dated: October 30, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–26318 Filed 10–30–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 213
Monday, November 4, 2013

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

[FNS–2011–0027]

RIN 0584–AE16

National School Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the eligibility regulations for free and reduced price meals under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to codify the statutory provision that establishes the community eligibility provision, a reimbursement option for eligible local educational agencies and schools that wish to offer free school meals to all children in high poverty schools without collecting household applications. This proposed rule reflects statutory requirements that were implemented through policy guidance following enactment of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Implementation of this proposed rule would align the regulations with the statutory provision that establishes administrative and operational requirements for State agencies, local educational agencies, and schools.

DATES: To be assured of consideration, comments on this proposed rule must be received by January 3, 2014.

ADDRESSES: The Food and Nutrition Service (FNS), USDA, invites interested persons to submit written comments on this proposed rule. Comments must be submitted through one of the following methods:

- *Preferred method:* Comments on the provisions in this rule must be received on or before January 3, 2014 to be assured of consideration. Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Mailed comments on this proposed rule must be postmarked on or before January 3, 2014 to be assured of consideration. Send mailed comments to William Wagoner, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 1212, Alexandria, Virginia 22302–1594.

Comments sent by other methods will not be accepted. All comments sent by the methods listed above will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: William Wagoner or Marisol Aldahondo, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1212, Alexandria, Virginia 22302; telephone: (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

Section 104(a) of the HHFKA (Pub. L. 111–296) amended section 11(a)(1) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1759a(a)(1)) by adding a new subparagraph (F) to establish the community eligibility provision, also known as the community eligibility option. The community eligibility provision is a 4-year reimbursement alternative for high poverty local educational agencies (LEAs) and schools participating in the NSLP and SBP. It is intended to improve access to free school meals in eligible high poverty LEAs and schools, and eliminate the administrative burden associated with collecting household applications.

This proposed rule would amend the regulations in § 245.9, *Special Assistance Certification and Reimbursement Alternatives*, to include the community eligibility provision. In addition, this rule would make minor editorial changes in the current regulations for all special assistance provisions to achieve consistency.

Currently, § 245.9 uses the term "school food authority" for the provisions 1, 2 and 3. For the community eligibility provision, however, the NSLA uses the term "local educational agency", which is a broader entity in a school district that often includes or performs school food authority functions in addition to those unrelated to administration of the Child Nutrition Program. Therefore, this proposed rule refers to the "local educational agency" as defined in § 245.2 to describe the requirements for the provisions 1, 2 and 3, and the community eligibility provision. This editorial change does not indicate a change in the regulatory requirements for the provisions 1, 2 and 3, nor how these special assistance provisions are monitored. For example, counting and claiming responsibilities for the Provision 2 schools would continue to be the responsibility of the school food authority.

To use community eligibility, eligible LEAs and schools would be required to have a minimum percentage of identified students, who are students certified for free meals through means other than individual household applications (e.g., students directly certified through the Supplemental Nutrition Assistance Program (SNAP)) in the school year prior to implementing the provision, as required by Sections 11(a)(1)(F)(i) and (ii) of the NSLA, as amended. In addition, in accordance with Section 11(a)(1)(F)(ii), LEAs and schools would serve free lunches and breakfasts to all students, and cover with non-Federal funds any costs of providing free meals to all students that exceed the Federal reimbursement. As provided for in Section 11(a)(1)(F)(vi), no household applications for free and reduced price meals would be collected because meal reimbursement would be based on claiming percentages derived from the identified student percentage, as provided for in Section 11(a)(F)(iii) and (iv). The claiming percentages used in the first year would be valid for a period of four school years but could be increased in the second, third or fourth year if the identified student percentage rises. An eligible LEA would be able to elect the community eligibility provision on behalf of a single school, a select group of schools, or all schools under its jurisdiction, in accordance with Section 11(a)(1)(F)(ii)(I).

FNS has phased in the community eligibility provision over a three year period as required by the amendments made by HHFKA to Section 11(a)(a)(F)(viii) and (ix) of the NSLA. Community eligibility was made available in eligible LEAs and schools in three States (Illinois, Kentucky and Michigan) starting with the school year beginning July 1, 2011. An additional four States (Ohio, New York, District of Columbia, and West Virginia) were added for the school year beginning July 1, 2012. Four more States (Florida, Georgia, Maryland and Massachusetts) were added for the school year beginning July 1, 2013. Community eligibility will be available nationwide to all eligible LEAs and schools for the school year beginning July 1, 2014.

This proposed rule mirrors the memoranda on community eligibility issued by FNS during the phased-in implementation. As required by the law, FNS issued guidance within 90 days of enactment of the HHFKA to implement the statutory requirements for community eligibility (see memorandum SP 23–2011 dated March 15, 2011). Additional memoranda followed to further explain the statutory requirements. State and local operators must continue to follow FNS memoranda and guidance on community eligibility, as applicable, while the rulemaking process is under way.

The following memoranda (available on the FNS Web site at *http://www.fns.usda.gov/cnd/governance/policy.htm*) address the community eligibility requirements established in section 11(a)(1)(F) of the NSLA, as amended:

- Memorandum SP 23–2011 (March 15, 2011), Community Eligibility Option: Guidance and Process for Selection of States for School Year 2011–2012.
- Memorandum SP 12–2012 (February 9, 2012), Community Eligibility Option: Guidance and Procedures for Selection of States for School Year 2012–2013 (Includes Frequently Asked Questions).
- Memorandum SP 24–2012 (April 10, 2012), Interim Review Guidance for States with Local Educational Agencies Electing the Community Eligibility Option.
- Memorandum SP 15–2013 (December 7, 2012), Community Eligibility Option: Guidance and Procedures for Selection of States for School Year 2013–2014 (includes Frequently Asked Questions).
  - Attachment A: Information for State Agency Participation.
  - Attachment B: Monthly Federal Reimbursement Estimator.

In addition to issuing the above guidance, FNS has worked with the phase-in States to provide individual assistance and guidance. FNS has also conducted a number of webinars and monthly conference calls for the phase-in States.

FNS will evaluate participation in the community eligibility provision and the impact on eligible LEAs and schools in States selected during the phase-in period. Data collection began in fall, 2012 and the final report will be completed in December, 2013. FNS expects the community eligibility provision to improve access to school meals in high poverty areas, reduce administrative burden, and increase program efficiency by utilizing readily available and current data to certify eligible students for meal benefits.

This proposed rule would amend the regulations in § 245.9, Special assistance certification and reimbursement alternatives, by redesignating several paragraphs to add a new paragraph (f) and a new paragraph (l) for the community eligibility requirements. For consistency in the regulatory text, the proposed rule refers to the "local educational agency" to describe the requirements for provisions 1, 2 and 3, and the community eligibility provision.

Community Eligibility Definitions

For purposes of community eligibility, the proposed rule at § 245.9(f)(1) defines the terms "enrolled students", "identified students" and "identified student percentages" as follows:

Enrolled Students

Under the proposal, the term "enrolled students" would mean students who are enrolled in and attending schools participating in the community eligibility provision and who have access to at least one meal service daily. Half-day students who *have access* to either breakfast or lunch would be included in the count of enrolled students. Students who *do not have access* to either breakfast or lunch due to the times they are attending school would not be included in the count of enrolled students.

Identified Students

Under this proposed rule, the term "identified students" would mean low-income children who are certified for free school meals without the use of a household application. Section 11(a)(1)(F)(i), as amended by HHFKA, defines identified students as "students certified based on documentation of benefit receipt or categorical eligibility as described in § 245.6a(c)(2)" of Program eligibility regulations in 7 CFR part 245. This refers to students directly certified for free meals through documentation provided by the following programs:

- Supplemental Nutrition Assistance Program (SNAP);
- Temporary Assistance to Needy Families (TANF);
- Food Distribution Program on Indian Reservations (FDPIR); and
- Medicaid (in States and LEAs participating in an FNS demonstration project to test the potential for direct certification with Medicaid).

The term identified students would also include the following students, as defined in § 245.2:

- Homeless children as defined under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2));
- Runaway and homeless youth served by programs established under the Runaway and Homeless Youth Act (42 U.S.C. 5701);
- Migrant children as defined under section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399);
- Foster children certified through means other than a household application;
- Children enrolled in a Federally-funded Head Start Program or a comparable State funded Head Start Program or pre-kindergarten program;
- Children enrolled in an Even Start Program; and
- Non-applicant students approved by local education officials, such as a principal, based on available information.

Identified Student Percentage

This proposed rule would define the term "identified student percentage" as the percentage determined by dividing the number of "identified students" as of a specified period of time by the number of "enrolled students" as of the same period of time and multiplying the quotient by 100.

$$\text{Identified Student Percentage} = \frac{\text{Number of Identified Students}}{\text{Number of Enrolled Students}} \times 100$$

For a group of schools, the identified student percentage would be calculated by taking the total of the identified students for that group of schools and dividing that total by the total student enrollment for that group of schools. Only schools that are in the same LEA would be grouped together for purposes of determining community eligibility.

Implementation

The proposed rule at § 245.9(f)(2) would allow LEAs to elect the community eligibility provision for all schools or for certain schools meeting the eligibility criteria on or after July 1, 2014. Eligible LEAs and schools may operate the community eligibility provision for one or more 4-year cycles. Extensions are discussed further in this preamble under the heading *New 4-year Cycles*.

Eligibility Criteria

To participate in the community eligibility provision, LEAs (other than a residential child care institution, as that term is set forth in the definition of "School" in § 210.2) and schools would be required to meet the requirements of § 245.9(f)(3), i.e., meet the minimum identified student percentage requirements, participate in both the NSLP and SBP, and comply with all community eligibility provision procedures, as set forth in § 245.9(f)(4) of the proposed rule.

To be eligible for community eligibility, an LEA or school would be required to have an identified student percentage of at least 40 percent based on data as of April 1st of the prior school year. This percentage reflects both the number of identified students and the number of enrolled students as of April 1 of prior school year data.

Section 11(a)(1)(F)(viii)(II) of the NSLA, as amended, authorizes the Department to establish a threshold that is less than 40 percent for each school year beginning on or after July 1, 2014. However, the Department does not intend to lower the threshold for school year 2014–2015. The Department would consider data from the final community eligibility evaluation, along with program operational data and experience from nationwide implementation in determining if a future change to the threshold is warranted. Any future change to the threshold would be communicated in advance of implementation, through the **Federal Register**.

Schools already offering free meals under Provision 2 or Provision 3 would be able to elect the community eligibility provision, and schools under Provision 1 would also be able to convert to this provision. The conversion could take place during base or non-base years as long as the State or the LEA is able to demonstrate that the minimum identified student percentage threshold is met as of April 1 of the prior school year. Provision 1 schools in Puerto Rico and the Virgin Islands, where a statistical survey procedure is allowed in lieu of eligibility determinations, would be able to participate in the community eligibility provision. For those schools, updated direct certification data would be needed to determine the current percentage of identified students and all other requirements of the proposed rule would need to be met.

Community Eligibility Provision Procedures

This rule at § 245.9(f)(4) outlines proposed community eligibility provision procedures. The procedures include election deadline, State agency approval, service of meals at no charge, household applications, meal claiming percentages, multiplier factor, cost differential, new 4-year cycles, and grace years.

Election Deadline

Under proposed § 245.9(f)(4)(i), any LEA intending to elect the community eligibility provision for the following year for some or all of its schools would be required to submit to the State agency documentation demonstrating that the LEA or school meets the minimum identified student percentage threshold, as described earlier under *Eligibility criteria*. Such documentation would include, at a minimum, the counts of identified and enrolled students, as of April 1 of the prior school year. LEAs would be required to submit documentation no later than June 30 to begin community eligibility in the school year beginning July 1.

State Agency Review

Prior to authorizing an LEA to participate in community eligibility provision for some or all of its schools, § 245.9(f)(4)(ii) of the proposed rule would require the State agency to review the identified student percentage documentation submitted by the LEA to ensure the LEA or school meets the minimum identified student percentage, participates in both the NSLP and SBP, and has a record of administering the meal program in accordance with program regulations, as indicated by the most recent administrative review.

While the decision to participate in the community eligibility provision rests with the LEA, the State agency is responsible for providing technical assistance and assuring continued program integrity. Thus, the State agency would be required to confirm the LEA's eligibility to participate in the community eligibility provision.

Meal Counts and Meals at No Charge

Under § 245.9(f)(4)(iii) of the proposal, the LEA would be required to ensure participating schools offer free reimbursable breakfasts and free reimbursable lunches to all students in participating schools during the 4-year cycle and count the number of reimbursable breakfasts and lunches served to students daily.

Household Applications

Under proposed § 245.9(f)(4)(iv), an LEA would not be permitted to collect applications for free and reduced price school meals on behalf of children in schools participating in the community eligibility provision. Any LEA seeking to obtain socio-economic data from students would be required to develop, conduct and fund this effort totally separate from and not under the auspices of the NSLP and SBP. Because costs associated with obtaining the socio-economic data would not be allowable Program costs, nonprofit school food service account funds could not be used for this purpose.

Based on feedback from the States implementing the community eligibility provision during the phase-in period, the absence of socio-economic data is cited as the largest barrier to electing the provision. Currently, LEAs use aggregate, non-identifying, eligibility information collected from school meals applications as a socio-economic indicator for multiple purposes, including funding formulas for Federal and State education programs. Program regulations in 7 CFR Part 245 allow the use of aggregate, non-identifying information for such purposes, and also allow the use of individual student eligibility by authorized persons for specific purposes.

Consistent with discussions the Department has had with the U.S.

Department of Education (DoE), DoE is developing guidance on how to use data collected without applications through community eligibility to determine the distribution of Title I funds to schools, which preserves the burden reduction intent of community eligibility. However, Title I is not the only assistance funding that uses NSLP socio-economic data, as LEAs may rely on this data for the distribution of other services to children or areas in high need.

Before an LEA decides to collect separate applications to obtain socio-economic data, the State agency child nutrition staff is encouraged to work with State funding experts to assess the need for school meal program application data, and to identify alternate sources of socio-economic data. Replacing the collection of socio-economic data through NSLP with another collection system is contrary to the statutory goal of reducing paperwork for households and schools through community eligibility. If the LEA determines that it is absolutely necessary to collect socio-economic data to assist with the disbursement of other education-related funds, such application process would be developed and managed totally separate from the School Nutrition Programs, and not under the auspices of the National School Lunch Program. It is expected that the form/request for household information for non-Program purposes would clarify its purpose, and affirmatively state that receipt of school meal benefits would not be affected by a household's decision to complete and return the form/request.

Free and Paid Claiming Percentages

Under proposed § 245.9(f)(4)(v), reimbursement for breakfasts and lunches meeting Program requirements would be based on free and paid claiming percentages applied to the total number of reimbursable lunches and breakfasts served, respectively, each month. To determine the free claiming percentage, LEAs would multiply the identified student percentage by a multiplier factor of 1.6, as required by the NSLA. If the product of this calculation exceeds 100 percent, the free claiming percentage is capped at 100 percent. The difference between the free claiming percentage and 100 percent represents the paid claiming percentage. Because community eligibility schools do not collect household applications for school meals, the multiplier factor of 1.6 is intended to estimate the number of free and reduced price meals that would had been served at the participating school based on income eligibility and categorical eligibility if applications were collected.

Multiplier Factor

Consistent with section 11(a)(1)(F)(vii) of the NSLA, as amended, the multiplier factor is 1.6, until otherwise determined by the Secretary. For each school year beginning on or after July 1, 2014, the law allows the Secretary to change the multiplier factor to a number between 1.3 and 1.6, and to apply a different multiplier factor for different schools or LEAs. However, schools electing community eligibility would maintain the same multiplier factor for an entire 4-year cycle. This proposed provision is found at § 245.9(f)(4)(vi).

Although the amendments to the NSLA made by HHFKA would allow the Secretary to change the multiplier factor on July 1, 2014, the Department does not intend to change it for school year 2014–2015. The Department would consider data from the final community eligibility evaluation, along with program operational data and experience from nationwide implementation in determining if a future change to the multiplier factor is warranted. Any change to the multiplier factor would be communicated in advance of implementation, through the **Federal Register**.

Selection of the Identified Student Percentage

In the first year of a 4-year cycle, the LEA would use the identified student percentage as of April 1 of the prior school year. In the second, third, and fourth year of the cycle, the LEA would have discretion to use either (a) the identified student percentage from the year prior to year 1 of the four-year cycle or (b) the identified student percentage from the preceding year, whichever is higher. For example, if an LEA elects community eligibility for the school year 2014–2015, the selection would be as follows:

For Year 1 (SY 2014–2015): percentage as of April 1, 2014 (school year prior to implementing the community eligibility provision);

For Year 2 (SY 2015–2016): percentage as of April 1, 2014 or April 1, 2015;

For Year 3 (SY 2016–2017): percentage as of April 1, 2014 or April 1, 2016; and

For Year 4 (SY 2017–2018): percentage as of April 1, 2014 or April 1, 2017.

Due to variations in the point in time for monthly updates in State and local systems, under this proposed rule the identified student percentage must be representative of the identified students and the student enrollment as of April 1. Updates could be done before or after April 1 to account for differences in operational procedures, but the data would have to be representative of this date. For example, if a State or local direct certification system provides monthly updates of directly certified students on the 5th of each month, data from the April 5 updates may be used to develop the identified student percentage if it is representative of April 1.

Calculating the Claiming Percentages

As stated earlier, the LEA would multiply the applicable identified student percentage by a factor of 1.6 to calculate the free claiming percentage. The difference between the free claiming percentage and 100 percent represents the paid claiming percentage. An example of calculating the free and paid claiming percentages used for Year 1 follows:

Year 1 (School Year July 1, 2014–June 30, 2015):
Identified student percentage as of April 1, 2014 (school year prior to Year 1): 45%
Identified student percentage × multiplier factor: 45% × 1.6 = 72%
Free claiming percentage: 72%
Paid claiming percentage (100% minus the free claiming percentage): 28%

The claiming percentages used in Year 1 would be valid for the 4-year community eligibility cycle. However, in the second, third and fourth year, the identified student percentage may be calculated each year (as discussed earlier) to determine if an increase has occurred from the year prior to the first year of community eligibility. An LEA or school may re-calculate its claiming percentages in the second, third or fourth year to reflect the higher identified student percentage. As shown in the next example, if the identified student percentage rises in the second, third or fourth year, there would be a corresponding increase in the free claiming percentage and decrease in the paid claiming percentage.

Year 2 (School Year July 1, 2015-June 30, 2016):
Identified student percentage (as of April 1, 2014) used for school year prior to Year 1: 45%
Identified student percentage as of April 1, 2015: 47%
Identified student percentage × multiplier factor: 47% × 1.6 = 75.2%
Free claiming percentage: 75.2%
Paid claiming percentage (100% minus the free claiming percentage): 24.8%

Calculating the Claim for Reimbursement

Under the proposal, the LEA would determine the number of free lunches to claim for reimbursement by multiplying

the free claiming percentage by the total number of reimbursable lunches served. To determine the number of paid lunches to claim for reimbursement, the LEA would multiply the paid claiming percentage by the total number of reimbursable lunches served. Similar calculations are made to determine the number of free and paid breakfasts to claim for reimbursement.

Non-Federal Funding Sources

The proposed rule at § 245.9(f)(4)(vii) would require the LEA or school to pay, with funds from non-Federal sources, the difference between the cost of serving lunches and breakfasts at no charge to all participating children and Federal reimbursement. This is consistent with the existing requirements for Provision 2 and 3, the other two reimbursement alternatives available under § 245.9. The use of non-Federal funds would be necessary if the total amount of Federal reimbursement through the community eligibility provision does not cover the costs of serving all students free meals. Consistent with regular Program administration, funds other than Federal reimbursement available to the nonprofit school food service account would be used to make up the difference. Such funds generally include other school food service revenue such as revenue from a la carte sales, etc. The non-Federal funds used for community eligibility would have to be allocated for this purpose and could not be assigned to meet other Federal requirements.

When considering whether to participate in community eligibility, LEAs and schools should consider the participation level (e.g., individual school, group of schools within the LEA, or the entire LEA), the anticipated level of Federal reimbursement, and the non-Federal resources available.

New 4-Year Cycle

Under § 245.9(f)(4)(viii) of the proposal, participating LEAs or schools that meet the identified student percentage of 40 percent as of April 1 in Year 4 of the 4-year cycle would be able, with the State agency's concurrence, to immediately begin another 4-year cycle after the initial cycle concludes. For example, schools that elect community eligibility beginning July 1, 2014 would have to meet the 40 percent threshold as of April 1, 2018 to qualify for another 4-year cycle. The identified student percentage as of April 1, 2018 would be used to calculate the claiming percentages for Year 1 of the new cycle.

Grace Year

Under § 245.9(f)(4)(ix) of this proposed rule, participating LEAs and schools that fall within 10 percentage points lower than the established threshold of 40 percent as of April 1 in Year 4 of the 4-year cycle, would be allowed to continue community eligibility for a grace year (one year outside of the 4-year cycle). At least a 30 percent identified student percentage would be required to qualify for a grace year. Reimbursement for schools in a grace year would be based on the identified student percentage as of April 1 in year 4 of the current 4-year cycle. For example, the claiming percentages for participating schools in a grace year would be calculated as follows:

Year 4 identified student percentage as of April 1, 2018: 35%
Identified student percentage × multiplier factor: 35% × 1.6 = 56%
Free claiming percentage: 56%
Paid claiming percentage: 44%

LEAs or schools that reach the required 40 percent threshold of identified students as of April 1 of the grace year would be able to begin a new community eligibility 4-year cycle in the following school year. Those that do not meet the threshold as of April 1 of the grace year would be required to return to regular Program administration, including collecting household applications in the following school year.

Notification and Reporting Requirements

Section 11(a)(1)(F)(x) of the NSLA, as amended, includes several provisions which, in concert, encourage State agencies to promote and disseminate information about community eligibility. Under the statute, State agencies are required to publish a list of schools and notify eligible or potentially eligible LEAs of the community eligibility provision no later than May 1. In order for the State agency to meet the publication and notification deadline, the proposal would require the list of schools and the notification of eligible or potentially eligible LEAs to occur no later than April 15. The April 15 deadline is intended to give State agencies enough time to obtain and post the required information within the period specified by the law. The proposed deadlines and requirements are discussed in more detail below and appear in the proposed regulatory text under paragraphs § 245.9(f)(5) through (f)(8).

List of Schools

To assist State agencies in disseminating information about community eligibility, § 245.9(f)(5) of this proposal would require LEAs to submit to the State agency by April 15, a list of schools eligible or potentially eligible for the community eligibility provision. The State agency may exempt LEAs from this requirement if the State agency already collects this information. The lists would be required to include:

- Schools with an identified student percentage of at least 40 percent;
- Schools with an identified student percentage of at least 30 percent but less than 40 percent; and
- Schools that are currently in the fourth year community eligibility with an identified student percentage of at least 30 percent but less than 40 percent.

The above lists of schools may be obtained by the State agency at any time during the current school year, but not later than April 15. Since this requirement is intended as part of a public notification and outreach effort, local and State agencies would be permitted to use data reflecting either the identified student percentage or direct certifications as a percentage of enrollment, as an indicator of potential eligibility or eligibility. LEAs or State agencies are encouraged to use existing data sources to meet this requirement. For example, data collected through the frequent matching activities with the Supplemental Nutrition Assistance Program may be used to fulfill the notification requirements. Additional information regarding notification data is discussed in this preamble under the heading *Notification data.*

Notification of Local Educational Agencies

Under § 245.9(f)(6) of the proposal, State agencies would be required to notify eligible or potentially eligible LEAs by April 15, of their status for community eligibility and the procedures to elect this reimbursement option. Based on the most current identified student data available district wide, States agencies would notify:

- LEAs with an identified student percentage of at least 40 percent district wide, of the opportunity to elect community eligibility in the subsequent year; the estimated cash assistance the LEA would receive, e.g., a blended per meal rate; and the procedures to participate in community eligibility;
- LEAs with an identified student percentage that is less than 40 percent district wide but greater than or equal to 30 percent, that they may be eligible to

participate in community eligibility in the subsequent year if they meet the eligibility requirements set forth in § 245.9 (f)(3) of this proposal;

- LEAs currently using community eligibility district wide, of the options available in establishing claiming percentages for next school year; and
- LEAs currently in year 4 with an identified student percentage district wide that is less than 40 percent but greater than or equal to 30 percent, of the grace year eligibility. The LEAs would also be notified of the estimated cash assistance they would receive during the grace year, and the procedures to maintain eligibility and election.

State agencies are encouraged to use existing data to effect the LEA notification requirement. For example, State agencies are able to determine each LEA's identified student percentage based on the FNS–742, *School Food Authority Verification Summary Report*. This information is submitted to the State agency by March 1. With this information, State agencies could readily notify eligible and potentially eligible LEAs of their status for the community eligibility provision.

Public Notification Requirements

Section 11(a)(1)(F)(x) of the NSLA, as amended, requires each State agency to publish the list of schools described previously under *List of schools,* and to submit to the Department the list of LEAs receiving notices as described previously under *Notification of local educational agencies.*

This proposed rule at § 245.9(f)(7) would require State agencies to make both the list of schools and the list of LEAs readily accessible on the State agency Web site in a format prescribed by FNS. FNS intends to develop a template for State agencies to use in displaying the required information.

In lieu of having the State agencies submit the list of LEAs to the Department for publication, the FNS intends to develop a Community Eligibility Provision Web site which would link to the applicable portion of the State agencies' Web sites that identify both the list of schools and the list of LEAs.

Notification Data

The proposed rule, at § 245.9(f)(8), would require State agencies and LEAs to obtain data reflective of the current school year when identifying schools and LEAs that are eligible or near eligible for community eligibility. State agencies and LEAs would be required to use the identified student percentage, as defined in the proposed § 245.9(f)(1).

As mentioned earlier, LEA-wide identified student percentage data are readily available as both the numbers of identified students and enrolled students are collected and reported on the FNS–742, *School Food Authority Verification Summary Report.* However, school-specific data may not be as readily available to the State agency.

If school-specific identified student data are not readily available, State agencies would be permitted to use the number of direct certifications as a proxy for identified students when identifying schools to notify, as required under proposed § 245.9(f)(5). To calculate the identified student percentage using proxy data, divide the number of students directly certified through the Supplemental Nutrition Assistance Program and other assistance programs, if applicable, by the number of enrolled students.

If direct certification counts are used in the identified student percentage calculation to meet the proposed notification requirements, the data must be clearly identified as data not fully reflective of the number of identified students. Further, if the data are not representative of April 1 of the current school year, the data must include a notation that the data are intended for informational purposes and do not confer eligibility for community eligibility. This proposed provision is found in § 245.9(f)(8) of the proposed regulation.

Other Uses of the Free Claiming Percentage

As required in § 245.9(f)(9) of the proposed regulation, when community eligibility is in place in all or a group of schools in an LEA, an individual school's eligibility for other Child Nutrition Programs, such as Fresh Fruit and Vegetable Program, Child and Adult Care Food Program, Summer Food Service Program, Afterschool Snacks, and Seamless Summer Option, would be determined by the school's free claiming percentage (as discussed earlier in the rule under the heading *Free and Paid Claiming Percentages*). No household applications would be required. Institutions or sites in the boundaries of the individual community eligibility school would be permitted to use the school's free claiming percentage (identified student percentage multiplied by 1.6) to determine area eligibility under these programs.

Record Retention

Under the proposal, LEAs and schools would be required to keep documentation and records related to methodology used to calculate the identified student percentage (for each school year if applicable) and meet existing recordkeeping requirements in Parts 210, 220 and 245. Failure to maintain records would result in the State agency requiring the LEA and/or school(s) to return to standard meal counting and claiming procedures because the level of reimbursement could not be justified. This provision is found at § 245.9(h)(3).

Administrative Reviews of Community Eligibility Schools

When conducting the administrative reviews of community eligibility schools, the State agency must verify the identified student percentage used during the year in which a review is conducted. In addition, the State agency must review the documentation and records from each year used to establish the identified student percentage. Applicable provisions in § 210.18 and FNS guidance must be followed when reviewing schools using community eligibility. This proposed provision is found at § 245.9(i). Additional information on administrative review procedures will be provided under a separate proposed rulemaking.

Ending Use of Community Eligibility

Existing regulations at § 245.9(i) sets forth requirements for Provision 1, 2, and 3 schools wishing to return to standard meal counting and claiming procedures. Provision 1, 2, and 3 schools may return to standard notification, certification and counting procedures at any time if standard procedures better suit the school's Program needs. The LEA must notify the State agency of the return to standard procedures.

Under section 11(a)(1)(F)(ii)(II) of the NSLA, as amended, a participating LEA or school would be able to cease community eligibility and return to standard notification, certification and counting procedures for the following year by notifying the State agency not later than June 30.

The proposed rule at § 245.9(j) would consolidate the existing and new requirements for all special assistance LEAs and schools, i.e., LEAs and schools participating in Provision 1, 2, 3 or community eligibility. Under the proposal, special assistance LEAs or schools would be able to cease a special provision option and return to standard notification, certification and counting procedures at any time during the school year. The LEA would be required to notify the State agency prior to the change and seek State agency guidance and concurrence to resume standards

procedures. To return to standard procedures in the next school year, the LEA would notify the State agency no later than June 30.

Transferring a Student's Eligibility for Free Meals Under the Special Assistance Provisions

This proposed rule at § 245.9(l) would ensure that students transferring from a community eligibility school, or a special provision school, to a school using standard counting and claiming procedures in the same LEA continue to receive free meals for up to 10 operating days. This is intended to avoid interruption in nutrition benefits for a student while the receiving school is determining individual eligibility status. For transfers between LEAs, the receiving LEA may also choose to provide the transferred student free meals for up to 10 operating days.

LEA Best Practices

To implement community eligibility successfully and encourage all children to benefit from universal free school meals, LEAs are encouraged to:

- Consider and plan for potential issues surrounding the absence of individual free and reduced price data for other education purposes and communicate with those impacted.
- Inform students and parents that free meals (breakfast and lunch) will be offered to all enrolled students under the community eligibility provision.
- Implement the community eligibility provision in a way that results in full student participation and not in overt-identification of low-income students;
- Communicate effectively to all students and households the nutrition benefits of school meals; and
- Be aware of potential overt identification issues when offering a la carte foods.

Procedural Matters

Executive Order 12866 and Executive Order 13563

This proposed rule has been reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866 and has been determined to be Not Significant.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Pursuant to that review it has been certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would establish an alternative reimbursement option for LEAs and schools in high poverty areas, and would eliminate the requirement to collect free and reduced price household applications in participating schools during the period of participation in the community eligibility provision. Therefore, FNS does not expect that the proposed rule will have a significant economic impact on small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that would result in expenditures for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP and SBP are listed in the Catalog of Federal Domestic Assistance Programs under 10.555 and 10.553, respectively. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Child Nutrition Programs are federally funded Programs administered at the State level. FNS headquarters and regional office staff engage in ongoing formal and informal discussions with State and local officials regarding Program operational issues. This structure of the Child Nutrition Programs allows State and local agencies to provide feedback that contributes to the development of meaningful and feasible Program requirements.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

1. Prior Consultation With State Officials

FNS headquarters and regional offices have formal and informal discussions with State agency officials on an ongoing basis regarding the Child Nutrition Programs and policy issues. Prior to drafting this proposed rule, FNS held several conference calls and webinars with the State agencies to discuss the phased-in implementation of the community eligibility provision as prescribed by the HHFKA. FNS also shared information with State officials at national, regional and state level conferences. These opportunities allowed for exchange of information that aided in the development of this proposed rule. Issues identified during the phased-in implementation of the community eligibility provision were also taken into consideration.

2. Nature of Concerns and the Need To Issue This Rule

State agencies identified the absence of non-identifying household information for other education related purposes, such as Title I funding allocation, as an issue. The HHFKA does not allow LEAs and schools to collect household applications for free and reduced price meals while participating in the community eligibility provision. This alternative reimbursement option is designed to increase access to school meals while maximizing the use of existing information and eliminating the burden associated with collecting household applications.

3. Extent to Which the Department Meets Those Concerns

FNS has considered the concerns raised by stakeholders. We have attempted to balance the statutory requirement prohibiting the use of

household applications for the purpose of identifying students eligible for free and reduced price meals in the community eligibility provision with the reported need of LEAs and schools to access household information for other education-related purposes. The preamble to this rule explains that LEAs and schools are allowed to develop alternative methods to collect household socio-economic data and lists a few restrictions intended to ensure that such collection of data is conducted separately from the NSLP and SBP. In addition, FNS has communicated with the Department of Education on several occasions, and with the Federal Communication Commission to provide information to assist them in the development of their community eligibility guidance materials related to funding distribution under their assistance programs.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, appeal procedures in § 210.18(q) and § 235.11(f) of this chapter must be exhausted.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In spring 2011, FNS offered five opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on Indian tribes or Indian Tribal governments. FNS followed up with a conference call on February 13, 2013, and has scheduled additional calls for May 22, 2013; August 21, 2013; and November 6, 2013. These consultation sessions have provided and will continue to provide the opportunity to address Tribal concerns related to school meals. No concerns about the community eligibility provision have been expressed by the Indian Tribal governments.

The impact of this proposed rule on Tribal members is expected to be positive. The community eligibility provision facilitates access to free school meals in high-need LEAs and schools, and enhances program efficiency by eliminating the need to collect household applications. Providing free meals to all students through community eligibility would support Tribal efforts to reduce obesity and diabetes in their communities by providing nutritional balanced meals and helping children develop healthful eating habits early in life.

USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country. We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule's intent and provisions revealed that this proposed rule is not intended to reduce a child's ability to participate in the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, or Special Milk Program. The community eligibility provision provides all children enrolled in and attending the eligible schools access to free school meals.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR Part 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This collection is a revision of a currently approved collection for Determining Eligibility for Free and Reduced Price Meals, OMB control #0584–0026 (7 CFR Part 245). The current approval for the information collection burden associated with 7 CFR Part 245 expires on April 30, 2016. This revision consists of the proposed rule, *National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010*. The proposed rule is intended to improve school meal program access for low-income children and reduce paperwork for households and program administrators. The current collection burden inventory for Determining Eligibility for Free and Reduced Price Meals is 965,645. This revision will reduce reporting burden by 6,571 hours and increase recordkeeping burden by 80 hours for an overall reduction of 6,491 hours, resulting in a total collection burden inventory of 959,154 hours. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Written comments on the information collection in this proposed rule must be received by February 3, 2014.

Send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Margaret Applebaum, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Room 640, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Margaret Applebaum at the address indicated above. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

Title: National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010.

OMB Number: 0584–0026.

Expiration Date: April 30, 2016.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell National School Lunch Act (NSLA), as amended (42 U.S.C. 1751. *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). As provided in 7 CFR Part 245, schools participating in these meal programs must make free and reduced price meals available to eligible children.

This rule proposes to amend the eligibility regulations for free and reduced price meals under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to codify the statutory provision that establishes the community eligibility provision, a reimbursement option for eligible local educational agencies (LEAs) and schools that wish to offer free school meals to all children in high poverty schools without collecting household applications for a period of four years. Eligibility to participate in the provision is based on an identified student percentage (ISP) derived from the claiming percentages of students eligible for free meals who are not subject to verification as prescribed in section § 245.6a(c)(2). Participating LEAs and schools will receive meal reimbursement based on the ISP derived from the claiming percentages.

This collection obtains information on LEAs and schools that fall in one of the following categories of the community eligibility provision: Eligible to participate (ISP 40% or greater), nearly eligible (ISP between 30–40%), currently electing (ISP 40% or greater), or grace year eligible (in fourth year with ISP between 30–40%) and State agencies that must make the information collected publically available. For those eligible and electing to participate in the provision, this collection also eliminates certain LEA and household reporting and administrative burdens associated with applications for free and reduced price meals.

This proposed rule is requesting a revision in the burden hours. As a result of program changes, the revisions result in an overall reduction of 6,491 hours from current approved burden (decrease of 6,571 reporting burden and slight increase of 80 hours of recordkeeping burden).

The average burden per response and the annual burden hours for reporting and recordkeeping are explained below and summarized in the charts which follow.

Affected Public: Individuals/ Households, Local Educational Agencies, and State Agencies

Estimated Number of Respondents: 8,278,357

Estimated Number of Responses per Respondent: 2.21

Estimated Total Annual Responses: 18,322,111

Estimated Time per Response: 0.258

Estimate Total Annual Burden on Respondents: 959,154

Current OMB Inventory: 965,645

Difference (Burden Revisions Requested): −6,491

Refer to the following tables for estimated total annual reporting and recordkeeping burden per each type of respondent:

ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR 0584–0026, DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS, 7 CFR 245

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Previous total hours	Difference due to rulemaking
Recordkeeping (State Agencies)								
State Agencies review and confirm LEAs eligibility to participate in provision.	245.9(f)(4)(ii)	56	9	500	0.080	40	0	40
Recordkeeping (Local Education Agency)								
LEAs maintain documentation related to methodology used to calculate the identified student percentage and determine eligibility.	245.9(h)(3)	500	1	500	0.080	40	0	40
Total Recordkeeping Burden for Proposed Rule.		556	1.80	1000	12.5	80		
Total Existing Recordkeeping Burden for Part 245.						6,059		
Total Recordkeeping Burden for Part 245 with Proposed Rule.						6,139		

ESTIMATED ANNUAL REPORTING BURDEN FOR 0584–0026, DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS, 7 CFR 245

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Previous total hours	Difference due to rulemaking
Reporting (State Agencies)								
State agency notify LEAs of their community eligibility status as applicable.	245.9(f)(6)	56	85	4769	0.050	239	0	239
State agency to make publically available the names of LEAs and schools receiving notifications.	245.9(f)(7)	56	1	56	0.017	1	0	1
Reporting (Local Education Agency)								
LEAs submit to State agency documentation of acceptable identified student percentage of LEA/school electing the provision.	245.9(f)(4)(i)	500	1	500	0.033	17	0	17
LEA submit to State agency for publication a list of potentially eligible schools and their eligibility status; unless otherwise exempted by State agency.	245.9(f)(5)	5,159	1	5,159	0.0167	86	0	86
LEAs amend free and reduced policy statement and certify that schools meet eligibility criteria.	245.9(g)(1)	500	1	500	0.250	125	0	125
LEAs notify households of approval of meal benefit applications.	245.6(c)(6)(i)	20,358	306	6,231,886	0.02	124,638	125,148	−510
LEAs must notify households in writing that children are eligible for free meals based on direct certification and that no application is required.	245.6(c)(6)(ii)	20,358	145	2,942,097	0.020	58,842	62,574	−3,732
LEAs provide written notice to each household of denied benefits.	245.6(c)(7)	20,358	17	345,256	0.020	6,905	7,092	−187
LEA must enter into written agreement with the agency receiving children's free and reduced price eligibility information.	245.6(j)	20,358	1	20,358	0.166	3,379	3,462	−83
LEAs must determine sample size of households to verify eligibility.	245.6a(c)	20,358	1	20,358	0.330	6,718	6,883	−165
LEAs notify households of selection for verification.	245.6a(f)	20,358	12	249,531	0.250	62,383	62,574	−191
Reporting (Household)								
Households complete application form for free or reduced price meal benefits.	245.6(a)	8,236,529	1	8,236,529	0.070	576,557	578,343	−1,786
Households assemble written evidence for verification of eligibility and send to SFA.	245.6a(a)(7)(i)	189,235	1	189,235	0.500	94,617	95,000	−383
Households cooperate with collateral contacts for verification of eligibility.	245.6a(a)(7)(ii)	1,892	1	1,892	0.167	316	317	−1
Total Reporting Burden for Proposed Rule.		8,256,943	2	18,248,125	0.051	934,823		
Total Existing Reporting Burden for Part 245.						959,586		
Total Reporting Burden Decrease for Part 245.						(6,571)		
Total Reporting Burden for Part 245 with Proposed Rule.						953,015		

SUMMARY OF BURDEN (OMB #0584–0026) 7 CFR 245

TOTAL NO. RESPONDENTS	8,278,357
AVERAGE NO. RESPONSES PER RESPONDENT	2.213
TOTAL ANNUAL RESPONSES	18,322,111

SUMMARY OF BURDEN (OMB #0584–0026) 7 CFR 245—Continued

AVERAGE HOURS PER RESPONSE	0.258
TOTAL BURDEN HOURS FOR PART 245 WITH REVISIONS	959,154
CURRENT OMB INVENTORY FOR PART 245	965,645
DIFFERENCE (BURDEN REVISIONS REQUESTED)	(6,491)

E-Government Act Compliance

FNS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

List of Subjects

7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

■ 1. The authority citation for 7 CFR Part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

■ 2. In § 245.6, amend paragraph (b)(1)(v) by adding a third sentence at the end of the paragraph to read as follows.

§ 245.6 Application, eligibility and certification of children for free and reduced price meals and free milk.

* * * * *

(b) * * *

(1) * * *

(v) * * * Local educational agencies or schools electing the community eligibility provision under § 245.9(f), are required to conduct direct certification only in the year prior to the first year of a cycle or, if seeking to update the identified student percentage in the second, third or fourth year of a cycle.

* * * * *

■ 3. In § 245.9:

■ a. Redesignate paragraph (k) as paragraph (m) and redesignate paragraphs (f) through (j) as paragraphs (g) through (k);

■ b. Add new paragraphs (f) and (l);

■ c. Revise newly redesignated paragraphs (g), (i), (j) and (k);

■ d. Revise the introductory text for newly redesignated paragraph (h) and add paragraph (h)(3);

■ e. Remove the words "school food authority" whenever they appear in § 245.9 and add, in their place, the words "local educational agency";

■ f. Remove the words "school food authorities" whenever they appear in § 245.9 and add, in their place, the words "local educational agencies";

■ g. Remove the words "school food authority's" whenever they appear in § 245.9 and add, in their place, the words "local educational agency's";

■ h. Remove the words "paragraph (g)" whenever they appear in § 245.9 and add, in their place, the words "paragraph (h)";

■ i. Remove the words "paragraphs (g) and (h)" whenever they appear in § 245.9 and add, in their place, the words "paragraphs (h) and (i)"; and

■ j. Remove the words "paragraph (k)" whenever they appear in § 245.9 and add, in their place, the words "paragraph (m)".

The revisions and additions read as follows:

§ 245.9 Special assistance certification and reimbursement alternatives.

* * * * *

(f) *Community eligibility.* The community eligibility provision is a 4-year reimbursement option for eligible high poverty local educational agencies and schools. Under this provision, a local educational agency may participate for all schools in the local educational agency or for only some schools. Participating local educational agencies must offer free breakfasts and lunches for four successive years to all children attending participating schools and receive meal reimbursement based on claiming percentages, as described in paragraph (f)(4)(v) of this section.

(1) *Definitions.* For the purposes of this paragraph,

(i) *Enrolled students* means students who are enrolled in and attending schools participating in the community eligibility provision and who have access to at least one meal service (breakfast or lunch) daily.

(ii) *Identified students* means students who are not subject to verification as prescribed in § 245.6a(c)(2). Identified students are students approved for free meals based on documentation of their receipt of benefits from SNAP, TANF, the Food Distribution Program on Indian Reservations, or Medicaid where applicable. The term identified students also includes a homeless child, a migrant child, a runaway child or a Head Start Child, as these terms are defined in § 245.2. In addition, the term includes foster children certified for free meals through means other than an application for free and reduced price school meals. The term does not include students who are categorically eligible based on submission of an application for free and reduced price school meals.

(iii) *Identified student percentage* means a percentage determined by dividing the number of identified students as of a specified period of time by the number of enrolled students as defined in paragraph (f)(1)(i) of this section as of the same period of time and multiplying the quotient by 100. The identified student percentage may be determined by an individual participating school, a group of participating schools in the local educational agency, or in the aggregate for the entire local educational agency if all schools participate, following procedures established in FNS guidance.

(2) *Implementation.* A local educational agency may elect the community eligibility provision for all schools or for certain schools meeting the requirements of this section beginning on or after July 1, 2014. Community eligibility may be implemented for one or more 4-year cycles.

(3) *Eligibility criteria.* To be eligible to participate in the community eligibility provision, local educational agencies (other than a residential child care institution, as that term is set forth in the definition of "School" in § 210.2) and schools must meet the eligibility criteria set forth in this paragraph.

(i) *Minimum identified student percentage.* A local educational agency or school must have an identified student percentage of at least 40 percent, as of April 1 of the school year prior to participating in the community eligibility provision, unless otherwise specified by FNS.

(ii) *Lunch and breakfast program participation.* A local educational agency or school must participate in the National School Lunch Program and School Breakfast Program, under Parts 210 and 220 of this title.

(iii) *Compliance.* A local educational agency or school must comply with the procedures and requirements specified

in paragraph (f)(4) of this section to participate in the community eligibility provision.

(4) *Community eligibility provision procedures.*

(i) *Election deadline.* A local educational agency that intends to elect the community eligibility provision for the following year for all schools or on behalf of certain schools must submit to the State agency documentation demonstrating the LEA or school meets the identified student percentage, as specified under paragraph (f)(3)(i) of this section. Such documentation must be submitted no later than June 30 and must include, at a minimum, the counts of identified students and enrolled students as of April 1 of the prior school year.

(ii) *State agency concurrence.* A local educational agency must obtain State agency concurrence to elect the community eligibility provision.

(iii) *Meals at no charge.* A local educational agency must ensure participating schools offer free reimbursable breakfasts and lunches to all students attending participating schools during the 4-year cycle, and count the number of reimbursable breakfasts and lunches served to students daily.

(iv) *Household applications.* A local educational agency must not collect applications for free and reduced price school meals on behalf of children in schools participating in the community eligibility provision. Any local educational agency seeking to obtain socio-economic data from children receiving free meals under this section must develop, conduct and fund this effort totally separate from and not under the auspices of the National School Lunch Program and School Breakfast Program.

(v) *Free and paid claiming percentages.* Reimbursement is based on free and paid claiming percentages applied to the total number of reimbursable lunches and breakfasts served each month, respectively. Reduced price students are accounted for in the free claiming percentage eliminating the need for a separate percentage.

(A) To determine the free claiming percentage, multiply the applicable identified student percentage by a factor of 1.6, or as otherwise specified by FNS. The product of this calculation may not exceed 100 percent. The difference between the free claiming percentage and 100 percent represents the paid claiming percentage. The applicable identified student percentage means:

(*1*) In the first year of participation in the community eligibility provision, the identified student percentage as of April 1 of the prior school year.

(*2*) In the second, third, and fourth year of the 4-year cycle, the higher of the identified student percentage as of April 1 of the prior school year or the identified student percentage as of April 1 of the year prior to the first year of community eligibility.

(B) To determine the number of lunches to claim for reimbursement, multiply the free claiming percentage by the total number of reimbursable lunches served to determine the number of free lunches to claim for reimbursement. The paid claiming percentage is multiplied by the total number of reimbursable lunches served to determine the number of paid lunches to claim for reimbursement. In the breakfast meal service, the free and paid claiming percentages are multiplied by the total number of reimbursable breakfasts served to determine the number of free and paid breakfasts to claim for reimbursement, respectively.

(vi) *Multiplier factor.* A 1.6 factor must be used for an entire 4-year cycle to calculate the percentage of lunches and breakfasts to be claimed at the Federal free rate.

(vii) *Cost differential.* The local educational agency of a school participating in community eligibility must pay, with funds from non-Federal sources, the difference between the cost of serving lunches and breakfasts at no charge to all participating children and Federal reimbursement.

(viii) *New 4-year cycle.* To begin a new 4-year cycle, local educational agencies or schools must establish a new identified student percentage as of April 1 of the fourth year of the previous cycle. If the local educational agency or school meets the eligibility criteria set forth in paragraph (f)(3) of this section, a new 4-year cycle may begin, subject to State agency concurrence.

(ix) *Grace year.* A local educational agency or school in the fourth year of a community eligibility cycle with an identified student percentage of less than 40 percent but equal to or greater than 30 percent as of April 1 may continue using community eligibility for a grace year that is outside of the 4-year cycle. If the local educational agency or school regains the 40 percent threshold as of April 1 of the grace year, the State agency may authorize a new 4-year cycle for the following school year. If the local educational agency or school does not regain the required threshold as of April 1 of the grace year, it must return to collecting household applications in the following school year in accordance with paragraph (j) of this section. Reimbursement in a grace year is determined by multiplying the identified student percentage at the local educational agency or school as of April 1 of the fourth year of the previous cycle by the 1.6 factor, or the factor as otherwise established by FNS.

(5) *Identification of potential community eligibility schools.* No later than April 15 of each school year, each local educational agency must submit to the State agency a list(s) of schools as described in this paragraph. The State agency may exempt local educational agencies from this requirement if the State agency already collects the required information. The list(s) must include:

(i) Schools with an identified student percentage of at least 40 percent;

(ii) Schools with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent; and

(iii) Schools currently in year 4 of the community eligibility provision with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent.

(6) *State agency notification requirements.* No later than April 15 of each school year, the State agency must notify the local educational agencies described in this paragraph about their community eligibility status. Each State agency must notify:

(i) Local educational agencies with an identified student percentage of at least 40 percent district wide, of the potential to participate in community eligibility in the subsequent year; the estimated cash assistance the local educational agency would receive, e.g., a blended per meal rate; and the procedures to participate in community eligibility.

(ii) Local educational agencies with an identified student percentage that is less than 40 percent district wide but greater than or equal to 30 percent, that they may be eligible to participate in community eligibility in the subsequent year if they meet the eligibility requirements set forth in paragraph (f)(3) of this section as of April 1.

(iii) Local educational agencies currently using community eligibility district wide, of the options available in establishing claiming percentages for next school year.

(iv) Local educational agencies currently in year 4 with an identified student percentage district wide that is less than 40 percent but greater than or equal to 30 percent, of the grace year eligibility.

(7) *Public notification requirements.* By May 1 of each school year, the State agency must make the following

information readily accessible on its Web site in a format prescribed by FNS:

(i) The names of schools identified in paragraph (f)(5) of this section, grouped as follows: schools with an identified student percentage of least 40 percent, schools with an identified student percentage of less than 40 percent but greater than or equal to 30 percent, and schools currently in year 4 of the community eligibility provision with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent.

(ii) The names of local educational agencies receiving State agency notification as required under paragraph (f)(6) of this section, grouped as follows: local educational agencies with an identified student percentage of at least 40 percent district wide, local educational agencies with an identified student percentage that is less than 40 percent district wide but greater than or equal to 30 percent, local educational agencies currently using community eligibility district wide, and local educational agencies currently in year 4 with an identified student percentage district wide that is less than 40 percent but greater than or equal to 30 percent.

(8) *Notification data.* For purposes of fulfilling the requirements in paragraphs (f)(5) and (f) (6), the State agency must:

(i) Obtain data representative of the current school year, and

(ii) Use the identified student percentage as defined in paragraph (f)(1) of this section. If school-specific identified student percentage data are not readily available by school, use direct certifications as a percentage of enrolled students, i.e., the percentage derived by dividing the number of students directly certified under § 245.6(b) by the number of enrolled students as defined in paragraph (f)(1) as an indicator of potential eligibility. If direct certification data are used, the State agency must clearly indicate that the data provided does not fully reflect the number of identified students.

(iii) If data are not as of April 1 of the current school year, ensure the data includes a notation that the data are intended for informational purposes and do not confer eligibility for community eligibility. Local educational agencies must meet the eligibility requirements specified in paragraph (f)(3) of this section to participate in community eligibility.

(9) *Other Uses of the Free Claiming Percentage.* For purposes of determining a school's or site's eligibility to participate in a Child Nutrition Program, a community eligibility provision school's free claiming percentage, i.e., the product of the school's identified student percentage multiplied by 1.6, or as otherwise established by FNS guidance, serves as a proxy for free and reduced price certification data.

(g) *Policy statement requirement.* A local educational agency that elects to participate in the special assistance provisions or the community eligibility provision set forth in this section must:

(1) Amend its Free and Reduced Price Policy Statement, specified in § 245.10 of this part, to include a list of all schools participating in each of the special assistance provisions specified in this section. The following information must also be included for each school:

(i) The initial school year of implementing the special assistance provision;

(ii) The school years the cycle is expected to remain in effect;

(iii) The school year the special assistance provision must be reconsidered; and

(iv) The available and approved data that will be used in reconsideration, as applicable.

(2) Certify that the school(s) meet the criteria for participating in each of the special assistance provisions, as specified in paragraphs (a), (b), (c), (d), (e) or (f) of this section, as appropriate.

(h) *Recordkeeping.* Local educational agencies that elect to participate in the special assistance provisions set forth in this section must retain implementation records for each of the participating schools. Failure to maintain sufficient records will result in the State agency requiring the school to return to standard meal counting and claiming procedures and/or fiscal action. Recordkeeping requirements include, as applicable:

* * * * *

(3) *Records for the community eligibility provision.* Local educational agencies must ensure records are maintained, including: data used to calculate the identified student percentage, annual selection of the identified student percentage, total number of breakfasts and lunches served daily, percentages used to claim meal reimbursement, non-Federal funding sources used to cover any excess meal costs, and school-level information provided to the State agency for publication if applicable. Such documentation must be made available at any reasonable time for review and audit purposes.

(i) *Availability of documentation.* Upon request, the local educational agency must make documentation available for review or audit to document compliance with the requirements of this section. Depending on the certification or reimbursement alternative used, such documentation includes, but is not limited to, enrollment data, participation data, identified student percentages, available and approved socioeconomic data that was used to grant an extension, if applicable, or other data. In addition, upon request from FNS, local educational agencies under Provision 2 or Provision 3, or State agencies must submit to FNS all data and documentation used in granting extensions including documentation as specified in paragraphs (c) and (e) of this section. Data used to establish a new cycle for the community eligibility provision must also be available for review.

(j) *Restoring standard meal counting and claiming.* Under Provisions 1, 2, or 3 or community eligibility provision, a local educational agency may restore a school to standard notification, certification and counting procedures at any time during the school year or for the following school year if standard procedures better suit the school's program needs. Prior to the change taking place, but no later than June 30, the local educational agency must:

(1) Notify the State agency of the intention to stop participating in a special assistance certification and reimbursement alternative under this section and seek State agency guidance and approval regarding the restoration of standard operating procedures.

(2) Notify the public and meet the certification and verification requirements of § 245.6 and § 245.6a in affected schools.

(k) *Puerto Rico and Virgin Islands.* A local educational agency in Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may: maintain their standard procedures in accordance with § 245.4, select Provision 2 or Provision 3, or elect the community eligibility provision provided the applicable eligibility requirements as set forth in paragraphs (a), (b), (c), (d), (e) and (f) of this section are met. For the community eligibility provision, updated direct certification data must be available to determine the identified student percentage.

(l) *Transferring eligibility for free meals.* For student transfers within a local educational agency, a student's access to free meals under the special provisions specified in this section must be extended by a receiving school operating under the standard counting and claiming procedures for up to 10

operating school days. For student transfers between local educational agencies, the free meals may be offered for up to 10 operating school days at the discretion of the receiving local educational agency.

* * * * *

Dated: October 24, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–25922 Filed 11–1–13; 8:45 am]

BILLING CODE 3410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC–2012–0246]

RIN 3150–AJ20

Proposed Waste Confidence Rule and Draft Generic Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Rescheduling of public meetings.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has rescheduled the Waste Confidence public meetings it initially planned to hold in Perrysburg, Ohio, and Minnetonka, Minnesota, on October 15 and October 17, 2013, respectively. The NRC postponed these meetings as a result of lapsed appropriations. The Waste Confidence public meeting in Perrysburg will now be held on December 2, 2013. The Waste Confidence public meeting in Minnetonka will now be held on December 4, 2013. In addition to these rescheduled meetings, the NRC has also scheduled an additional, teleconference-only public meeting on December 9, 2013, that is accessible from anywhere in the United States. The meetings will allow the NRC to receive public comments on proposed amendments to the NRC's regulations pertaining to the environmental impacts of the continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal (the proposed Waste Confidence rule) and the draft generic environmental impact statement (DGEIS), NUREG–2157, "Waste Confidence Generic Environmental Impact Statement," that forms a regulatory basis for the proposed rule. The meetings are open to the public, and anyone may participate. The NRC has now rescheduled all Waste Confidence public meetings that were affected by the lapse in governmental appropriations.

DATES: The NRC plans to hold a rescheduled Waste Confidence public meeting in Perrysburg Ohio, on December 2, 2013. The NRC plans to hold a rescheduled Waste Confidence public meeting in Minnetonka, Minnesota, on December 4, 2013. The NRC has scheduled a new public teleconference meeting on December 9, 2013. This document contains specific meeting information in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Please refer to Docket ID NRC–2012–0246 when contacting the NRC about the availability of information for the proposed Waste Confidence rule and DGEIS. You may access publicly available information related to these documents by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0246.
- NRC's Waste Confidence Web site: Go to *http://www.nrc.gov/waste/spent-fuel-storage/wcd.html.*
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The DGEIS is available in ADAMS under Accession No. ML13224A106.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Sarah Lopas, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–0675; email: *Sarah.Lopas@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published the proposed Waste Confidence Rule in the **Federal Register** on September 13, 2013 (78 FR 56776). On the same day, the NRC and the U.S. Environmental Protection Agency issued notices of availability for the DGEIS (78 FR 56621; 78 FR 56695).

Prior to the lapse in appropriations in October 2013, the NRC staff held two Waste Confidence public meetings (one in Rockville, Maryland, on October 1, and one in Denver, Colorado, on October 3). The NRC postponed five meetings (in San Luis Obispo and Carlsbad, California; Perrysburg, Ohio; Minnetonka, Minnesota; and Oak Brook, Illinois) as a result of lapsed appropriations. The NRC rescheduled the meeting in Oak Brook, Illinois, on November 12; in Carlsbad, California, on November 18; and in San Luis Obispo, California, on November 20. Five additional Waste Confidence public meetings remain scheduled as publicized in 78 FR 54789: Chelmsford, Massachusetts, on October 28; Tarrytown, New York, on October 30; Charlotte, North Carolina, on November 4; Orlando, Florida, on November 6; and Rockville, Maryland, on November 14. The December 9 meeting is a new meeting that the NRC has added to allow interested groups and individuals an additional opportunity to present oral comments.

The December 2 public meeting will take place at the Hilton Garden Inn Toledo/Perrysburg, 6165 Levis Commons Boulevard, Perrysburg, Ohio. The December 2 meeting will start at 7:00 p.m. Eastern Standard Time and will continue until 10:00 p.m. Eastern Standard Time. The December 4 public meeting will take place at the Minneapolis Marriott Southwest, 5801 Opus Parkway, Minnetonka, Minnesota. The December 4 meeting will start at 7:00 p.m. Central Standard Time and will continue until 10:00 p.m. Central Standard Time. Additionally, the NRC staff will host informal discussions during an open house one hour prior to the start of the Perrysburg and Minnetonka meetings. The open houses will start at 6:00 p.m. local time.

The December 9 public meeting will take place via teleconference only. The teleconference meeting will start at 1:00 p.m. Eastern Standard Time and will end at 4:00 p.m. Eastern Standard Time. To participate in the December 9 teleconference public meeting, dial 1–888–603–9749, and provide the operator with passcode 5132332. Interested groups and individuals may participate in the December 9 teleconference public meeting from anywhere in the United States.

The NRC staff will accept comments from the public during the comment-period portion of the meetings. The public meetings will be transcribed and will include: (1) a presentation on the contents of the DGEIS and proposed Waste Confidence rule; and (2) the opportunity for government agencies, organizations, and individuals to provide comments on the DGEIS and proposed rule. No oral comments on the DGEIS or proposed Waste Confidence rule will be accepted during the open house sessions at the December 2 and December 4 meetings (the December 9 meeting does not have an open house

session). To be considered, oral comments must be presented during the transcribed portions of the public meetings. The NRC staff will also accept written comments at any time during the public meetings.

Persons interested in presenting oral comments at the December 2, December 4, or December 9 public meetings are encouraged to pre-register. Persons may pre-register to present oral comments at either meeting by calling 301–287–9392 or by emailing *WCRegistration@nrc.gov* no later than 3 days prior to the meeting. Members of the public may also register in-person to provide oral comments at each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register.

If special equipment or accommodations are needed to attend or to present information at either public meeting, then the need should be brought to the NRC's attention no later than 10 days prior to the meeting to provide the NRC staff adequate notice to determine whether the request can be accommodated. The meeting agenda and participation details for each meeting will be available on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* no later than 10 days prior to each meeting.

Dated at Rockville, Maryland, this 29th day of October 2013.

For the Nuclear Regulatory Commission.

Carrie M. Safford,

Deputy Director, Waste Confidence Directorate, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–26381 Filed 11–1–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 310, 314, and 600

[Docket No. FDA–2011–N–0898]

RIN 0910–AG88

Permanent Discontinuance or Interruption in Manufacturing of Certain Drug or Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is proposing to amend its regulations to implement certain drug shortages provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA). The proposed rule would require all applicants of covered approved drugs or biological products—including certain applicants of blood or blood components for transfusion and all manufacturers of covered drugs marketed without an approved application—to notify FDA electronically of a permanent discontinuance or an interruption in manufacturing of the product that is likely to lead to a meaningful disruption in supply (or a significant disruption in supply for blood or blood components) of the product in the United States.

DATES: Submit either electronic or written comments on the provisions of this proposed rule by January 3, 2014. Submit comments on the information collection requirements under the Paperwork Reduction Act of 1995 (the PRA) by December 4, 2013 (see the "Paperwork Reduction Act of 1995" section).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0898 by any of the following methods, except that comments on information collection issues under the PRA must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (see the "Paperwork Reduction Act of 1995" section).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions:

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper or CD–ROM 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. 2011–N–0898 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or 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.

FOR FURTHER INFORMATION CONTACT: Kalah Auchincloss, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6208, Silver Spring, MD 20993, 301–796–0659; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

Table of Contents

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Proposed Rule

FDASIA (Pub. L. 112–144) significantly amended provisions in the FD&C Act related to drug shortages. Among other things, FDASIA amended section 506C of the FD&C Act (21 U.S.C. 356c) to require all manufacturers of certain drugs to notify FDA of a permanent discontinuance or an interruption in manufacturing of these drugs 6 months in advance of the permanent discontinuance or interruption in manufacturing, or as soon practicable. FDASIA also added section 506E to the FD&C Act (21 U.S.C. 356e) requiring FDA to maintain a current list of drugs that are determined by FDA to be in shortage in the United States, and to include on that public list certain information about those shortages. Finally, FDASIA permits FDA to apply section 506C to biological products by regulation, and requires FDA to issue a final rule implementing

certain drug shortages provisions in FDASIA by January 9, 2014.

In accordance with FDASIA, FDA is issuing this proposed rule, which we believe will improve FDA's ability to identify potential drug shortages and to prevent or mitigate the impact of these shortages.

B. Summary of the Major Provisions of the Proposed Rule

The proposed rule would modify FDA's regulations to implement sections 506C and 506E of the FD&C Act as amended by FDASIA.

Proposed §§ 310.306, 314.81(b)(3)(iii) (21 CFR 314.81(b)(3)(iii)), and 600.82 would require all applicants of certain approved drugs or biological products,[1] including applicants of blood or blood components for transfusion ("blood or blood components") that manufacture a significant percentage of the U.S. blood supply, and all manufacturers of certain drugs marketed without an approved application ("unapproved drug manufacturers"), to notify FDA electronically of a permanent discontinuance or an interruption in manufacturing of the product that is likely to lead to a meaningful disruption in supply (for drugs and biological products other than blood or blood components) or a significant disruption in supply (for blood or blood components) of the product in the United States. Applicants[2] would be required to notify FDA of a permanent discontinuance or an interruption in supply if the drug or biological product is a prescription product that is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including any such drug used in emergency medical care or during surgery, and excluding radiopharmaceutical products (referred to in this document as "covered" drugs or biological products). The proposed rule would require notification to FDA at least 6 months prior to date of the permanent discontinuance or interruption in manufacturing, or, if 6 months' advance notice is not possible, as soon as practicable thereafter, but in no case later than 5 business days after the permanent discontinuance or interruption in manufacturing occurs.

The proposed rule would also require FDA to issue a public noncompliance letter to an applicant for failure to notify FDA under the proposed rule; specify minimum information that must be included in the notification; codify FDA's current practice of publicly disseminating information on shortages and maintaining public lists of drugs and biological products in shortage (subject to certain confidentiality protections); and define the terms, "drug shortage," "biological product shortage," "meaningful disruption," "significant disruption," "life supporting or life sustaining," and "intended for use in the prevention or treatment of a debilitating disease or condition."

Finally, the proposed rule would include a technical revision to § 20.100 (21 CFR 20.100) (public disclosure regulations) to include a cross-reference to the disclosure provisions in in §§ 310.306, 314.81, and 600.82; and would remove § 314.91 (21 CFR 314.91) related to reducing the 6-month notification period for "good cause," since it is no longer applicable under the FDASIA-revised section 506C.

C. Summary of the Costs and Benefits of the Proposed Rule

The proposed rule would impose annual reporting costs of up to $16,576 on those applicants affected by the rule, and up to $441,000 on FDA in review costs. Undertaking mitigation strategies, as measured by labor resources, is estimated to cost FDA between $2.44 and $7.84 million, and industry between $3.86 and $12.43 million. We also estimate annual costs for industry between $8.54 and $26.89 million associated with increasing production. Estimated total annual costs of the interactions between industry and FDA range between $14.99 and $47.62 million. Discounting over 20 years, annual quantified benefits from avoiding the purchase of alternative products, managing product shortages, and life-years gained, would range from $27.56 million to $86.77 million using a 3 percent discount rate, and from $27.50 million to $86.61 million using a 7 percent discount rate. The public health benefits, mostly nonquantified, include the value of information that would assist FDA, manufacturers, health care providers, and patients in evaluating, mitigating, and preventing shortages of drugs and biological products that could otherwise result in delayed patient treatment or interruption in clinical trial development.

II. Introduction

Recent experience with shortages of drugs and biological products in the United States has shown the serious and immediate effects they can have on patients and health care providers. According to information from FDA's drug and biological product shortages databases, the number of drug and biological product shortages quadrupled from approximately 61 in 2005 to more than 250 shortages in 2011. Although the number of drug shortages significantly decreased in 2012 to 117 shortages, drug and biological product shortages still represent an ongoing challenge to public health.[3] Shortages can involve critical drugs used to treat cancer, to provide required parenteral nutrition, or to address other serious medical conditions and can delay or deny needed care for patients. Shortages can also result in providers prescribing second-line alternatives, which may be less effective or higher risk than first-line therapies.

Preventing drug and biological product shortages is a top priority for FDA. Working closely with manufacturers and other stakeholders, FDA was able to help prevent just under 200 drug and biological product shortages in 2011 and more than 280 such shortages in 2012, using tools such as:

- Working with manufacturers to resolve manufacturing and quality issues contributing to short supply.
- Expediting FDA inspections and reviews of submissions from manufacturers to prevent and/or alleviate shortages.
- Identifying and working with manufacturers willing to initiate or increase production to cover expected gaps in supply.
- Exercising enforcement discretion in appropriate circumstances, if this would not cause undue risk to patients.

In response to the increasing concerns about the impact of shortages on health care in the United States, on October 31, 2011, President Obama issued Executive Order 13588 directing FDA to "take steps that will help to prevent and reduce current and future disruptions in the supply of lifesaving medicines" and noting that "one important step is

[1] As used throughout this preamble, the term "biological product" refers to a biological product licensed under section 351 of the Public Health Service Act, other than a biological product that also meets the definition of a device in section 201(h) of the FD&C Act (21 U.S.C. 321(h)).

[2] In this document, for the sake of convenience, we collectively refer to applicants holding an abbreviated new drug application (ANDA), new drug application (NDA), or biologics license application (BLA) and unapproved drug manufacturers subject to this proposed rule as the "applicant" (although we recognize that an unapproved drug manufacturer is not an applicant). We may also individually refer to the ANDA, NDA, and BLA applicant or unapproved drug manufacturer as needed, if the context requires distinguishing between these entities.

[3] Information on drug shortages can be found at *http://www.fda.gov/drugs/drugsafety/drugshortages/default.htm* (drug shortages) and *http://www.fda.gov/BiologicsBloodVaccines/SafetyAvailability/Shortages/default.htm* (biological product shortages).

ensuring that FDA and the public receive adequate advance notice of shortages whenever possible" (Ref. 1 of this proposed rule). In response to the Executive Order's directive to address the growing problem of drug shortages, FDA published an interim final rule (IFR) on December 19, 2011 (effective January 18, 2012), modifying the regulation at § 314.81 related to drug shortages (76 FR 78530). As a result of the Executive Order and IFR, early notifications to FDA of potential shortages increased from an average of 10 a month before the Executive Order to approximately 60 a month in the months after the IFR. This dramatic increase in early notifications enabled FDA to work with manufacturers to successfully prevent numerous shortages. As we stated above, FDA was able to prevent just under 200 drug and biological product shortages in 2011 and more than 280 such shortages in 2012. Moreover, the number of new drug shortages decreased from more than 250 in 2011 to 117 in 2012—a 50 percent reduction.

In July 2012, FDASIA amended the FD&C Act to modify existing drug shortages requirements and to add new drug shortages provisions. This rule proposes to implement the drug shortages provisions of FDASIA, and, when final, will supersede the IFR. Although many of the issues raised by the 11 comments we received on the IFR are no longer directly applicable to this rulemaking given the changes to the underlying statute made by FDASIA, when drafting this proposed rule we considered these comments to the extent that they were applicable.[4] Where appropriate, we have summarized and responded to the IFR comments in this preamble.

III. Description of the Proposed Rule

Section 1001 of FDASIA made substantial changes to section 506C of the FD&C Act related to reporting and addressing "permanent discontinuances" or "interruptions in manufacturing" of certain drug products. Most significantly for purposes of this proposed rule, section 506C of the FD&C Act as amended:

- Requires all manufacturers of a prescription drug that is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including any such drug used in emergency medical care or during surgery, and excluding radiopharmaceutical products, to notify FDA of a permanent discontinuance in the manufacture of the drug or an interruption in the manufacturing of the drug that is likely to lead to a meaningful disruption in the supply of that drug in the United States at least 6 months prior to the date of the permanent discontinuance or interruption in manufacturing, or, if that is not possible, as soon as practicable.
- Requires the manufacturer to include in the notification the reason for the permanent discontinuance or interruption in manufacturing.
- Requires FDA to issue a letter to a "person" who fails to comply with the notification requirements in section 506C.
- Defines the terms "drug," "drug shortage," and "meaningful disruption," and requires FDA to define the terms "life supporting," "life sustaining," and "intended for use in the prevention or treatment of a debilitating disease or condition."
- Permits FDA to apply section 506C to biological products, including vaccines and plasma-derived products and their recombinant analogs, if FDA determines the inclusion would benefit public health, taking into account existing supply reporting programs and aiming to reduce duplicative notifications.
- Requires FDA to distribute information on drug shortages to the public, to the maximum extent possible, subject to certain confidentiality protections.

In addition to modifying section 506C, FDASIA added several new drug shortage-related sections to the FD&C Act, including section 506E. Section 506E of the FD&C Act requires FDA to maintain an up-to-date list of drugs that are determined by FDA to be in shortage, including the names and the National Drug Codes (NDCs) of such drugs in shortage, the name of each manufacturer of the drug, the reason for each shortage as determined by FDA (choosing from a list of reasons enumerated in the statute), and the estimated duration of each shortage. Section 506E of the FD&C Act also includes confidentiality provisions.

This rule proposes to implement sections 506C and 506E of the FD&C Act by amending § 314.81(b)(3)(iii) (permanent discontinuance or interruption in manufacturing of approved prescription drugs) and § 20.100 (cross-reference to disclosure provisions); adding new § 310.306 (permanent discontinuance or interruption in manufacturing of marketed prescription unapproved new drugs) and § 600.82 (permanent discontinuance or interruption in manufacturing of prescription biological products); and removing § 314.91 (reduction in the discontinuance notification period). Table 1 compares the proposed rule to the current regulation (IFR).

TABLE 1—CURRENT REGULATION (IFR) COMPARED WITH PROPOSED RULE

Requirement	Current regulation (IFR)	Proposed rule
Scope of products subject to notification requirements.	§ 314.81(b)(3)(iii)(*a*)	§ 310.306. § 314.81(b)(3)(iii)(*a*) and (f). § 600.82(a) and (f).
	A drug product approved under an NDA or ANDA that is: • Life supporting, life sustaining or intended for use in the prevention of a serious disease or condition; and • Not originally derived from human tissue and replaced by a recombinant product.	All prescription drugs and biological products, including marketed unapproved prescription drugs, that are: • Life supporting, life sustaining or intended for use in the prevention or treatment of a debilitating disease or condition, including any such drug used in emergency medical care or during surgery; and • That are not radiopharmaceutical products.[5]

[4] The IFR comments are available electronically at *http://www.regulations.gov*, Docket No. FDA–2011–N–0898, or can be obtained in person at the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

[5] With respect to blood and blood components for transfusion, the reporting requirement applies only to an applicant that manufactures a significant percentage of the U.S. blood supply.

TABLE 1—CURRENT REGULATION (IFR) COMPARED WITH PROPOSED RULE—Continued

Requirement	Current regulation (IFR)	Proposed rule
		The terms "life supporting or life sustaining" and "intended for use in the prevention or treatment of a debilitating disease or condition" are defined in the proposed rule.
What triggers notification	§ 314.81(b)(3)(iii)(*a*) and (d)	§ 314.81(b)(3)(iii)(*a*) and (f). § 600.82(a)(1) and (f).
	A "discontinuance," defined as "any interruption in manufacturing . . . that could lead to a potential disruption in supply of the drug product [in the United States], whether the interruption is intended to be temporary or permanent".	For products other than blood or blood components, a "permanent discontinuance" or an "interruption in manufacturing that is likely to lead to a meaningful disruption in supply of the product in the United States"; "meaningful disruption" is defined in the statute and the proposed rule. § 600.82(a)(2) and (f). For blood or blood components, a "permanent discontinuance" or an "interruption in manufacturing that is likely to lead to a significant disruption in supply of the product in the United States"; "significant disruption" is defined in the proposed rule.
Who must notify FDA	§ 314.81(b)(3)(iii)(*a*) and (d)	§ 314.81(b)(3)(iii)(*a*). § 600.82(a).
	Applicants who are sole manufacturers of covered drugs; sole manufacturer is defined in the regulation.	All applicants for covered, approved drugs and biological products (other than blood or blood components), all applicants for blood or blood components that manufacture a significant percentage of the U.S. blood supply, and all manufacturers of covered drugs marketed without an approved application.
When to notify FDA	§ 314.81(b)(3)(iii)(*a*)	§ 314.81(b)(3)(iii)(*b*). § 600.82(b).
	At least 6 months prior to the discontinuance. § 314.91 ..... Applicants may seek, and FDA may grant, a reduction in the 6-month notification period for "good cause."	• At least 6 months prior to the permanent discontinuance or interruption in manufacturing; or • If notification at least 6 months prior is impossible, "as soon as practicable," which is further described in the proposed rule. • Deletes § 314.91 in its entirety, because it is no longer applicable under section 506C of the FD&C Act as amended by FDASIA.
How to notify FDA	§ 314.81(b)(3)(iii)(*b*)	§ 314.81(b)(3)(iii)(*b*). § 600.82(b).
	Electronically or by phone, according to instructions on FDA's drug shortages Web page.	Electronically in a format FDA can process, review, and archive.
What to include in the notification.	Not specified	§ 314.81(b)(3)(iii)(*c*). § 600.82(c). • Name, NDC (or, for certain biological products, an alternative, as applicable), and applicant of the product; • Whether the notification is a permanent discontinuance or an interruption in manufacturing; • A description of the reason for the permanent discontinuance or interruption in manufacturing; and Estimated duration of the interruption in manufacturing.
Dissemination of information	§ 314.81(b)(3)(iii)(*c*)	§ 310.306(c). § 314.81(b)(3)(iii)(*c*). § 600.82(c).
	FDA will publicly disclose a list of all drug products discontinued under § 314.81(b)(3)(iii)(*a*).	FDA will maintain public lists of drugs and biological products determined by FDA to be in shortage, including the names, NDCs (or, for certain biological products, an alternative, as applicable), and each applicant of the product (or, for marketed unapproved prescription drugs, each manufacturer of the product); the reason for the shortage; and the estimated duration of the shortage.
Confidentiality	Not specified in regulation, but information submitted to FDA under the regulation is subject to protections for trade secrets and confidential commercial and financial information where applicable.	§ 314.81(b)(3)(iii)(*d*) § 600.82(d) Includes specific reference to protection of trade secrets and confidential commercial information submitted to FDA under the proposed rule and allows FDA to choose not to make certain other information public if it determines that would adversely affect the public health.
	No equivalent provision	§ 20.100(c)(45).

TABLE 1—CURRENT REGULATION (IFR) COMPARED WITH PROPOSED RULE—Continued

Requirement	Current regulation (IFR)	Proposed rule
Noncompliance	No equivalent provision	Cross-reference to disclosure provisions in §§ 310.306, 314.81, and 600.82. § 310.306(b). § 314.81(b)(3)(iii)(e). § 600.82(e). If an applicant of a covered drug or biological product, or manufacturer of a covered, marketed unapproved prescription drug, fails to submit a notification required under the proposed rule within the required timeframe, FDA will issue a publicly available noncompliance letter to the applicant or unapproved drug manufacturer.

A. Persons Subject to the Proposed Rule

Proposed §§ 310.306, 314.81(b)(3)(iii), and 600.82 would require notification to FDA of a permanent discontinuance or an interruption in manufacturing of a covered drug or biological product. Under the proposed rule, the following persons would be subject to these notification requirements:

- All applicants with an approved NDA or ANDA for a covered drug product (proposed § 314.81(b)(3)(iii)).
- All applicants with an approved BLA for a covered biological product, other than blood or blood components (proposed § 600.82(a)(1)).
- Applicants with an approved BLA for blood or blood components, if the applicant is a manufacturer of a significant percentage of the U.S. blood supply (proposed § 600.82(a)(2)).
- All manufacturers of a covered drug product marketed without an approved NDA or ANDA (proposed § 310.306, which applies § 314.81(b)(3)(iii) in its entirety to covered drug products marketed without an approved NDA or ANDA).

Section 506C of the FD&C Act as amended by FDASIA requires a "manufacturer" to notify FDA of a permanent discontinuance or an interruption in manufacturing. The proposed rule would require the ANDA, NDA, or BLA applicant (for approved drugs or biological products) or the unapproved drug manufacturer (for marketed, unapproved drugs) to notify FDA of a permanent discontinuance or an interruption in manufacturing.

For purposes of section 506C of the FD&C Act, under the proposed rule an ANDA, NDA, or BLA applicant would be considered the manufacturer of an approved, covered product, even if the ANDA, NDA, or BLA applicant contracts that function out to another entity. In other words, the proposed rule makes clear that for approved, covered drugs and biological products, the ANDA, NDA, or BLA applicant bears the responsibility for reporting to FDA a permanent discontinuance or an interruption in manufacturing, whether the product is manufactured by the applicant itself or for the applicant under contract with one or more different entities.

As such, the ANDA, NDA, or BLA applicant should establish a process with any relevant contract manufacturer, active pharmaceutical ingredient (API) supplier, or other nonapplicant that ensures the applicant's compliance with this proposed rule. For example, assume that Applicant X holds an ANDA, NDA, or BLA for a covered drug or biological product and contracts with a third party to manufacture the drug or biological product for the purposes of marketing and selling the drug or biological product in the United States. If the third party contract manufacturer experiences a manufacturing issue that results in a permanent discontinuance or an interruption in manufacturing of Applicant X's product that would be reportable under proposed § 314.81(b)(3)(iii) or § 600.82, Applicant X, not the contract manufacturer, must notify FDA of this permanent discontinuance or interruption in manufacturing. Therefore, Applicant X should establish a process with the contract manufacturer that ensures Applicant X's ability to timely report to FDA the permanent discontinuance or interruption in manufacturing.

Section 506C(i)(3) of the FD&C Act, as amended by FDASIA, directs FDA to "take into account any supply reporting programs [for biological products] and . . . aim to reduce duplicative notification" in applying section 506C to biological products by regulation. Accordingly, with respect to blood or blood components, we are proposing to limit this rule only to applicants that are manufacturers of a "significant percentage of the United States blood supply." As described more fully in sections II.B.2.c and II.C.1.b.ii, FDA believes that this approach with respect to blood or blood components will ensure that the Agency receives information that is essential to preventing shortages of these products, without being unnecessarily duplicative of existing systems or unduly burdensome to industry. For purposes of this proposed rule, FDA intends to consider an applicant that holds a BLA for blood or blood components to be a manufacturer of a "significant percentage" of the U.S. blood supply if the applicant manufactures 10 percent or more of the U.S. blood supply (e.g., greater than 1.5 million units of whole blood annually or approximately 125,000 units per month).

B. Products Subject to the Proposed Rule

1. Prescription Drug and Biological Products That Are Life Supporting, Life Sustaining, or Intended for Use in the Prevention or Treatment of a Debilitating Disease or Condition

The proposed rule would apply to all prescription drug products approved under an NDA or ANDA (proposed § 314.81(b)(3)(iii)), all marketed unapproved prescription drug products (proposed § 310.306), and all prescription biological products approved under a BLA (proposed § 600.82) that are:

- Life supporting; life sustaining; or intended for use in the prevention or treatment of a debilitating disease or condition, including any such product used in emergency medical care or during surgery; and
- not radiopharmaceutical products.[6]

FDASIA does not define the terms "life supporting," "life sustaining," or "intended for use in the prevention or treatment of a debilitating disease or

[6] With respect to blood and blood components for transfusion, the reporting requirement applies only to an applicant that manufactures a significant percentage of the U.S. blood supply.

condition," but instead requires FDA to define them. Proposed §§ 314.81(b)(3)(iii)(*f*) and 600.82(f) would define a "life supporting or life sustaining" drug product as one that is "essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life." This definition of "life supporting" or "life sustaining" is consistent with language used to describe this term in the preamble to the final rule implementing the pre-FDASIA section 506C (72 FR 58993 at 58994 (October 18, 2007)), and in medical device regulations (see 21 CFR 821.3(g)).

Under the proposed rule, "intended for use in the prevention or treatment of a debilitating disease or condition" would refer to "a drug product intended for use in the prevention or treatment of a disease or condition associated with mortality or morbidity that has a substantial impact on day-to-day functioning" (proposed §§ 314.81(b)(3)(iii)(*f*) and 600.82(f)). We have equated "debilitating disease or condition" with "serious disease or condition" under this proposed definition and defined it according to the definition of "serious" found in 21 CFR 312.300. This definition of "intended for use in the prevention or treatment of a debilitating disease or condition" is also consistent with our discussion of the term in the preamble to the proposed rule implementing the pre-FDASIA section 506C (65 FR 66665 at 66666 (November 7, 2000)).

When defining these terms, we also took into account comments we received on the IFR, including: A request for additional clarity on how these terms relate to FDA's use of the term "medically necessary" with respect to drug and biological product shortages; comments recommending that FDA interpret this terminology to require notification for "medicines at risk of being in shortage"; and a related comment suggesting that once FDA identifies "medicines at risk of being in shortage," the Agency should establish a mechanism for the purchase and storage of advance supplies of drugs on the list. According to this comment, this "government stockpile" could prevent shortages from occurring or mitigate the impact of an unavoidable shortage.

In response to the first comment, the proposed definitions of "life supporting or life sustaining" and "intended for use in the prevention or treatment of a debilitating disease or condition" are, in important respects, different than FDA's definition of "medically necessary" as used in the context of the existing Center for Drug Evaluation and Research (CDER) Manual of Policies and Procedures (MAPP) on drug shortages (CDER MAPP 6003.1) (Ref. 2 of this proposed rule). FDA considers a product to be medically necessary under this internal MAPP if "there is no other adequately available drug product that is judged by medical staff to be an appropriate substitute" (Ref. 2 of this proposed rule). Under this proposed rule, the applicant would be required to notify FDA of a permanent discontinuance or an interruption in manufacturing of a drug or biological product that is life supporting, life sustaining, or intended for use in the prevention or treatment of debilitating disease or condition, whether or not the product is considered medically necessary under the MAPP. Under the MAPP, FDA uses the definition of medically necessary to prioritize the Agency's response to specific shortages or potential shortages and to allocate resources appropriately.

In response to the second group of comments, the proposed rule does not define either "life supporting or life sustaining" or "intended for use in the prevention or treatment of debilitating disease or condition" to mean "medicines at risk of being in shortage," because shortages are often triggered by factors related to manufacturing and product quality that cannot be anticipated in advance, making it difficult, if not impossible, to accurately predict drugs or biological products that are vulnerable to shortage. This suggested interpretation of these terms would also be inconsistent with the statutory text, which defines drugs subject to the notification provisions by their uses, and contains separate language to explain when risks to supply require a notification.

Finally, in response to the suggestion to create a national stockpile of drugs and biological products vulnerable to shortage, FDA concludes that this is beyond the scope of the current proposal, which is to implement amended sections 506C and 506E of the FD&C Act.

We are interested in comments on the definitions of "life supporting or life-sustaining" and "intended for use in the prevention or treatment of a debilitating disease or condition." FDA believes these definitions are consistent with the industry's (and Agency's) current understanding of the terms, and that more information rather than less is essential for resolving drug shortages. However, we are specifically interested in comments on whether these definitions might unintentionally broaden the scope of reporting to such an extent that the Agency is "over-notified," particularly in the context of the requirement for applicants to notify FDA of a meaningful disruption in *the manufacturer's* supply, without regard to the market as a whole (see section III.C.1. for further discussion on meaningful disruption in supply).

2. Biological Products

Section 506C of the FD&C Act, as amended, states that for purposes of this section the term "drug" does not include biological products as defined in section 351(i) of the Public Health Service Act, unless the Secretary of Health and Human Services (the Secretary) applies section 506C to such products by regulation. Section 506C(i)(3) of the FD&C Act provides that FDA may, by regulation, apply section 506C to biological products, "including plasma products derived from human plasma protein and their recombinant analogs" if "the Secretary determines that such inclusion would benefit the public health," taking into account "any [existing] supply reporting programs" and aiming to reduce "duplicative notification." Additionally, FDA may apply section 506C of the FD&C Act to vaccines, but the Secretary must determine whether notification of a vaccine shortage to the Centers for Disease Control and Prevention (CDC) under its "vaccine shortage notification program" could satisfy a vaccine manufacturer's obligation to notify FDA of a permanent discontinuance or an interruption in manufacturing under section 506C.

We are proposing to apply section 506C of the FD&C Act to all biological products, including recombinant therapeutic proteins, monoclonal antibody products, vaccines, allergenic products, plasma-derived products and their recombinant analogs, blood or blood components, and cellular and gene therapy products. Like drug shortages, shortages of biological products can have serious negative consequences for patients who rely on these products for their treatment. For example, recent shortages of biological products such as agalsidase beta (Fabrazyme), peginterferon alfa-2a (Pegasys), and BCG[7] Live (Intravesical) (TheraCys) have adversely affected patient care. Fabrazyme is indicated for the treatment of Fabry's disease, a life shortening, inherited disease caused by a deficiency of alpha-galactosidase A, an enzyme needed to metabolize lipids. The Fabrazyme shortage resulted from contamination at the manufacturing

[7] BCG is an attenuated live culture preparation of the Bacillus of Calmette and Guerin (BCG) strain of *Mycobaterium bovis*.

plant and led to rationing of the product at one-third the recommended dose for current patients using the drug. As a result of the reduced doses, some patients reported a progression of Fabry's disease, including serious adverse events affecting the heart, central nervous system, and kidneys. Similarly, shortages of the antiviral drug Pegasys and the bladder cancer biological drug TheraCys threatened the timely treatment of patients with debilitating diseases, interrupting the continuity (and potentially undercutting the effectiveness) of treatment for patients prescribed these medications as well as preventing new patients from obtaining these medications.

Early notification of a permanent discontinuance or an interruption in the manufacturing of biological products would allow FDA to address, prevent, or mitigate a shortage of these products, greatly benefiting the public health. In addition, for the reasons described in this document, we have determined that requiring manufacturers of biological products to notify FDA under this proposed rule would not duplicate the existing reporting programs of which we are aware.

a. Plasma-derived products and their recombinant analogs. As stated previously, we are proposing to apply section 506C of the FD&C Act to all biological products, including plasma products derived from human plasma protein and their recombinant analogs (referred to in this document as plasma-derived products and their recombinant analogs). With respect to plasma-derived products and their recombinant analogs, FDA recognizes that the Plasma Protein Therapeutics Association (PPTA) has developed a voluntary data system that captures the distribution and supply of five plasma product groups in the United States: Plasma-Derived Factor VIII, Recombinant Factor VIII, Immune Globulin (Ig), Albumin 5%, and Albumin 25%. The PPTA, in consultation with a third party, voluntarily submits a monthly report to FDA of aggregate distribution data for these five product groups. This information provides a picture of the total supply and distribution of these five products in any given month as compared to the last 12 months (see, e.g., *http://www.pptaglobal.org/UserFiles/file/Sept2012PDfviii.pdf*). (FDA has verified the Web sites in this document but is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

FDA recognizes and greatly appreciates the efforts by PPTA to provide plasma product supply information to FDA and the public. However, in addition to the PPTA system, for several reasons we believe that it would benefit the public health for the Agency to receive direct notification under this proposed rule from all manufacturers of these products. First, the PPTA system does not include all plasma-derived products and their recombinant analogs. FDA has approved many plasma-derived products (and their recombinant analogs) that are not included in the PPTA monthly report, but that would be subject to this proposed rule, such as Rho(D) Immune Globulin and Hepatitis B Immune Globulin; Coagulation Factor VIIa (Recombinant); and Coagulation Factor IX.

Second, the product distribution data is submitted to PPTA (and subsequently to FDA) on a voluntary basis; reporting under this proposed rule would be mandatory. Finally, the PPTA data is aggregate distribution data derived from historical supply and demand. Unlike the notifications proposed under this rule, it is not real-time data, nor does it capture the types of circumstances that would be considered a "permanent discontinuance" or an "interruption in manufacturing" under this proposed rule. Rather, as described previously, the PPTA data provides a snapshot of current aggregate supply as compared to historical supply. It is not intended to identify circumstances that could lead to a future permanent discontinuance or an interruption in manufacturing of all plasma-derived products and their recombinant analogs.

Because the PPTA program, although helpful, does not serve the same purpose as notification under this proposed rule, including plasma-derived products and their recombinant analogs in this rulemaking will not duplicate the PPTA system. FDA believes that including these products within the scope of the proposed rule is essential to FDA's efforts to identify permanent discontinuances and interruptions in manufacturing of these products, and consequently, essential to our efforts to address, prevent, or mitigate shortages of these products.

b. Vaccines. We are proposing to apply section 506C of the FD&C Act to all biological products, including vaccines. Under section 506C(i)(3)(B) of the FD&C Act, if FDA applies section 506C to vaccines, the Secretary must specifically consider whether the notification requirement may be satisfied by submitting a notification to CDC under CDC's "vaccine shortage notification program."

CDC contracts with vaccine manufacturers as part of the Vaccines for Children (VFC) program.[8] FDA recognizes that CDC includes language in its contracts with vaccine manufacturers requiring the manufacturer to notify CDC of vaccine supply issues that could affect the manufacturer's ability to fulfill its contract with CDC.[9]

Only certain vaccines are included under the existing CDC program, and thus, only manufacturers of certain vaccines are obligated to provide notification of supply issues to CDC. Based on information from CDC, FDA estimates that approximately 30 percent of vaccines licensed in the United States are not subject to CDC notification, including vaccines for rabies, yellow fever, and typhoid.

Moreover, even for the vaccines that are subject to CDC notification, the information collected is not adequate for purposes of this rule, because the existing CDC program does not require vaccine manufacturers to provide notice 6 months in advance of a permanent discontinuance or interruption in manufacturing. Early notice of permanent discontinuances and interruptions is critically important to the prevention of drug shortages. Although FDA and its HHS partners work together closely on vaccine supply issues, and the current framework for CDC notification is useful for contractual purposes, FDA believes including vaccines within the scope of this rulemaking is necessary to fully support FDA's efforts to identify, address, prevent, or mitigate a vaccine shortage and would not be duplicative of existing notification systems.

c. Blood or blood components for transfusion. We are proposing to apply section 506C of the FD&C Act to blood

[8] The VFC program is a federally funded program that provides vaccines at no cost to children and adults who might not otherwise be vaccinated because of inability to pay. VFC was created by the Omnibus Budget Reconciliation Act of 1993 as a new entitlement program to be a required part of each state's Medicaid plan. CDC buys vaccines at a discount from the manufacturers and distributes them to awardees—i.e., State health departments and certain local and territorial public health Agencies—who in turn distribute them at no charge to those private physicians' offices and public health clinics registered as VFC providers. (See *http://www.cdc.gov/vaccines/programs/vfc/index.html*.)

[9] The Biomedical Advanced Research and Development Authority (BARDA), which is responsible for the procurement of certain vaccines related to medical countermeasures, also includes similar language in its procurement contracts. Contracts for the procurement of medical countermeasures against chemical, biological, nuclear, and radiological threat agents (e.g. smallpox and anthrax vaccines) are administered by BARDA, part of the Office of the Assistant Secretary for Preparedness and Response in the U.S. Department of Health and Human Services (HHS). (See *http://www.hhs.gov/aspr*.)

or blood components, but in a more limited manner than for other biological products. The proposed rule would require blood or blood component applicants (i.e., blood collection establishments subject to licensure) that manufacture a significant percentage of the U.S. blood supply to notify FDA of a permanent discontinuance or an interruption in manufacturing that is likely to lead to a "significant disruption" in the applicant's supply of blood or blood components. As described more fully in sections II.A and II.C.1.b.ii, the proposed rule is intended to require reporting of large-scale, permanent discontinuances, or interruptions in manufacturing of blood or blood components.

The proposed rule would ensure that FDA receives information essential to the Agency in preventing, mitigating, or addressing shortages of blood or blood components, while avoiding duplication with existing programs that monitor local and regional supplies of blood or blood components by ABO blood group. We are aware of two significant efforts to monitor local and regional supplies of blood or blood components.

i. America's Blood Centers and the Blood Availability and Safety Information System. America's Blood Centers (ABC) is a network of nonprofit community blood centers in North America. ABC members operate more than 600 blood collection sites in 45 states and provide blood or blood components to more than 3,500 hospitals and health care facilities. ABC also maintains a voluntary supply monitoring program for blood and blood components. Information on local and regional blood supply is provided weekly to ABC members nationwide through a newsletter, and online (see *http://www.americasblood.org/stoplight.aspx*). In addition, ABC and certain other large licensed blood establishments provide voluntary, daily blood supply reports to HHS, which maintains a system called the Blood Availability and Safety Information System (BASIS) (see *https://www.usbloodreport.net/About.aspx*). Certain sentinel hospitals also voluntarily provide inventory reports to the BASIS system, and these data are compiled into a weekly status report on blood supplies, stratified by ABO blood group. Upon request, FDA receives BASIS reports from HHS.

The ABC and BASIS systems monitor the supply and demand of blood or blood components on a daily and weekly basis, and in the event of a national disaster. In other words, ABC and BASIS are tools for local blood centers and hospitals to track their day-to-day inventory of blood or blood components. Unlike the notifications required under this proposed rule, ABC and BASIS are not designed to predict large-scale or nationwide disruptions in the supply of blood or blood components. Moreover, ABC and BASIS are voluntary systems; the proposed rule would require mandatory reporting.

ii. Task Force. Also critical to the management of the national blood supply is the coordinating function of the Interorganizational Task Force on Domestic Disasters and Acts of Terrorism (Task Force), which is managed by the AABB (formerly the American Association of Blood Banks). The Task Force was formed in January 2002 to help make certain that blood collection efforts resulting from domestic disasters and acts of terrorism are managed properly, and to deliver clear and consistent messages to the public regarding the status of the U.S. blood supply. The Task Force is comprised of representatives from blood establishments, trade associations, commercial entities, and liaisons from governmental Agencies (including FDA), who work together to ensure that adequate blood inventories are in place at all times. In addition, the Task Force operates a system for assessing the need for collections and transportation of blood components, should a disaster or act of terrorism occur.

Again, the Task Force efforts, although critical to public health, are focused on inventory management and are not intended to predict large-scale disruptions in the supply of blood or blood components. The Task Force coordinates the movement of blood throughout the United States and appeals to the public for blood donations, but it is not sufficient for FDA in the context of predicting a permanent discontinuance or an interruption in manufacturing of these products that would have a large-scale impact.

In short, although the information already available to FDA from the ABC, BASIS, and Task Force programs is useful, the existing frameworks are voluntary, do not result in a direct notification from an applicant to FDA, and, as explained previously, only capture short-term, day-to-day supply and distribution information. In addition, in contrast to this proposed rule, the existing systems are not equipped to predict large-scale, significant disruptions of blood or blood components. Accordingly, FDA has determined that including blood or blood components within the scope of this rule would benefit the public health, providing information that is essential to FDA's efforts to address shortages of these products.

However, recognizing that the existing ABC, BASIS, and Task Force programs do provide certain information concerning the supply of blood or blood components, we have limited the proposed reporting requirements to apply only to applicants of blood or blood components that manufacture a significant percentage of the U.S. blood supply, and only to a permanent discontinuance of manufacture or an interruption in manufacturing that is likely to lead to a "significant disruption" in supply of that blood or blood component, as further described in sections II.A and II.C.1.

d. Distribution reports (for all biological products). Under § 600.81 (21 CFR 600.81), applicants are required to submit to the Center for Biologics Evaluation and Research (CBER) or CDER, information about the quantity of product distributed under the biologics license, including the quantity distributed to distributors. As part of this safety reporting requirement, manufacturers provide distribution data to FDA every 6 months or at other intervals as may be required by FDA. Although distribution reports submitted by applicants are helpful in the analysis of safety reporting data, particularly for newly approved products, these reports do not include information about a permanent discontinuance or an interruption of the manufacture of a biological product that is likely to lead to a meaningful disruption in the supply of that product. Furthermore, the production cycles of biological products vary widely (e.g., some are manufactured once a year, some are manufactured every other year, and some are manufactured more or less frequently), such that any distribution data received from the manufacturer at 6-month intervals for such products will not be current. Therefore, FDA has determined that the reporting requirements under § 600.81 do not constitute a duplicate supply reporting program.

In summary, we are proposing to apply section 506C of the FD&C Act to all biological products. For the reasons discussed in this document, FDA finds that this inclusion would benefit the public health by facilitating prompt FDA action to address, prevent, or mitigate drug shortages, without duplicating existing reporting programs or creating redundant reporting. With respect to vaccines, for the reasons already described, we have determined that notification to CDC is not sufficient for purposes of reporting to FDA under

section 506C of the FD&C Act and may not replace section 506C notifications.

3. Scope of the Term "Product"

For purposes of this proposed rule, "product" refers to a specific strength, dosage form, or route of administration of a drug or biological product. For example, if Applicant X experiences an interruption in manufacturing of the 50-milligram (mg) strength of a drug product that would be subject to proposed § 314.81(b)(3)(iii), but the 100 mg strength continues to be manufactured without delay, under the proposed rule, Applicant X must notify FDA of the interruption in manufacturing of the 50 mg strength if the interruption is likely to lead to a meaningful disruption in the applicant's supply of the 50 mg strength. Recent experience has shown that the permanent discontinuance or interruption in manufacturing of a specific strength, dosage form, or route of administration of a drug or biological product can have a significant impact on the targeted needs of particular patients (e.g., although the 100 mg tablet from Applicant X is available, it may not be split in half easily for a patient that is prescribed the 50 mg strength).

Moreover, shortages of a specific strength, dosage form, or route of administration may lead to a shortage of another strength, dosage form, or route of administration of the product, exacerbating patient difficulties in acquiring the product. Obtaining this information is consistent with the emphasis in the IFR on the importance of notifying FDA of permanent or temporary interruptions in supply of a specific strength, dosage form, or route of administration of covered products (76 FR 78530 at 78533), and with the general support for this approach we received in comments on the IFR.

C. Notification of a Permanent Discontinuance or an Interruption in Manufacturing

1. Notification

a. Permanent discontinuance. Section 506C of the FD&C Act requires manufacturers to notify FDA of a permanent discontinuance of manufacture of a covered drug. Proposed §§ 314.81(b)(3)(iii) and 600.82 would require the applicant to report all permanent discontinuances of covered drugs and biological products to FDA. For purposes of this rule, we are interpreting a permanent discontinuance to be a decision by the applicant for business or other reasons to cease manufacturing and distributing the product indefinitely.

b. Interruption in manufacturing. In addition to permanent discontinuances, section 506C of the FD&C Act requires manufacturers to notify FDA of an interruption in manufacturing of a covered drug that is likely to lead to a meaningful disruption in supply of that drug in the United States. The statute defines "meaningful disruption" to mean "a change in production that is reasonably likely to lead to a reduction in the supply of a drug *by a manufacturer* that is more than negligible and affects the ability of *the manufacturer* to fill orders or meet expected demand for its product; and does not include interruptions in manufacturing due to matters such as routine maintenance or insignificant changes in manufacturing so long as the manufacturer expects to resume operations in a short period of time" (emphasis added).

i. Drugs and biological products other than blood or blood components. Proposed §§ 314.81(b)(3)(iii)(*a*) and 600.82(a)(1) would require the applicant for a product other than blood or blood components to report to FDA an interruption in manufacturing of the drug or biological product that is likely to lead to a meaningful disruption in supply of that drug or biological product in the United States. Proposed §§ 314.81(b)(3)(iii)(*f*) and 600.82(f) would adopt the statutory definition of meaningful disruption in supply.

Consistent with the statutory definition of meaningful disruption, the proposed rule would require an applicant to report an interruption in manufacturing likely to lead to a meaningful disruption in its *own supply* of a covered drug or biological product. In other words, when evaluating whether an interruption in manufacturing is reportable to FDA under this proposed rule, rather than considering the potential impact of the interruption on the market as a whole, the relevant question (regardless of how large or small the applicant's market share may be) is whether the interruption is likely to lead to a reduction in the applicant's supply of a covered drug or biological product that is more than negligible, and affects the ability of the applicant to fill its own orders or meet the expected demand of its clients for the covered product. Consistent with the statute, the proposed rule would not require an applicant to predict the market-wide impact of its own interruption in manufacturing, which can be difficult to accurately assess and could lead to inconsistent interpretation of the regulation, less accurate predictions, and under- or reporting, as suggested by multiple comments on the IFR.

Under the proposed rule, reportable discontinuances or interruptions in manufacturing of a covered drug or biological product would include:

- A business decision to permanently discontinue manufacture of a covered drug or biological product.
- A delay in acquiring APIs or inactive ingredients that is likely to lead to a meaningful disruption in the applicant's supply of a covered drug or biological product while alternative API suppliers are located.
- Equipment failure or contamination affecting the quality of a covered drug or biological product that necessitates an interruption in manufacturing while the equipment is repaired or the contamination issue is addressed and that is likely to lead to a meaningful disruption in the applicant's supply of the product.
- Manufacturing shutdowns for maintenance or other routine matters, if the shutdown extends for longer than anticipated or otherwise is likely to lead to a meaningful disruption in the applicant's supply of a covered drug or biological product.
- A merger of firms or transfer of an application for a covered drug or biological product to a new firm, if the merger or transfer is likely to lead to a meaningful disruption in the applicant's supply of the product.
- An interruption in manufacturing (e.g., contamination of a manufacturing line) that in the applicant's view may not meaningfully disrupt the market-wide supply of the covered drug or biological product (for example, because the applicant holds only a small share of the market for the product), but that the applicant determines is likely to lead to a meaningful disruption in its own supply of the covered product.

Conversely, an applicant would not be required under the proposed rule to notify FDA if an interruption in manufacturing is not likely to lead to a meaningful disruption in the applicant's supply of the drug or biological product. For example, FDA would not need to be notified in the following circumstances:

- A scheduled shutdown of an applicant's manufacturing facility for routine maintenance, if the shutdown is anticipated and planned for in advance; and therefore, is not expected to lead to a meaningful disruption in the applicant's supply of a covered drug or biological product.
- An unexpected power outage that results in an unscheduled interruption in manufacturing of a covered drug or biological product, if the applicant expects to resume normal operations

within a relatively short timeframe and does not expect to experience a meaningful disruption in its supply of the covered drug or biological product.

In either of these circumstances, if the interruption in manufacturing subsequently appears likely to lead to a meaningful disruption in the applicant's supply of the covered drug or biological product, then it would become a reportable interruption in manufacturing under this proposed rule and the applicant would be required to notify FDA.

The list of examples described in this document is intended to assist industry in understanding what would (or would not) be required to be reported under amended section 506C of the FD&C Act, but it is not exhaustive. The proposed rule would require *any* permanent discontinuance or *any* interruption in manufacturing that is likely to lead to a meaningful disruption in the applicant's supply of a covered drug or biological product to be reported to FDA, even if not specifically described in this preamble.

ii. Blood or blood components for transfusion. Proposed § 600.82(a)(2) would require an applicant that manufactures a significant percentage of the U.S. blood supply to report to FDA an interruption in manufacturing of a blood or blood component that is likely to lead to a "significant disruption" in supply of that product in the United States. As we discussed in section II.A, an applicant that manufactures 10 percent or more of the U.S. blood supply (e.g., greater than 1.5 million units of whole blood annually or approximately 125,000 units per month), would be considered to manufacture a significant percentage of the U.S. blood supply for purposes of this proposed rule. Proposed § 600.82(f) defines "significant disruption" to mean "a change in production that is reasonably likely to lead to a reduction in the supply of blood or blood components by a manufacturer that substantially affects the ability of the manufacturer to fill orders or meet expected demand for its product; and does not include interruptions in manufacturing due to matters such as routine maintenance or insignificant changes in manufacturing so long as the manufacturer expects to resume operations in a short period of time." This definition of significant disruption closely follows, but is not identical to, the statutory and regulatory definition of meaningful disruption.

For purposes of the proposed rule, FDA intends to consider an interruption in manufacturing that leads to a reduction of 20 percent or more of an applicant's own supply of blood or blood components over a one-month period to "substantially affect" the ability of the applicant to fill orders or meet expected demand; accordingly, such an interruption would be considered a "significant disruption" in supply. Again, when determining when an interruption in manufacturing is likely to lead to a significant disruption in supply, the blood or blood component applicant should not consider the market as a whole, but rather, should consider only its own supply of product.

The proposed definition of "significant disruption" (interpreted to mean affecting 20 percent or more of an individual applicant's supply over a one-month period) as applied to blood or blood components, in combination with the limitation of the proposed rule only to applicants of blood or blood components that manufacture a significant percentage (10 percent or more) of the nation's blood supply, is intended to avoid duplication with existing programs to monitor the daily and weekly distribution of blood or blood components described in section II.B.2.c. As described in that section, in general, existing programs maintained by ABC, BASIS, and the Task Force monitor and resolve temporary, local shortfalls of a particular ABO blood group or a particular blood component. Accordingly, the definition of "significant disruption" is intended to capture events that are likely to precipitate large-scale disruptions in an applicant's blood supply, and that are unlikely to be identified and corrected by the existing ABC, BASIS, and Task Force programs. The additional limitation of the proposed rule to applicants that manufacture a significant percentage of the nation's blood supply further ensures that reporting to FDA will not unnecessarily duplicate reporting to the ABC, BASIS, and Task Force systems, but still allows FDA to receive information that is essential to the Agency in preventing large-scale shortages of these products.

Under the proposed rule, circumstances that would trigger notification to FDA of a permanent discontinuance or an interruption in manufacturing of blood or blood components would include the following examples. We recognize that, with the exception of the first example of a permanent discontinuance, the following interruptions are unlikely to be reasonably anticipated 6 months in advance. In that case they would be reportable as soon as practicable, but in no case later than 5 business days after the interruption in manufacturing occurs:

- A business decision by an applicant that manufactures 10 percent or more of the nation's blood supply to permanently discontinue manufacture of blood or blood components;
- A computer system failure that causes an applicant of a blood establishment that collects 10 percent or more of the nation's blood supply to be unable to label blood for 2 weeks, resulting in a 20 percent monthly shortfall of blood for that applicant;
- An issue with blood collection bags, such that they are unavailable, causing an applicant that manufactures 10 percent or more of the nation's blood supply to experience a 20 percent monthly shortfall in normal production for that applicant;
- An issue with apheresis collection devices that causes an applicant of a blood establishment that collects 10 percent or more of the nation's blood supply to be unable to collect platelets by apheresis, resulting in a 20 percent monthly shortfall in platelet supply for that applicant;
- An explosion or fire that damages a large testing laboratory that performs blood testing for an applicant that manufactures 10 percent or more of the nation's blood supply, resulting in a 20 percent monthly shortfall of blood or blood components for that applicant.

Conversely, a covered blood or blood component applicant would not be required under the proposed rule to notify FDA if an interruption in manufacturing is not likely to lead to a significant disruption in the applicant's supply of blood or blood components. For example, FDA would not need to be notified if a covered blood or blood component applicant experiences a temporary drop in blood donations at one of its local blood donation centers, such that it is unable to fully supply its hospital customers with blood for several days, provided the donation center quickly returns to its normal donation and supply levels and the dip in blood donations is not likely to lead to a 20 percent decrease in the applicant's overall supply of blood over a one-month period. We expect that this type of situation would be identified and resolved through the ABC, BASIS, and Task Force systems (e.g., these systems would identify the issue and locate temporary, alternative blood supplies for the applicant's customers). If such an event does lead to a significant disruption in a covered applicant's supply of blood or blood components, it would need to be reported to FDA under the proposed rule.

Again, the list of examples described in this document is intended to assist industry in understanding what must be reported under amended section 506C of the FD&C Act, but the list is not exhaustive. The proposed rule would require *any* permanent discontinuance or *any* interruption in manufacturing that is likely to lead to a significant disruption (as defined by the proposed rule) in a covered applicant's supply of blood or blood components to be reported to FDA, even if not specifically discussed in this preamble.

c. Consideration of comments to the IFR. Several comments on the IFR suggested alternative ways of defining circumstances that must be reported to FDA under pre-FDASIA section 506C of the FD&C Act. We have considered whether these may be relevant to amended section 506C of the FD&C Act. For example, one comment suggested that historical supply and demand should be considered when determining whether to notify FDA under section 506C of the FD&C Act. Specifically, the comment suggested that notification should only be required if an interruption in manufacturing is expected to affect the supply of the product based on "historical inventory levels and other factors." Another comment suggested that an applicant should be required to report to FDA only after the disruption in supply occurs, for example when it is "unable to ship 90 percent or more of its full quantity of [covered] product as reasonably ordered by its customers for more than 4 weeks." In other words, the applicant should report to FDA if it experiences a 10 percent reduction in supply for a 4-week period. A third comment suggested that notification should be required when an event causes an applicant to predict that patients will be unable to obtain a covered product for a certain, extended period of time (e.g., at the point when an applicant projects that it will be unable to ship the drug or biological product to customers for 8 weeks).

Although we agree that it could be appropriate to consider historical supply and demand or shipping schedules in deciding whether a notification would be required under this proposed rule, we decline to limit the term "interruption in manufacturing that is likely to lead to a meaningful disruption in supply" to consideration only of such factors, and we decline to define the requirement by codifying a preset, numerical threshold. The purpose of FDASIA, and this proposed rule, is to improve FDA's ability to prevent or mitigate the impact of drug and biological product shortages by broadening the scope of information that the Agency receives regarding permanent discontinuances and interruptions in manufacturing. If reportable circumstances are limited to situations in which a manufacturer is unable to ship a certain percentage of historic demand for a certain period time, or unable to ship at all for a certain period of time, some circumstances that could lead to a shortage may not be reported to FDA, putting the Agency at a disadvantage in addressing those situations.

For example, if notification under this proposed rule is triggered only by the inability of an applicant to ship at least 90 percent of its full quantity of a particular drug product as reasonably ordered by its customers for more than 4 weeks (10 percent reduction in supply), if an applicant were able to ship 92 percent of its supply (i.e., it experiences an 8 percent reduction in supply), the interruption would not be reportable to FDA. Yet this interruption in manufacturing may still have an impact on a patient's ability to obtain the product and could still lead to a product shortage that is "more than negligible."

Instead, this proposed rule defines "meaningful disruption in supply" consistent with the statutory text, and this preamble provides examples of reportable interruptions in manufacturing as illustrations for industry. An applicant may, at its discretion, analyze historical supply and demand and estimate shipping schedules to help determine whether an interruption in manufacturing is likely to lead to a meaningful disruption in supply, but the applicant should not substitute a rigid calculation for a full consideration of all circumstances applicable to determining whether the change in production is reasonably likely to lead to a reduction in supply that is more than negligible and that affects the manufacturer's ability to fill orders or meet expected demand for its product.

2. Timing and Submission of Notification

a. Timing of notification. Section 506C of the FD&C Act requires notification to FDA "(1) at least 6 months prior to the date of the permanent discontinuance or interruption [in manufacturing]; or (2) if compliance with paragraph (1) is not possible, as soon as practicable." Consistent with the statute, proposed §§ 314.81(b)(3)(iii)(*b*) and 600.82(b) would require an applicant to notify FDA of a permanent discontinuance or an interruption in manufacturing at least 6 months in advance of the date of the permanent discontinuance or interruption in manufacturing; or, if 6 months' advance notice is not possible, as soon as practicable thereafter, but in no case later than 5 business days after the permanent discontinuance or interruption in manufacturing occurs.

The Agency's most powerful tool for addressing drug and biological product shortages is early notification, which provides lead time for FDA to work with manufacturers and other stakeholders to prevent a shortage or to mitigate the impact of an unavoidable shortage. As such, we expect that applicants would provide 6 months' advance notice whenever possible. In particular, FDA believes that an applicant will generally know of a permanent discontinuance at least 6 months in advance, and in that case the applicant would be required to provide notification of a permanent discontinuance to FDA at least 6 months in advance. We understand that an applicant may not reasonably be able to anticipate certain interruptions in manufacturing that are likely to lead to a meaningful disruption in supply 6 months in advance. For example, if an applicant discovers fungal contamination that requires an immediate, temporary shutdown of its manufacturing plant for a covered product, the applicant will not be able to provide FDA with 6 months' advance notice of the interruption in manufacturing. Instead, the proposed rule would require the applicant to notify FDA "as soon as practicable," but in no case more than 5 business days after the interruption in manufacturing occurs. In this example, the applicant would need to notify FDA as soon as it reasonably anticipates that an interruption in manufacturing caused by fungal contamination is *likely* to result in a meaningful disruption in supply of the applicant's product. The applicant should not wait until it or its manufacturer begins rejecting or delaying fulfillment of orders for the product from available inventory (i.e., the applicant should not wait until the interruption in manufacturing actually begins to disrupt supply and affect patient access to the product).

In our experience, even if it is not possible for an applicant to notify the Agency before a permanent discontinuance or an interruption in manufacturing occurs, it should generally be possible for the applicant to provide notice within a day or two, and it should *always* be possible for the applicant to notify the Agency no later than 5 days after the permanent discontinuance or interruption occurs, even in the event of a natural disaster

or some other catastrophic incident. Accordingly, the 5-day provision in our proposal represents a date certain after which FDA would be able to take action under section 506C(f) of the FD&C Act against an applicant for failure to comply with the notification requirements (see section II.C.5 of this document for further discussion of the consequences of failure to notify FDA). Additionally, an applicant that could have notified the Agency before five days had passed, but waited until the end of the 5-day period would be in violation of the proposed regulation. Consistent with the statutory intent, whenever possible, applicants would be required to provide us with advance notice, whether 6 months' advance notice, or "as soon as practicable" thereafter (e.g., 3 months' advance notice).

b. Submission of notification. Proposed §§ 314.81(b)(3)(iii)(*b*) and 600.82(b) would require an applicant to notify FDA of a permanent discontinuance or an interruption in manufacturing electronically in a format FDA can process, review, and archive. Applicants must email notifications to *drugshortages@fda.hhs.gov* (for products regulated by CDER) or *cbershortage@fda.hhs.gov* (for products regulated by CBER). In the future, the Agency may consider creating an electronic notification portal linked to the Agency's internal drug shortages database to facilitate submission of these notifications. Unless and until this portal is created, however, email notifications will be used.

c. Reduction in notification period for "good cause". Under the pre-FDASIA section 506C(b), a manufacturer could seek, and FDA could grant, a reduction in the required 6-month advance notification period for "good cause." The statute listed several reasons that would constitute "good cause," including when continuing to manufacture the product for the full 6-month notification period could cause a public health problem or result in substantial economic or legal hardship for the manufacturer. The regulation at § 314.91 implemented the pre-FDASIA section 506C(b). Because section 506C of the FD&C Act as amended by FDASIA does not include an option for formally seeking a reduction in the 6-month advance notification period based on "good cause," this rule proposes to eliminate § 314.91 in its entirety.

3. Contents of the Notification

Proposed §§ 314.81(b)(3)(iii)(*c*) and 600.82(c) would require an applicant to include the following items in notifications submitted under section 506C(a) of the FD&C Act:

- The name of the drug or biological product subject to the notification, including the NDC for the drug or biological product (or, for a biological product that does not have an NDC, an alternative standard for identification and labeling that has been recognized as acceptable by the Center Director);
- The name of the applicant of the drug or biological product;
- Whether the notification relates to a permanent discontinuance of the drug or biological product or an interruption in manufacturing of the drug or biological product;
- A description of the reason for the permanent discontinuance or interruption in manufacturing; and
- The estimated duration of the interruption in manufacturing.

FDA is proposing to require applicants to include the minimum information listed in this document in the initial notification to assist the Agency in complying with section 506E of the FD&C Act, which requires FDA to maintain a publicly available list of drugs in shortage, as described in section II.C.4 of this document. We recognize that the duration of an interruption in manufacturing can be difficult to accurately predict. The applicant should provide FDA with its best estimate of the expected duration of the interruption in manufacturing. If, after the initial notification is submitted, the estimated duration changes, the applicant should notify FDA of the new expected duration of the interruption in manufacturing so that FDA can respond appropriately. In addition, the applicant should include a detailed, factual description of the reason for the shortage in the notification to assist FDA in responding to the notification.

In addition to the proposed required elements of the notification, applicants are encouraged to include any other information in the notification that may be helpful to the Agency in working with the applicant to resolve the permanent discontinuance or interruption in manufacturing. Such information could include the applicant's market share, inventory on hand or in distribution channels, allocation procedures and/or plans for releasing available product, copies of communications to patients and providers regarding the shortage (e.g., Dear Healthcare Professional letters), or initial proposals to prevent or mitigate the shortage. As appropriate, the Agency will also follow up with the applicant after the notification is submitted to obtain additional information and to work with the applicant to facilitate resolution of any shortage or potential shortage.

4. Public Lists of Products in Shortage

Section 506E of the FD&C Act requires FDA to maintain a publicly available list of drugs (and biological products, if FDA applies section 506C to biological products by regulation) that are determined by FDA to be in shortage, including providing the names and NDCs of the drugs, the name of each manufacturer of the drug, the reason(s) for the shortage, and the estimated duration of the shortage. Section 506C(h)(2) of the FD&C Act defines "drug shortage" to mean "a period of time when the demand or projected demand for the drug within the United States exceeds the supply of the drug." For purposes of section 506E of the FD&C Act, under the proposed rule, the ANDA, NDA, or BLA applicant would be considered the manufacturer of an approved drug or biological product, even if the ANDA, NDA, or BLA applicant contracts that function out to another entity.

Section 506E of the FD&C Act further requires FDA to include on the drug shortages list the reason for the shortage, choosing from the following statutory list of categories:

- Requirements relating to complying with current good manufacturing practices (CGMPs);
- Regulatory delay;
- Shortage of an active ingredient;
- Shortage of an inactive ingredient component;
- Discontinuation of the manufacture of the drug;
- Delay in shipping of the drug; and
- Demand increase in the drug.

Consistent with the statute, and with FDA's current practice, under proposed §§ 310.306(b), 314.81(b)(3)(iii)(*d*), and 600.82(d), FDA would maintain publicly available lists of drugs and biological products that are determined by FDA to be in shortage, whether or not FDA has received a notification under this proposed rule concerning the product in shortage. Proposed §§ 314.81(b)(3)(iii)(*f*) and 600.82(f) adopt the statutory definition of drug shortage (substituting "biological product shortage" for "drug shortage" in § 600.82(f)). Under the proposed rule, the shortages lists would include the following required statutory elements for drugs or biological products in shortage: Names and NDCs (or the alternative standard for certain biological products) of the drugs or biological products, names of each applicant, reason for each shortage, and estimated duration of each shortage.

If FDA has received a notification under the proposed rule for the drug or biological product, FDA would consider the reason for the shortage supplied by the applicant in its notification, and, where applicable, other relevant information before the Agency, in determining how to categorize the reason for the shortage under the proposed rule. Consistent with the statute, the Agency, not the applicant, would be responsible for determining which categorical reason best fits a particular situation. FDA would generally choose the categorical reason that best fits the applicant's supplied description. To facilitate FDA's determination of the categorical reason for the shortage, under the proposed rule we would expect applicants to supply as many details and facts as possible concerning the reason for the permanent discontinuance or interruption in manufacturing when submitting a 506C notification. This information would also assist FDA in responding quickly to the notification. FDA works proactively with applicants and others experiencing issues that could lead to a product shortage. We are committed to working with industry to address any underlying quality or manufacturing issues, and we seek to avoid shutdowns and long-term interruptions in supply whenever possible to ensure continued patient access to vital safe and effective drugs and biological products.

If FDA has not received a notification under the proposed rule, but becomes aware of a shortage through other means, FDA would consider information before the Agency when determining and choosing the reason for the shortage to be included on the public list.

In addition to the list of statutory reasons for the shortage that FDA may choose from, we are also proposing to add an eighth category, entitled "Other reason." We are proposing to add this category because the Agency believes that some quality or manufacturing problems that result in a shortage may not fit into any of the listed categories in the statute (e.g., not all quality concerns are the result of noncompliance with CGMPs). The Agency would only choose "Other reason" if none of the other listed reasons is applicable. For example, an interruption in manufacturing as a result of a natural disaster or other catastrophic loss would fall into the "Other reason" category. Moreover, as described in this document, although FDA may choose the "Other reason" category, the public shortages list would also include a brief summary of the reason for the shortage submitted by the applicant, thus providing additional information to the public on the cause of the shortage.

As noted previously, the proposed rule would codify, consistent with FDASIA, FDA's current practice of maintaining public lists of drugs and biological products in shortage, available on FDA's Web site at *http://www.fda.gov/drugs/drugsafety/drugshortages/default.htm* (drug shortages) and *http://www.fda.gov/BiologicsBloodVaccines/SafetyAvailability/Shortages/default.htm* (biological product shortages).

FDA's current drug shortages list was reorganized after the enactment of FDASIA to begin implementing revised section 506E of the FD&C Act. The drug shortages list now includes six categories of information about each drug product on the list: Company (manufacturer of product and contact information); Product (name, strength, formulation, dosage, and NDC); Availability and Estimated Shortage Duration; Related Information (includes applicant's submitted description of reason for shortage); Shortage Reason (FDA-determined reason for the shortage, chosen from the list in proposed §§ 314.81(b)(3)(iii)(*d*)); and Date Updated (last date FDA updated the information for that particular product). The biological product shortage list includes similar information in fields for Product Name, Reason for Shortage, and Status.

In reformatting and revising the drug shortages list and drafting this proposed rule, we considered several comments on the IFR and other suggestions from stakeholders to improve the Agency's public communication about shortages. We agree that communication between FDA and interested stakeholders, including industry, providers (such as physicians, pharmacists, and nurses), and patients, is an essential component of preventing and mitigating both drug and biological product shortages. FDA updates the drug and biological product shortages lists regularly, and strives to communicate in "real-time" so that patients and providers have the most current data available for planning purposes.

Moreover, consistent with section 506D(d) of the FD&C Act, FDA is encouraging patients, providers, pharmacists, and other nonapplicants to communicate with the Agency about potential shortages or disruptions in supply via one of the following email addresses: *drugshortages@fda.hhs.gov* or *cbershortage@fda.hhs.gov*. FDA is already in frequent contact with third parties to collect and disseminate shortage-related information, and we hope the availability of these dedicated email addresses will further facilitate communication. We are continuing to work diligently to improve our drug and biological product shortages Web sites and to consider new methods for communicating with all stakeholders about shortages. We appreciate suggestions on how to do this more effectively.

5. Confidentiality and Disclosure

In general, as required by section 506C(c) and 506E of the FD&C Act, and as described in this document, FDA will publicly disclose, to the maximum extent possible, information on drug shortages, including information provided by applicants in a notification of a permanent discontinuance or an interruption in manufacturing.

Proposed §§ 314.81(b)(3)(iii)(*d*) and 600.82(d) contain an exception to these provisions, stating that FDA may choose not to make information collected under the authority of this proposed rule available to the public on the drug or biological product shortages lists or under its general obligation to disseminate drug shortage information under section 506C(c) of the FD&C Act if the Agency determines that disclosure of such information would adversely affect the public health (such as by increasing the possibility of hoarding or other disruption of the availability of the drug or biological product to patients). These proposed provisions closely track the statutory language in sections 506C(c)(3) and 506E(c)(3) of the FD&C Act.

In addition, proposed §§ 310.306(c), 314.81(b)(3)(iii)(*d*), and 600.82(d) state that FDA will not provide on the public drug or biological product shortages lists or under section 506C(c) of the FD&C Act, information that is protected by 18 U.S.C. 1905 or 5 U.S.C. 552(b)(4), including trade secrets and commercial or financial information that is considered confidential or privileged under 21 CFR 20.61. These proposed provisions would ensure appropriate protection for commercial and trade secret information protected by other Federal law and are consistent with the statutory language in sections 506C(d) and 506E(c)(2) of the FD&C Act, which clarify that the information provisions in sections 506C and 506E do not alter or amend 18 U.S.C. 1905 or 5 U.S.C. 552(b)(4). Additionally, by reference to section 506E of the FD&C Act, the Agency's obligation to disseminate to the public, to the maximum extent possible, drug shortage information under section 506C(c) does not alter or

amend the protections afforded by 18 U.S.C. 1905 or 5 U.S.C. 552(b)(4). FDA is also proposing a technical amendment to § 20.100 to include a cross-reference to §§ 310.306, 314.81, and 600.82. Proposed § 20.100 describes, by cross-reference to other regulations, the rules on public availability of certain specific categories of information.

One comment on the IFR expressed concern that FDA had not discussed how the Agency would preserve the confidentiality of proprietary information reported to FDA in the context of (pre-FDASIA) section 506C notifications. The comment was specifically concerned that as FDA attempts to mitigate a potential drug shortage by contacting manufacturers to increase production, it might reveal confidential information, even if the interruption in manufacturing by the original manufacturer is only temporary. Proposed §§ 314.81(b)(3)(iii)(*d*) and 600.82(d) are intended to make clear that FDA will adhere to applicable laws to protect trade secrets and confidential commercial information as it works to mitigate or prevent a shortage.

6. Failure To Notify

Proposed §§ 310.306(b), 314.81(b)(iii)(3)(*e*), and 600.82(e) would require FDA to issue a noncompliance letter to an applicant (or, for a covered, unapproved drug, to a manufacturer) who fails to submit a section 506C notification as required under proposed §§ 314.81(b)(iii)(3)(*a*) and 600.82(a) within the timeframe stated in proposed §§ 314.81(b)(iii)(3)(*b*) and 600.82(b). Consistent with the statute, as proposed in this rule, failure to notify FDA would include failure to *timely* notify FDA. For example, if FDA discovers that an applicant did not notify FDA of the permanent discontinuance of a covered drug or biological product 6 months in advance, even though the applicant anticipated the permanent discontinuance 6 months in advance, FDA would issue a noncompliance letter under this proposed rule. Similarly, if FDA determines that an applicant experienced a reportable interruption in manufacturing that it could not reasonably anticipate 6 months in advance, but the applicant failed to notify FDA "as soon as practicable," the proposed rule would require FDA to issue a noncompliance letter. Refer to section II.C.2.a of this document for a discussion of the required timing for section 506C notifications.

As required by statute, the proposed rule would provide the applicant with 30 days from the date of issuance of the noncompliance letter to respond to the letter. The applicant's response must set forth the basis for noncompliance and provide the required notification with the required information. Under the proposed rule, not later than 45 days after the date of issuance of the letter, FDA would make the letter and the applicant's response public, after appropriate redaction to protect any trade secret or confidential commercial information. FDA would not make the letter and the applicant's response public if FDA determines, based on the applicant's response, that the applicant had a reasonable basis for not notifying FDA as required.

IV. Legal Authority

FDA is amending its regulations to implement sections 506C and 506E of the FD&C Act (21 U.S.C. 356c and 356e) as amended by FDASIA. FDA's authority for this rule also derives from section 701(a) of the FD&C Act (21 U.S.C. 371(a)).

V. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). OMB has determined that this proposed rule may be an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The estimated per notification cost for small business entities, $224, represents a small percentage of average annual sales (up to 0.10 percent), for all entities covered by the proposed rule. Although the final rule does not require specific mitigation strategies, for firms that choose to implement mitigation or prevention strategies, there could be additional costs of $112,000 associated with labor resources. For pharmaceutical companies with fewer than 20 workers, these could be 2 to 7.8 percent of average annual sales. In FDA's experience, 4–5 small business entities per year have been affected by a shortage. For these companies, the average annual sales was $17.54 million, and the estimated costs of implementing mitigation or prevention strategies would represent less than 0.64 percent of their average annual sales. The Agency anticipates that the proposed rule will not have a significant economic impact on a substantial number of small entities, and seeks comments on its Initial Regulatory Flexibility Analysis.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $141 million, using the most current (2012) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Summary

The proposed rule would amend FDA's regulations to implement sections 506C and 506E of the FD&C Act, as amended by FDASIA. The proposed rule would require all applicants of covered, approved drugs or biological products other than blood or blood components, all applicants of blood or blood components that manufacture a significant percentage of the U.S. blood supply, and all manufacturers of covered drugs marketed without an approved application, to notify FDA electronically of a permanent discontinuance or an interruption in manufacturing of the product that is likely to lead to a meaningful disruption in supply (or a significant disruption for blood or blood components) of the product in the United States. Notification would be required 6 months in advance of the permanent discontinuance or interruption in manufacturing, or, if that is not possible, as soon as practicable. The proposed rule also describes how to submit such a notification, the information required to be included in such a notification, the consequences for failure to submit a required notification, the disclosure of shortage-related information, and the meaning of certain terms.

The proposed rule would impose annual costs of up to $39.34 million on those applicants or entities affected by

the rule, and up to $8.29 million on FDA associated with reporting and undertaking mitigation strategies. Estimated total annual costs of the interactions between industry and FDA range between $14.99 million and $47.62 million. Discounting over 20 years, annual quantified benefits from avoiding the purchase of alternative products, managing product shortages, and life-years gained, would range from $27.56 million to $86.77 million using a 3 percent discount rate, and from $27.50 million to $86.61 million using a 7 percent discount rate. Annualized over 20 years, net benefits range from $12.57 million to $39.15 million using a 3 percent discount rate, and from $12.51 million to $38.99 million using a 7 percent discount rate. The public health benefits, mostly nonquantified, include the value of information that would assist FDA, manufacturers, health care providers, and patients in evaluating, mitigating, and preventing shortages of drugs and biological products that could otherwise result in non-fatal adverse events, errors, delayed patient treatment, or interruption in clinical trial development. The costs and benefits are summarized in table 2. Under the current environment all notifications provide meaningful information to identify a shortage or to prevent one, but there is uncertainty as to whether the scope of the proposed rule could result in notifications that do not provide information about any shortage and lead to additional costs. FDA seeks comments on this issue.

The full discussion of economic impacts is available in docket FDA–2011–N–0898 and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 3 of this proposed rule).

TABLE 2—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Year dollars	Discount rate	Period covered	Notes
Benefits							
Annualized Monetized (millions $/year).	$57.165 $57.055	$27.556 $27.501	$86.773 $86.609	2012 2012	3% 7%	2014–33 2014–33	There is uncertainty surrounding these estimates since some underlying estimates came from non-representative studies.
Annualized Quantified	.....	.....	.....	.....	3% 7%	2014–33 2014–33	20–63 preventable shortages per year.
Qualitative	Reduction in errors and non-fatal adverse events associated with shortages. Uninterrupted patient access to drugs and biological products necessary for treatment; continued access to drugs used in clinical trial development.						
Costs							
Annualized Monetized (millions $/year).	$31.306 $31.306	$14.990 $14.990	$47.621 $47.621	2012 2012	3% 7%	2014–33 2014–33	There is uncertainty about potential noise from notifications that might not provide meaningful information, but which could result in additional review costs. In addition, these estimates assume that applicants will participate in mitigation or preventive strategies.
Annualized Quantified	None estimated.						
Qualitative	None estimated.						
Transfers							
Federal Annualized Monetized (millions $/year).	None estimated.						
Other Annualized Monetized (millions $/year).	None estimated.						
Effects							
State, Local or Tribal Gov't.	None.						
Small Business	FDA anticipates that when finalized, small business entities covered by the proposed rule will incur small costs, $224 per notification or up to 0.10 percent of their average annual sales. Although the proposed rule would not require it, some firms may choose to incur additional costs associated with mitigation or prevention strategies.						
Wages	No estimated effect.						
Growth	No estimated effect.						

VI. Paperwork Reduction Act of 1995

This proposed rule contains collections of information that 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 PRA). A description of these provisions is given below with an annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. .

FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Permanent Discontinuance or Interruption in Manufacturing of Certain Drug or Biological Products; Proposed Rule

Description: Under the proposed rule, applicants with an approved NDA or ANDA for a covered drug product, manufacturers of a covered drug product marketed without an approved application, and applicants with an approved BLA for a covered biological product (including certain applications of blood or blood components) would be required to notify FDA in writing of a permanent discontinuance of the manufacture of the drug or biological product or an interruption in manufacturing of the drug or biological product that is likely to lead to a meaningful disruption in the applicant's supply (or a significant disruption for blood or blood components) of that product. The notification would be required if the drug or biological product is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including use in emergency medical care or during surgery, and if the drug or biological product is not a radiopharmaceutical drug product.

The proposed rule would require the notification to include the following information: (1) The name of the drug or biological product subject to the notification, including the NDC (or, for a biological product that does not have an NDC, an alternative standard for identification and labeling that has been recognized as acceptable by the Center Director); (2) the name of each applicant of the drug or biological product; (3) whether the notification relates to a permanent discontinuance of the drug or biological product or an interruption in manufacturing of the product; (4) a description of the reason for the permanent discontinuance or interruption in manufacturing; and (5) the estimated duration of the interruption in manufacturing.

Under the proposed rule, the notification would be required to be submitted to FDA electronically at least 6 months prior to the date of the permanent discontinuance or interruption in manufacturing. If 6 months' advance notice is not possible because the permanent discontinuance or interruption in manufacturing was unanticipated 6 months in advance, the applicant would be required to notify FDA as soon as practicable, but in no case later than 5 business days after the permanent discontinuance or interruption in manufacturing occurs.

If an applicant fails to submit the required notification, the proposed rule would require FDA to issue a letter informing the applicant or manufacturer of its noncompliance. The applicant would be required to submit to FDA, not later than 30 calendar days after FDA issues the letter, a written response setting forth the basis for noncompliance and providing the required notification.

Description of Respondents: Applicants of prescription drugs and biological products subject to an approved NDA, ANDA, or BLA, and manufacturers of prescription drug products marketed without an approved ANDA or NDA, if the product is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including use in emergency medical care or during surgery, and is not a radiopharmaceutical product. If the BLA applicant is a manufacturer of blood or blood components, it is only subject to this rule if it manufactures a significant percentage of the nation's blood supply.

Burden Estimates: Based on the number of drug and biological product shortage related notifications we have seen during the past 12 months, we estimate that annually a total of approximately 75 respondents ("number of respondents" in table 3) would notify us of a permanent discontinuance of the manufacture of a drug or biological product or an interruption in manufacturing of a drug or biological product that is likely to lead to a meaningful disruption in the respondent's supply of that product under the proposed rule. We estimate that these respondents would submit annually a total of approximately 305 notifications as required under proposed §§ 310.306, 314.81(b)(3)(iii), and 600.82. Approximately 80 of these notifications are notifications that we currently receive under OMB control number 0910–0699 for the IFR, thus we expect to receive approximately 225 new notifications under the proposed rule ("total annual responses" in table 3).[10] We estimate three notifications per respondent, because a respondent may experience multiple discontinuances or interruptions in manufacturing in a year that require notification ("no. of responses per respondent" in table 3). We also estimate that preparing and submitting these notifications to FDA would take approximately 2 hours per respondent ("hours per response" in table 3).

We base these estimates on our experience with the reporting of similar information to FDA since the issuance of the President's Executive Order 13588 of October 31, 2011 (Ref. 1 of this proposed rule), and under the interim final rule entitled "Applications for Food and Drug Administration Approval To Market a New Drug; Revision of Postmarketing Reporting Requirements—Permanent" (76 FR 78530; December 19, 2011), and the draft guidance entitled "Draft Guidance for Industry on Notification to Food and Drug Administration of Issues That May Result in a Prescription Drug Shortage" (77 FR 11550; February 27, 2012).

FDA estimates the burden of this collection of information as follows:

[10] This estimate is based on the number of new notifications we would receive under the proposed rule as compared to notifications we currently receive under the IFR. The IFR is our baseline for comparison for purposes of estimating the burden under the PRA, because additional notifications that we may currently receive, but that are not required under the IFR (e.g., as requested in the draft guidance for industry on Notification to the Food and Drug Administration of Issues That May Result in a Prescription Drug Shortage) are not covered under any existing OMB control number, and thus must be captured in this PRA estimate. In contrast, the preliminary analysis of impacts of the proposed rule estimates the costs and benefits of the proposed rule as compared to current practice. As a result of the use of different baselines for comparison, the estimate of new notifications under the PRA does not match the estimate of new notifications included in the preliminary analysis of impacts (see Table 2B of Ref. 3, which estimates the number of new notifications we would receive under the proposed rule, as compared to the number of notifications the Agency receives currently, including all voluntary notifications not specifically required by the IFR).

TABLE 3—ESTIMATED REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Notifications required under proposed §§ 310.306 (unapproved drugs), 314.81(b)(3)(iii) (products approved under an NDA or ANDA), and 600.82 (products approved under a BLA)	75	3	225	2	450

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding the information collection by December 4, 2013, to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7245, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the title of this information collection and should include the FDA docket number found in brackets in the heading of this document.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, does not contain policies that 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. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) 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.

IX. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments 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*.

X. 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*. (FDA has verified all the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**).

1. Executive Order 13588, Reducing Prescription Drug Shortages, October 31, 2011, available at *http://www.gpo.gov/fdsys/pkg/FR-2011-11-03/pdf/2011-28728.pdf*, accessed November 2012.
2. Center for Drug Evaluation and Research, Manual of Policies and Procedures 6003.1, Drug Shortage Management, September 26, 2006, available at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDER/ManualofPoliciesProcedures/ucm079936.pdf*, accessed November 2012.
3. Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis for Permanent Discontinuance or Interruption in Manufacturing of Certain Drug or Biological Products; Proposed Rule, available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*.

List of Subjects

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 20, 310, 314, and 600 be amended as follows:

PART 20—PUBLIC INFORMATION

■ 1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393; 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 2. Revise § 20.100 by adding paragraph (c)(45) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(45) Postmarket notifications of a permanent discontinuance or an interruption in manufacturing of certain drugs or biological products, in §§ 310.306, 314.81(b)(3)(iii), and 600.82 of this chapter.

PART 310—NEW DRUGS

■ 3. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356c, 356e, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 4. Add § 310.306 to subpart D to read as follows:

§ 310.306 Notification of a permanent discontinuance or an interruption in manufacturing of marketed prescription drugs for human use without approved new drug applications.

(a) *Applicability.* Marketed prescription drug products that are not the subject of an approved new drug or abbreviated new drug application are subject to this section.

(b) *Notification of a permanent discontinuance or an interruption in manufacturing.* The manufacturer of each product subject to this section must make the notifications required under § 314.81(b)(3)(iii) of this chapter and otherwise comply with § 314.81(b)(3)(iii) of this chapter. If the manufacturer of a product subject to this section fails to provide notification as required under § 314.81(b)(3)(iii), FDA will send a letter to the manufacturer and otherwise follow the procedures set forth under § 314.81(b)(3)(iii)(*e*).

(c) *Drug Shortages List.* FDA will include on the drug shortages list required by § 314.81(b)(3)(iii)(*d*) drug products that are subject to this section that it determines to be in shortage. For such drug products, FDA will provide the names of each manufacturer rather than the names of each applicant. With respect to information collected under this paragraph FDA will observe the confidentiality and disclosure provisions set forth in § 314.81(b)(3)(iii)(*d*)(*2*).

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 5. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 356e, 371, 374, 379e.

■ 6. Revise § 314.81 paragraph (b)(3)(iii) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(3) * * *

(iii) *Notification of a permanent discontinuance or an interruption in manufacturing.*

(*a*) An applicant of a prescription drug product must notify FDA in writing of a permanent discontinuance of manufacture of the drug product or an interruption in manufacturing of the drug product that is likely to lead to a meaningful disruption in supply of that drug in the United States if:

(*1*) The drug product is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including any such drug used in emergency medical care or during surgery; and

(*2*) The drug product is not a radiopharmaceutical drug product.

(*b*) Notifications required by paragraph (b)(3)(iii)(*a*) of this section must be submitted to FDA electronically in a format that FDA can process, review, and archive:

(*1*) At least 6 months prior to the date of the permanent discontinuance or interruption in manufacturing; or

(*2*) If 6 months' advance notice is not possible because the permanent discontinuance or interruption in manufacturing was not reasonably anticipated 6 months in advance, as soon as practicable thereafter, but in no case later than 5 business days after the permanent discontinuance or interruption in manufacturing occurs.

(*c*) Notifications required by paragraph (b)(3)(iii)(*a*) of this section must include the following information:

(*1*) The name of the drug subject to the notification, including the NDC for such drug;

(*2*) The name of the applicant;

(*3*) Whether the notification relates to a permanent discontinuance of the drug or an interruption in manufacturing of the drug;

(*4*) A description of the reason for the permanent discontinuance or interruption in manufacturing; and

(*5*) The estimated duration of the interruption in manufacturing.

(*d*)(*1*) FDA will maintain a publicly available list of drugs that are determined by FDA to be in shortage. This drug shortages list will include the following information:

(*i*) The names and NDC(s) for such drugs;

(*ii*) The name of each applicant for such drugs;

(*iii*) The reason for the shortage, as determined by FDA from the following categories: Requirements related to complying with good manufacturing practices; regulatory delay; shortage of an active ingredient; shortage of an inactive ingredient component; discontinuation of the manufacture of the drug; delay in shipping of the drug; demand increase for the drug; or other reason; and

(*iv*) The estimated duration of the shortage.

(*2*) FDA may choose not to make information collected to implement this paragraph available on the drug shortages list or available under section 506C(c) of the FD&C Act if FDA determines that disclosure of such information would adversely affect the public health (such as by increasing the possibility of hoarding or other disruption of the availability of drug to patients). FDA will also not provide information on the public drug shortages list or under section 506C(c) of the FD&C Act that is protected by 18 U.S.C. 1905 or 5 U.S.C. 552(b)(4), including trade secrets and commercial or financial information that is considered confidential or privileged under § 20.61.

(*e*) If an applicant fails to submit a notification as required under paragraph (b)(3)(iii)(*a*) of this section and in accordance with paragraph (b)(3)(iii)(*b*) of this section, FDA will issue a letter to the applicant informing it of such failure.

(*1*) Not later than 30 calendar days after the issuance of such a letter, the applicant must submit to FDA a written response setting forth the basis for noncompliance and providing the required notification under paragraph (b)(3)(iii)(*a*) of this section and including the information required under paragraph (b)(3)(iii)(*c*) of this section; and

(*2*) Not later than 45 calendar days after the issuance of a letter under paragraph (b)(3)(iii)(*e*) of this section, FDA will make the letter and the applicant's response to the letter public, unless, after review of the applicant's response, FDA determines that the applicant had a reasonable basis for not notifying FDA as required under paragraph (b)(3)(iii)(*a*) of this section.

(*f*) The following definitions of terms apply to paragraph (b)(3)(iii) of this section:

Drug shortage or *shortage* means a period of time when the demand or projected demand for the drug within the United States exceeds the supply of the drug.

Intended for use in the prevention or treatment of a debilitating disease or condition means a drug product intended for use in the prevention or treatment of a disease or condition associated with mortality or morbidity that has a substantial impact on day-to-day functioning.

Life supporting or life sustaining means a drug product that is essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life.

Meaningful disruption means a change in production that is reasonably likely to lead to a reduction in the supply of a drug by a manufacturer that is more than negligible and affects the ability of the manufacturer to fill orders or meet expected demand for its product, and does not include interruptions in manufacturing due to matters such as routine maintenance or

insignificant changes in manufacturing so long as the manufacturer expects to resume operations in a short period of time.

* * * * *

§ 314.91 [Removed]

■ 7. Remove § 314.91.

PART 600—BIOLOGICAL PRODUCTS: GENERAL

■ 8. The authority citation for 21 CFR part 600 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 356c, 356e, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

■ 9. Add § 600.82 to subpart D to read as follows:

§ 600.82 Notification of a permanent discontinuance or an interruption in manufacturing.

(a) *Notification of a permanent discontinuance or an interruption in manufacturing.*

(1) An applicant of a biological product, other than blood or blood components for transfusion, which is licensed under section 351 of the Public Health Service Act, and which may be dispensed only under prescription under section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)), must notify FDA in writing of a permanent discontinuance of manufacture of the biological product or an interruption in manufacturing of the biological product that is likely to lead to a meaningful disruption in supply of that biological product in the United States if:

(i) The biological product is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including any such biological product used in emergency medical care or during surgery; and

(ii) The biological product is not a radiopharmaceutical biological product.

(2) An applicant of blood or blood components for transfusion, which is licensed under section 351 of the Public Health Service Act, and which may be dispensed only under prescription under section 503(b) of the Federal Food, Drug, and Cosmetic Act, must notify FDA in writing of a permanent discontinuance of manufacture of any product listed in its license or an interruption in manufacturing of any such product that is likely to lead to a significant disruption in supply of that product in the United States if:

(i) The product is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including any such product used in emergency medical care or during surgery; and

(ii) The applicant is a manufacturer of a significant percentage of the U.S. blood supply.

(b) *Submission and timing of notification.* Notifications required by paragraph (a) of this section must be submitted to FDA electronically in a format that FDA can process, review, and archive:

(1) At least 6 months prior to the date of the permanent discontinuance or interruption in manufacturing; or

(2) If 6 months' advance notice is not possible because the permanent discontinuance or interruption in manufacturing was not reasonably anticipated 6 months in advance, as soon as practicable thereafter, but in no case later than 5 business days after such a permanent discontinuance or interruption in manufacturing occurs.

(c) *Information included in notification.* Notifications required by paragraph (a) of this section must include the following information:

(1) The name of the biological product subject to the notification, including the National Drug Code for such biological product, or an alternative standard for identification and labeling that has been recognized as acceptable by the Center Director;

(2) The name of the applicant of the biological product;

(3) Whether the notification relates to a permanent discontinuance of the biological product or an interruption in manufacturing of the biological product;

(4) A description of the reason for the permanent discontinuance or interruption in manufacturing; and

(5) The estimated duration of the interruption in manufacturing.

(d)(1) *Public list of biological product shortages.* FDA will maintain a publicly available list of biological products that are determined by FDA to be in shortage. This biological product shortages list will include the following information:

(i) The names and National Drug Codes for such biological products, or the alternative standards for identification and labeling that have been recognized as acceptable by the Center Director;

(ii) The name of each applicant for such biological products;

(iii) The reason for the shortage, as determined by FDA, selecting from the following categories: Requirements related to complying with good manufacturing practices; regulatory delay; shortage of an active ingredient; shortage of an inactive ingredient component; discontinuation of the manufacture of the biological product; delay in shipping of the biological product; demand increase for the biological product; or other reason; and

(iv) The estimated duration of the shortage.

(2) *Confidentiality.* FDA may choose not to make information collected to implement this paragraph available on the biological product shortages list or available under section 506C(c) of the FD&C Act if FDA determines that disclosure of such information would adversely affect the public health (such as by increasing the possibility of hoarding or other disruption of the availability of the biological product to patients). FDA will also not provide information on the public shortages list or under section 506C(c) of the FD&C Act that is protected by 18 U.S.C. 1905 or 5 U.S.C. 552(b)(4), including trade secrets and commercial or financial information that is considered confidential or privileged under § 20.61 of this chapter.

(e) *Noncompliance letters.* If an applicant fails to submit a notification as required under paragraph (a) of this section and in accordance with paragraph (b) of this section, FDA will issue a letter to the applicant informing it of such failure.

(1) Not later than 30 calendar days after the issuance of such a letter, the applicant must submit to FDA a written response setting forth the basis for noncompliance and providing the required notification under paragraph (a) of this section and including the information required under paragraph (c) of this section; and

(2) Not later than 45 calendar days after the issuance of a letter under this paragraph, FDA will make the letter and the applicant's response to the letter public, unless, after review of the applicant's response, FDA determines that the applicant had a reasonable basis for not notifying FDA as required under paragraph (a) of this section.

(f) *Definitions.* The following definitions of terms apply to this section:

Biological product shortage or *shortage* means a period of time when the demand or projected demand for the biological product within the United States exceeds the supply of the biological product.

Intended for use in the prevention or treatment of a debilitating disease or condition means a biological product intended for use in the prevention or treatment of a disease or condition associated with mortality or morbidity that has a substantial impact on day-to-day functioning.

Life supporting or life sustaining means a biological product that is

essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life.

Meaningful disruption means a change in production that is reasonably likely to lead to a reduction in the supply of a biological product by a manufacturer that is more than negligible and affects the ability of the manufacturer to fill orders or meet expected demand for its product, and does not include interruptions in manufacturing due to matters such as routine maintenance or insignificant changes in manufacturing so long as the manufacturer expects to resume operations in a short period of time.

Significant disruption means a change in production that is reasonably likely to lead to a reduction in the supply of blood or blood components by a manufacturer that substantially affects the ability of the manufacturer to fill orders or meet expected demand for its product, and does not include interruptions in manufacturing due to matters such as routine maintenance or insignificant changes in manufacturing so long as the manufacturer expects to resume operations in a short period of time.

Dated: October 28, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–25956 Filed 10–31–13; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–351]

Schedules of Controlled Substances: Placement of Tramadol Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to place the substance 2-((dimethylamino)methyl)-1-(3-methoxyphenyl)cyclohexanol, its salts, isomers, salts of isomers, and all isomeric configurations of possible forms including tramadol (the term "isomers" includes the optical and geometric isomers) into Schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (HHS) and an evaluation of all other relevant data by the DEA. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to Schedule IV controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities, or possess) or propose to handle tramadol.

DATES: Interested persons may file written comments on this proposal pursuant to 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before January 3, 2014. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

Interested persons, defined as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)," 21 CFR 1300.01, may file a request for hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and 1316.47. Requests for hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before December 4, 2013.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–351" on all electronic and written correspondence. The DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. An electronic copy of this document and supplemental information to this proposed rule are also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate electronic submissions are not necessary. All comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments in lieu of electronic comments, they should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Ruth A. Carter, Chief, Policy Evaluation and Analysis Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 598–6812.

SUPPLEMENTARY INFORMATION: *Posting of Public Comments:* Please note that comments received in response to this NPRM are considered part of the public record and will be made available for public inspection and posted at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made public, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all of the personal identifying information you do not want to be made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available.

Comments containing personal identifying information and confidential business information identified and located as set forth above will be made available in redacted form. The Freedom of Information Act (FOIA) applies to all comments received. If you wish to personally inspect the comments and materials received or the supporting documentation the DEA used in preparing the proposed action, these materials will be available for public inspection by appointment. To arrange a viewing, please see the **FOR FURTHER INFORMATION CONTACT** paragraph, above.

Request for Hearing, Notice of Appearance at or Waiver of Participation in Hearing

Pursuant to the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551–559). 21 CFR 1308.41–1308.45, and 21 CFR part 1316 subpart D. In accordance with 21 CFR 1308.44(a)–(c), requests for hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)." 21 CFR 1300.01. Such requests or notices must conform to the requirements of 21 CFR 1308.44(a) or (b), and 1316.47 or 1316.48, as applicable, and include a statement of the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and 1316.49, including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of a hearing is restricted to "(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed. * * *" Requests for hearing, notices of appearance at the hearing, and waivers of an opportunity for the hearing or to participate in the hearing should be submitted to the DEA using the address information provided above.

Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, but they are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purposes of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, controlled substances are classified in one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of scheduled substances is published at 21 CFR part 1308. Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, "add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *." Pursuant to 28 CFR 0.100(b), the Attorney General has delegated this scheduling authority to the Administrator of the DEA, who has further delegated this authority to the Deputy Administrator of the DEA. 28 CFR 0.104.

The CSA provides that scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the HHS; or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action is based on a recommendation from the Assistant Secretary for Health of the HHS and on an evaluation of all other relevant data by the DEA. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions of Schedule IV controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities, or possess) or propose to handle tramadol.[1]

Background

Tramadol is an opioid analgesic that produces its primary opioid-like action through an active metabolite, referred to as the "M1" metabolite (O-desmethyltramadol). Since March 1995, tramadol has been available as a non-controlled and centrally acting opioid analgesic under the trade name ULTRAM® approved by the Food and Drug Administration (FDA) in the United States. Subsequently, the FDA approved generic, combination, and extended release products of tramadol.

Because of its chemical structure, 2-((dimethylamino)methyl)-1-(3-methoxyphenyl)cyclohexanol can exist as different isomeric forms. Thus, various prefixes can be associated with the name. Some examples of these prefixes include dextro, levo, d, l, R, S, cis, trans, erythro, threo, (+), (−), racemic, and may include combinations of these prefixes sometimes with numerical designations. Any such isomer is, in fact, 2-((dimethylamino)methyl)-1-(3-methoxyphenyl)cyclohexanol. Tramadol is typically formulated as a racemic mixture identified as (±)-*cis*-2-((dimethylamino)methyl)-1-(3-methoxyphenyl)cyclohexanol hydrochloride.[2]

Proposed Determination To Schedule Tramadol

The DEA received four petitions between October and November 2005 requesting that tramadol be controlled as a scheduled substance under the CSA. Three of these petitions specifically requested the placement of tramadol into Schedule III; the remaining petition did not specify a schedule for control. One of the petitioners stated that "tramadol has significant abuse potential, consistent with its pharmacology. This abuse has significant public health policy implications."

Pursuant to 21 U.S.C. 811(b) of the CSA, the DEA gathered the necessary data on tramadol and, on April 25, 2007 submitted it to the Assistant Secretary of the HHS with a request for a scientific and medical evaluation and the Secretary's recommendation as to whether or not tramadol should be added as a controlled substance, and, if so, in which schedule. On September 16, 2010, the HHS provided to the DEA a written scientific and medical evaluation and scheduling recommendation entitled "Basis for the Recommendation to Schedule Tramadol in Schedule IV of the Controlled Substances Act." In this recommendation, the HHS presented its eight-factor analysis as required under 21 U.S.C. 811(b), and recommended that

[1] See *infra* footnote 2.

[2] For simplicity's sake, from this point forward in the document, "tramadol" is used to refer to 2-((dimethylamino)methyl)-1-(3-methoxyphenyl)cyclohexanol, its salts, isomers, salts of isomers, and all isomeric configurations of possible forms.

tramadol be added to Schedule IV of the CSA. In response, the DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS and all other relevant data, and completed an eight-factor review document pursuant to 21 U.S.C. 811(c) in February 2011. Included below is a brief summary of each factor as analyzed by the HHS in its 2010 transmittal and the DEA in its 2011 analysis, and as considered by the DEA in its proposed scheduling decision. Please note that both the DEA and HHS analyses are available in their entirety under "Supporting and Related Material" of the public docket for this rule at *http://www.regulations.gov* under docket number "DEA–351." Full analysis of, and citations to, information referenced in the summary may also be found in the supporting material.

1. *The Drug's Actual or Relative Potential for Abuse:* Data gathered by the DEA and HHS indicate that since the initial marketing of tramadol in 1995, tramadol has been, and currently is, abused for its opioid effects. The DEA has considered all relevant data and found that:

a. Individuals Are Taking Tramadol in Amounts Sufficient To Create a Hazard to Their Health or to the Safety of Other Individuals or to the Community

Published case reports, case series, and data from databases such as the Drug Abuse Warning Network (DAWN) suggest that individuals are taking tramadol in amounts sufficient to create a hazard to their health, to the safety of other individuals, and to the community. Tramadol abuse is associated with serious adverse events including death, drug dependence, drug withdrawal symptoms, seizures, serotonin syndrome, and other serious medical problems.

DAWN is a database, managed by the Substance Abuse and Mental Health Services Administration (SAMHSA), which collects data on drug-related emergency department (ED) visits from a nationally representative sample of hospitals in the United States and a selection of metropolitan areas. The HHS reviewed and analyzed DAWN data from 2004 through 2008 and found that the estimated annual non-medical[3] Emergency Department (ED) visits from non-medical use of tramadol and its combinations (hereinafter "tramadol/combinations") continually increased from 4,849 ED visits to 11,850 ED visits. The DEA also evaluated more recent DAWN data and found that this increasing trend for tramadol continued in 2009 and 2010 (15,349 and 16,251 ED visits, respectively).

The American Association of Poison Control Centers (AAPCC) manages the National Poison Data System (NPDS), which is the only near real-time comprehensive poisoning surveillance database in the United States. The NPDS collects information from the poison centers across the United States. The HHS reviewed the NPDS data and found that the number of case mentions of human toxic exposures to tramadol during 2004 through 2008 increased annually from 3,769 to 9,623. The DEA reviewed the more recent NPDS data and found that in 2009, 2010, and 2011, the number of reported tramadol poison exposures, alone and in combination with other drugs, totaled 10,255; 11,225; and 12,424, respectively. Of these totals, intentional exposures to tramadol alone (i.e., exposures not including tramadol/combinations or tramadol in combination with any other substances) were 2,677; 2,867; and 3,170, resulting in four deaths in 2009, three deaths in 2010, and six deaths in 2011.

b. There Is a Significant Diversion of Tramadol From Legitimate Drug Channels

The National Forensic Laboratory Information System (NFLIS) is a DEA database that collects scientifically verified data on analyzed samples in state and local forensic laboratories. It also includes data from the System to Retrieve Information from Drug Evidence (STRIDE), which includes data on analyzed samples from DEA laboratories. The data show that for each of the years from 2000 through 2012, tramadol was present in drug exhibits seized in the course of law enforcement activity.[4] The tramadol exhibits seized by law enforcement involving drug abuse indicate the diversion of tramadol in the United States[5] Tramadol exhibits increased from a total of 82 in 2000 to 1,806 in 2012 (NFLIS data). In 2010, this number was greater than the number of exhibits shown to contain pentazocine (96, Schedule IV), but less than the number of hydrocodone (45,627, Schedule III), codeine (3,679, Schedules II, III, V), and buprenorphine (10,167, Schedule III) exhibits (NFLIS data). The number of tramadol exhibits is similar to that of propoxyphene (1,320, Schedule IV) (2010 NFLIS data). However, the reduced number of propoxyphene exhibits (561) in 2011 is significantly less than that of tramadol (1,704) due to the FDA's recommendation to withdraw propoxyphene from the United States market.

A post-marketing study published in 2002 and cited by the HHS's review document reported that among 140 health care professionals who had at least one positive tramadol urine specimen, 87 cases were associated with illegal prescriptions for obtaining tramadol. Another study referred to in the HHS review noted that from January 2002 through March 2004 there were 72 cases involving the diversion of tramadol from all 50 state law enforcement agencies. However, the number of tramadol diversion cases was less than the number of diversion cases associated with hydrocodone and oxycodone.

c. Individuals Are Taking Tramadol on Their Own Initiative Rather Than on the Basis of Medical Advice From a Practitioner Licensed by Law to Administer Such Drugs

The DEA's evaluation found that current evidence indicates that individuals take tramadol on their own initiative without medical consultation. This evidence includes case reports of abuse and dependence on tramadol in the medical literature, national drug abuse monitoring systems, and epidemiological data (DAWN, NFLIS, STRIDE, AAPCC, and the National Survey on Drug Use and Health (NSDUH)).

DAWN data show that from 2004 to 2010, the national annual estimates of ED visits related to non-medical use or

[3] As defined by the DAWN glossary, non-medical use of pharmaceuticals includes prescription and over-the-counter pharmaceuticals in ED visits that are of the following types of cases:

Overmedication—Patient took too much of his/her prescription medication.

Malicious poisoning—Drug use in which the patient was administered a drug by another person for a malicious purpose.

Other—This category includes all drug-related ED visits that could not be assigned into any of the other classifications used by DAWN (suicide, attempt, seeking detox, alcohol only (under 21), adverse reaction, overmedication, malicious poisoning, and accidental ingestion).

Non-medical use may involve pharmaceuticals alone or pharmaceuticals in combination with illicit drugs or alcohol.

[4] Because the primary focus of law enforcement agencies (with respect to drugs) is on investigating the *unlawful* distribution of drugs, the incidents in which tramadol has been seized in the course of law enforcement investigations supports a finding that the drug is being abused and/or diverted from legitimate channels. Moreover, because tramadol is not controlled in most states there is reason to believe that many laboratories may not report those incidents in which they have identified a substance as tramadol. This suggests that tramadol would likely rank substantially higher in NFLIS data were it controlled nationally.

[5] While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted or abused. 76 FR 77330, 77332, Dec. 12, 2011.

abuse[6] of tramadol/combinations increased from 4,849 to 16,251. Upon normalization of the number of non-medical ED visits relative to 100,000 prescriptions dispensed, the rate of ED visits for tramadol/combinations was found similar to the rates for propoxyphene.

The NSDUH, operated by SAMHSA, provides information on the non-medical use of drugs in the United States population age 12 and older and its database provides annual estimates on the lifetime non-medical use of opioids and pain relievers. The estimated number of individuals who have used tramadol products non-medically at least once in their lifetime increased from 994,000 in 2002 to 2,614,000 in 2011.

The NPDS from AAPCC reported that the number of tramadol exposures increased each year between 2004 (3,769 cases) and 2011. In 2011, the number of reported tramadol poison exposures totaled 12,424. Of these total poison exposures in 2011, the intentional exposures to tramadol alone (i.e., not tramadol/combinations or in combination with other substances) were 3,170—six of which resulted in death. These findings indicate that tramadol poses a significant threat to the public health.

d. Tramadol is so Related in Its Action to a Drug or Other Substance Already Listed as Having a Potential for Abuse To Make It Likely That It Will Have the Same Potential for Abuse as Such Substance, Thus Making It Reasonable To Assume That There May Be Significant Diversions From Legitimate Channels, Significant Use Contrary to or Without Medical Advice, or That It Has a Substantial Capability of Creating Hazards to the Health of the User or to the Safety of the Community

According to the HHS review, tramadol shares many similar pharmacological activities with some opioids scheduled under the CSA. As such, the abuse potential of tramadol would be expected to be related to its opioid properties. As a result, tramadol would be expected to be diverted from legitimate sources, be used without medical supervision, and consequently be a safety concern to individuals and the community.

The opioid activity of tramadol is primarily due to the "M1" metabolite. Compared to other opioids, tramadol showed a longer onset of action due to accumulation of the active metabolite and its effects include analgesia, respiratory depression, miosis, cough suppression, and inhibition of bowel motility. Preclinical studies demonstrate that tramadol, like other opioids in Schedules I through IV, exhibits complete generalization to morphine and is able to produce some reinforcing effects. Repeated administration of tramadol in animals caused dependence development, evidenced by a withdrawal syndrome similar in intensity to pentazocine (Schedule IV) or propoxyphene (Schedule IV). Human studies reveal that tramadol produces some reinforcing subjective effects at high doses. A similar dose response pattern at high doses with propoxyphene to produce reinforcing subjective effects was also observed. Thereby, propoxyphene may serve as an appropriate comparator drug for tramadol with respect to generating reinforcing effects. According to the HHS review, several studies examining chemical abuse potential suggest that the subjective reinforcing effect of tramadol is less than that of Schedule II opioids and more comparable to that of propoxyphene.

In summary, the abuse potential of tramadol is similar to that of substances in Schedule IV (such as propoxyphene) of the CSA. The accumulated information demonstrates that individuals take tramadol non-medically and in amounts sufficient to create a hazard to their health. Tramadol is diverted from legitimate sources and produces effects similar to other CSA-controlled opioids known to have an abuse potential. Furthermore, the available information regarding reinforcing effects and drug dependence shows that the abuse potential of tramadol is less than that of morphine (Schedule II), oxycodone (Schedule II), or buprenorphine (Schedule III), but similar to that of propoxyphene (Schedule IV). Additionally, epidemiological data also support an abuse potential for tramadol that is similar to substances in Schedule IV of the CSA. These data suggest that tramadol has an abuse potential warranting control under the CSA.

The DEA and HHS believe that an evaluation of the accumulated information demonstrates that the indicators of a drug's potential for abuse, as described in the legislative history of the CSA, are present for tramadol. Obtained or diverted from legitimate sources, individuals take tramadol in the absence of medical supervision and in amounts sufficient to create a hazard to their health. Tramadol produces effects similar to opioids known to have an abuse potential and that are controlled under the CSA.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* The DEA and HHS recognize tramadol as an opioid analgesic with monoaminergic activity that contributes to its analgesic effects. The M1 metabolite of tramadol contributes to its opioid effects and may be the cause of the delayed and prolonged activity associated with tramadol administration. Tramadol can block the reuptake of norepinephrine and serotonin, effects also produced by such opioids as meperidine (Schedule II), methadone (Schedule II), and levorphanol (Schedule II).

Preclinical animal studies found that tramadol demonstrated a dose-related anti-nociceptive effect. Its analgesic effects were compared to other Schedule III and IV opioid analgesics. In clinical trials for treatment in human subjects, tramadol was less effective than hydrocodone/acetaminophen (Schedule III), but displayed an analgesic effect similar to that of pentazocine (Schedule IV), and superior or similar to the propoxyphene/acetaminophen combination (Schedule IV) in relieving postoperative pain.

Tramadol produces abuse liability-related effects in various animal models and humans. It has been self-administered by monkeys, producing reinforcing effects which qualitatively show a similarity to opioids. In a drug discrimination study using rats, tramadol was shown to produce systematic generalization to morphine. Similar to other opioids in Schedules II through IV, tramadol fully substituted for discriminative effects of morphine and morphine fully substituted for tramadol. Drug discriminative studies showed that tramadol is comparable to other Schedule III and IV opioids. Physical dependence of tramadol has been demonstrated in studies on animals and humans.

Most adverse effects are related to tramadol's opioid activity including sedation, nausea, vomiting, constipation, and respiratory depression. However, a small but significant portion of individuals who use tramadol will experience seizures. The risk of seizures increases with dose and is relatively common among tramadol abusers. Further, clinical studies show that tramadol, at a single dose greater than the therapeutically prescribed-dose, produces subjective reinforcing effects that are significantly greater than those of placebos, and are similar to or approach those produced by morphine and oxycodone. A similar dose dependency in producing subjective reinforcing effects was also

[6] Since 2004, DAWN has defined "drug misuse or abuse" as a group of ED visits including all visits associated with the non-medical use of pharmaceuticals.

observed with propoxyphene at doses greater than the therapeutically prescribed dose. This similarity between tramadol and propoxyphene provides support for a similar abuse potential and placement of tramadol into Schedule IV.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* The chemical name of tramadol hydrochloride is (±)-*cis*-2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol hydrochloride. Tramadol hydrochloride has a molecular formula of $C_{16}H_{25}NO_2$ HCl with a molecular weight of 299.84. Because of tramadol's chemical structure, it can exist as different isomeric forms. Thus, various prefixes can be associated with the name. Some examples of these prefixes include dextro, levo, d, l, R, S, cis, trans, erythro, threo, (+), (-), racemic, and may include combinations of these prefixes sometimes with numerical designations. Any such isomer is, in fact, 2-[(dimethylamino) methyl]-1-(3-methoxyphenyl)cyclohexanol. It is typically formulated as a racemic mixture identified as (±)-*cis*-2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol hydrochloride. Tramadol hydrochloride is a white, crystalline, and odorless powder soluble in water and ethanol.

Tramadol is readily absorbed from the gastrointestinal tract, with both enantiomers as well as the M1 metabolite found in the blood following administration. Tramadol undergoes extensive metabolism in the liver, while 90 percent of tramadol and its metabolites are excreted via the kidneys. Approximately 10 to 30 percent of the parent drug is excreted un-metabolized with an elimination half-life of about 5.5 hours. This extensive metabolism, in part, provides for possible interactions between tramadol and a variety of other drugs that undergo metabolism by the CPY2D6 enzyme.

4. *Its History and Current Pattern of Abuse:* Tramadol has been abused since its marketing approval in 1995 by a wide spectrum of individuals of different ages, alone and in combination with other psychoactive substances. Data from Surveillance Data, Inc. (SDI)'s prescription database comparing tramadol and other analgesics in terms of annual prescriptions dispensed show that in 2007 and 2008, more prescriptions were written for tramadol than for any other opioid other than hydrocodone combination products[7] (Schedule III) and oxycodone (Schedule II). The annual number of prescriptions for tramadol surpassed the annual number of prescriptions for propoxyphene (Schedule IV) and codeine (Schedules II, III, V) in 2007 and 2008. Over each of the five years from 2003 to 2007, there was a consistent multi-fold greater number of prescriptions written for tramadol compared to such analgesics as morphine (Schedule II), fentanyl (Schedule II), methadone (Schedule II), hydromorphone (Schedule II), buprenorphine (Schedule III), meperidine (Schedule II), butorphanol (Schedule IV), pentazocine (Schedule IV), and oxymorphone (Schedule II). Updated information from another major national prescription database, IMS Health's National Prescription Audit Plus™, demonstrated a similar trend from 2009 to 2011: more prescriptions were written for tramadol than for any other opioid other than hydrocodone and oxycodone.

According to the HHS, abuse-related ED visits involving tramadol as reported in DAWN increased from 1995 (645 cases) to 2002 (1,714 cases), peaking in 2001 (2,329 cases).[8] Tramadol abuse-related deaths increased from 45 cases in 1997 to 88 cases in 2002. Over the period of 2004 through 2008, the number of estimated ED visits from non-medical use of tramadol/combinations showed a continuous increase from 4,849 ED visits to 11,850 ED visits. The DEA further reviewed the DAWN data for 2009 and 2010 and found that the national annual ED visits involving tramadol increased to 15,349 in 2009 and 16,251 in 2010.

The HHS reviewed DAWN data and calculated the rates of estimated non-medical ED visits per 100,000 prescriptions dispensed for tramadol/combinations as well as other selected opioids. The HHS found that from 2004 to 2007, the annual rates of non-medical tramadol/combination ED visits ranged between 28.4 and 33.9. In 2008, there was a substantial increase in the rate of ED visits of tramadol/combinations to 45.8 ED visits per 100,000 prescriptions. Over the five year period (2004 to 2008), annual rates of tramadol ED visits were substantially below that of rates for oxycodone/combinations (Schedule II), methadone (Schedule II), hydromorphone (Schedule II), morphine (Schedule II), fentanyl/combinations (Schedule II), meperidine/combinations (Schedule II), hydrocodone/combinations (Schedule III), and buprenorphine/combinations (Schedule III).[9] Over the period of 2004 through 2008, the rates of estimated non-medical ED visits for tramadol/combinations were more closely in the range for the rates of codeine/combinations (Schedules II, III, V) and proproxyphene/combinations (Schedule IV). For example, in 2008, the rate of non-medical ED visits per 100,000 prescriptions of tramadol/combinations was 45.8 which was between that for proproxyphene/combinations (62.7 ED visits per 100,000 prescriptions) and that for codeine/combinations (40.2 ED visits per 100,000 prescriptions). Overall, these data suggest that the abuse potential of tramadol is less than that of Schedule II and III substances and most similar to that of propoxyphene (Schedule IV).

According to the annual NSDUH report, the number of individuals who used tramadol non-medically at least once in their lifetime increased from approximately 994,000 in 2002 to 2,614,000 in 2011. For each year surveyed, the absolute number regarding tramadol was lower than that of hydrocodone combination products or oxycodone products. Additionally, for each of the years from 2002 to 2007, the estimated number of individuals who initiated use and reported non-medical use of tramadol was less than 100,000 (with the highest at 95,000 in 2003 and the lowest at 22,000 in 2006). By contrast, for each of the years from 2002 to 2007, the number of past year initiates for use of any pain reliever who also used hydrocodone (>1,200,000) and oxycodone (>450,000) non-medically was greater than that of tramadol. The DEA further analyzed the updated NSDUH data and found that the estimated number of individuals who have used tramadol products non-medically at least once in their lifetime are 1,990,000; 2,181,000; 2,282,000; and 2,614,000 in 2008, 2009, 2010, and 2011, respectively. Furthermore, these numbers are lower than that of oxycodone (Schedule II) and hydrocodone combination products (Schedule III). Collectively, the information from NSDUH shows that tramadol is used non-medically and supports placement of tramadol in a

[7] The various studies cited throughout this rule interchangeably use the terms "hydrocodone products," "hydrocodone combinations," and "hydrocodone combination products" to refer to the controlled substance hydrocodone combined with one or more active ingredients (Schedule III). The DEA uses the term "hydrocodone combination products" to refer to these controlled substances.

[8] DAWN was redesigned in early 2003, which resulted in a permanent disruption in trends for the years prior to 2003. Therefore, comparisons cannot be made between the previous DAWN system (before 2002) and the current DAWN system. Additionally, before 2002, DAWN collected data on "drug abuse cases" whereas now it collects data on all types of "drug-related" ED visits" (i.e., "non-medical visits").

[9] Only data from 2006 to 2008 was available for buprenophrine/combinations.

schedule less restrictive than Schedule III.

NFLIS and STRIDE databases provide evidence that tramadol has been diverted from legitimate use and encountered by law enforcement personnel. Furthermore in 2010, forensic laboratories analyzed 1,485 such exhibits and the tramadol-containing exhibits were close in number to that of exhibits for propoxyphene (Schedule IV) (1,320). The relative lower number of propoxyphene exhibits in 2011 and 2012 is because in November 2010, the FDA recommended that propoxyphene be withdrawn from the United States market due to the risk of cardiac toxicity. These exhibits from criminal investigations involving tramadol provide evidence of the significant diversion and non-medical use of tramadol in the United States.

The NPDS demonstrates that from 2004 to 2011, the number of human poison exposures to tramadol increased annually from 3,769 to 12,424. However, the number of exposures for tramadol is also less than the number of exposures for hydrocodone combination products (Schedule III) or oxycodone (Schedule II). The HHS calculated the number of case mentions per 100,000 prescriptions for tramadol and several other opioids and found that the tramadol case mentions per 100,000 prescriptions increased from 22 in 2004 to 37 in 2008. The HHS also found that from 2004 to 2007, the NPDS rates of tramadol case mentions per 100,000 prescriptions were lower than for oxycodone (Schedule II), morphine (Schedule II), and methadone (Schedule II). For the years 2004, 2005, and 2006, the rates of tramadol cases were similar to that of propoxyphene (Schedule IV). In 2007 and 2008, tramadol surpassed codeine (Schedules II, III, V) and propoxyphene (Schedule IV) in the number and rate of case mentions. These data indicate that tramadol represents a significantly growing risk to the public.

Collectively, data from DAWN, NSDUH, NFLIS, STRIDE, and AAPCC–NPDS databases demonstrate the misuse, abuse, and diversion of tramadol in the United States. With respect to the rates of non-medical ED visits found in DAWN, the number of NFLIS exhibits, and the increasing rates of AAPCC's NPDS reporting, tramadol data most closely resembles that of propoxyphene (Schedule IV).

5. *The Scope, Duration, and Significance of Abuse:* The scope, duration, and significance of tramadol abuse is evidenced by findings of national monitoring databases for drug abuse, review of studies of abuse potential, and clinical case reports. The HHS concluded its 15 years of post-marketing epidemiologic abuse-related data in the scientific literature and from the adverse events reporting system (AERS) since tramadol's commercial availability in the United States. The case reports describe abnormal behavior that demonstrates an addiction liability of tramadol: drug craving, increasing the tramadol dose, performing self-injury in order to be prescribed more tramadol, taking high doses despite adverse effects that result, and visiting multiple physicians in order to obtain more prescriptions for tramadol. Approximately 15 years of post-marketing history now show that tramadol can be, and is being, abused both in the United States and other countries.

Clinical case reports in the medical literature provide information on patterns of tramadol abuse when prescribed for clinical pain management. The case reports listed by the HHS review describe abuse of tramadol for its euphorigenic and sedating effects. The depicted behavior illustrates an addiction to tramadol: Drug craving, increasing the tramadol dose, inflicting self-injury in order to be prescribed more tramadol, taking high doses despite adverse effects that result, and visiting multiple doctors in order to obtain more prescriptions for tramadol. These reports provide information on characteristics and patterns of actual tramadol abuse with the development of dependence. Development of iatrogenic addiction to tramadol due to medical treatments is also reported.

The NSDUH data, discussed in detail in Factor 4, also provides evidence of the non-medical use of tramadol. According to the NSDUH data, the estimated number of individuals who have used tramadol products non-medically at least once in their lifetime increased from 994,000 in 2002 to 2,614,000 in 2011. For each year from 2002 to 2007, the number of individuals reporting either lifetime non-medical use or past-year non-medical use of tramadol was lower than the number of that of hydrocodone or oxycodone. The estimated number of individuals who have used tramadol products non-medically at least once in their lifetime increased from 2008 to 2011, but these numbers for tramadol are still lower than that of oxycodone (Schedule II) and hydrocodone combination products (Schedule III).

According to DAWN data, in 2010, an estimated 16,251 ED visits nationally were for non-medical use of tramadol. There is an increasing annual trend of non-medical ED visits from 2004 through 2010. Furthermore, the HHS reviewed the national estimates of ED visits related to non-medical use and to rates of these visits per 100,000 prescriptions from 2004 to 2008, and found tramadol most closely compares to propoxyphene (Schedule IV) and to codeine (Schedules II, III, V).

Collectively, the data shows that tramadol has less abuse potential than other pure mu-receptor agonists currently controlled in Schedule II. As evaluated by the HHS and the DEA, the DAWN data indicates tramadol most closely compares to propoxyphene (Schedule IV) and codeine (Schedules II, III, V). The NSDUH data from 2002 to 2007, cited by the HHS, also indicates the number of individuals reporting non-medical use of tramadol was lower than that of individuals using hydrocodone combination products (Schedule III) and oxycodone (Schedule II) products, suggesting an abuse potential less than that of Schedule III.

Tramadol's similarity to other controlled opioids and clear evidence of significant non-medical use and abuse, accompanied by serious adverse events, indicate that tramadol has sufficient abuse potential and incidence of drug dependence and addiction to warrant control as a Schedule IV controlled substance under the CSA.

6. *What, if any, Risk There is to the Public Health:* The DEA analysis indicates that there are numerous risks to the public health that may result from tramadol abuse. Tramadol and its M1 metabolite are opiate agonists devoid of opioid antagonist activity. Adverse effects occurring with tramadol are consistent with adverse effects associated with other opioids. The incidence of reported adverse effects increased as the time of tramadol therapy increased. The overall incidence rates of adverse effects of tramadol were similar to that of codeine containing drugs. Other adverse effects associated with tramadol included seizures, serotonin syndrome, and respiratory depression. Case studies of tramadol overdoses from United States poison centers reported that tramadol overdoses presented multiple systematic symptoms ranging from cardiovascular toxicity to significant neurologic toxicity including lethargy, nausea, tachycardia, agitation, seizures, coma, hypertension, and respiratory depression. The toxic mechanism of tramadol overdose is closely related to its μ-opioid receptor activity and its monoamine oxidase inhibition activity.

Information from the DAWN database shows that the rates of ED visits due to non-medical use of tramadol have been

similar to that of propoxyphene (Schedule IV) but lower than that of Schedule II and III opioids from 2004 to 2008. The HHS reviewed DAWN data and found that a total of 395 tramadol abuse-related deaths were reported to DAWN from 1997 to 2002 in selected areas. The result demonstrates a risk to the public health associated with the non-medical use of tramadol that is similar to that of propoxyphene (Schedule IV).

An increased number of exposure and death cases were reported by the AAPCC's NPDS database. It showed that from 2004 to 2011, annual tramadol exposures increased from 3,769 to 12,424. The HHS found that tramadol ranked third behind hydrocodone combination products (Schedule III) and oxycodone (Schedule II) in terms of the number of poison case mentions of opioids in 2007 and 2008. Over this period, the rates of case mentions per 100,000 prescriptions for tramadol increased from 22 to 37. In addition, the rate of tramadol case mentions was lower than for oxycodone (Schedule II), morphine (Schedule II), and methadone (Schedule II). For the years 2004, 2005, and 2006, the rates of tramadol case mentions were similar to that of propoxyphene (Schedule IV).

The labeling information approved by the FDA states that tramadol in excessive doses, alone or in combination with other central nervous system depressants, including alcohol, is a cause of drug-related deaths. Deaths associated with tramadol were also documented in the medical literature. Other reports document tramadol as a contributing factor to deaths in combination with other drugs such as, but not limited to, benzodiazepines, serotonergic drugs, and other antidepressants. The annual number of tramadol-related deaths reported by medical examiners in the DAWN database gradually increased from 1997 to 2004.

Reports of tramadol associated deaths from the Florida Department of Law Enforcement (FDLE) were also reviewed by the HHS and it was found the number of deaths involving tramadol increased from 106 in 2003 to 235 in 2008. According to FDLE's data, tramadol-related deaths were higher than heroin-related deaths between 2005 and 2008. For each of those years, the number of deaths involving tramadol was less than the number of deaths involving hydrocodone combination products (Schedule III), fentanyl (Schedule II), morphine (Schedule II), oxycodone (Schedule II), methadone (Schedule II), and propoxyphene (Schedule IV). The DEA reviewed the data for the years 2009 to 2011, and found that tramadol-related deaths continued to increase. There were 268 tramadol-related deaths in 2009, 275 tramadol-related deaths in 2010, and 379 tramadol-related deaths in 2011.

In summary, the collected data from a number of sources indicate that tramadol presents risks to the public health and, as such, supports the scheduling of tramadol. The DAWN, AAPCC, and FDLE data suggest a lower schedule for tramadol than Schedule III.

7. *Its Psychic or Physiological Dependence Liability:* The HHS reviewed available information from pre-clinical and clinical studies and found that repeated dosing with tramadol resulted in dependence development, and withdrawal syndromes resulted from termination of tramadol treatment. Additionally, medical literature also documents numerous case reports of physiological and physical dependence to tramadol.

Preclinical studies using monkeys and rats found that the tested animals displayed withdrawal signs after the termination of tramadol. Tramadol's potential to produce physical dependence was evidenced by naloxone precipitated withdrawal in observed animals. The results also supported that tramadol produced a degree of physical dependence similar to that of propoxyphene (Schedule IV). Infusion of tramadol in rats found that the total withdrawal scores of tramadol were lower than that of morphine (Schedule II) following naloxone administration. By comparing physical dependence development resulting from repeated subcutaneous administration of either morphine or tramadol to mice, another study concluded that tramadol produced a lesser degree of physical dependence than morphine. These findings suggest that tramadol can produce mild to moderate levels of physical dependence and the degree of dependence of tramadol is less than that of Schedule II, but similar to that of Schedule IV drugs such as pentazocine and propoxyphene.

A number of clinical studies examined the ability of tramadol to substitute for other opioids in individuals who are opioid dependent. A study compared the effectiveness of tramadol versus buprenorphine (Schedule III) in the treatment of opiate withdrawal and found that tramadol and buprenorphine effectively managed acute opioid withdrawal syndrome displayed by patients with mild to moderate addiction to heroin. Another study compared the use of tramadol to that of clonidine (not controlled under the CSA) for management of acute heroin (Schedule I) withdrawal and found that tramadol was more effective in managing withdrawal than clonidine. One study revealed a cross dependence development between tramadol and morphine (Schedule II) in opioid-dependent adults. A modest suppression of opioid withdrawal produced by tramadol was also reported in subjects with a mild to moderate degree of opioid physical dependence and this finding was also supported by several published case reports.

According to the HHS review, as of September 9, 2009, "Withdrawal symptoms may occur" was documented in the "Warning" section of the label for a tramadol containing product. Combining studies of cross dependence, tramadol produces a modest suppression of withdrawal in subjects dependent on other opioids and this suppression appears less than that produced by morphine (Schedule II) or buprenorphine (Schedule III).

In conclusion, the HHS states that collectively the data shows tramadol can produce a modest level of physical dependence, with the studies suggesting a degree of physical dependence development less than that of Schedule II and III opioids but similar to opioids in Schedule IV.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* Both the HHS and DEA state that tramadol is not an immediate precursor of any substance already controlled under the CSA.

Conclusion: Based on consideration of the scientific and medical evaluation and accompanying recommendation of the HHS, and based on the DEA's consideration of its own eight-factor analysis, the DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of tramadol. As such, the DEA hereby proposes to schedule tramadol as a controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA outlines the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of the HHS and review of all available data, the Deputy Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(4), finds that:

1. Tramadol has a low potential for abuse relative to the drugs or substances in Schedule III. The abuse potential of

tramadol is comparable to the Schedule IV substance propoxyphene;

2. Tramadol has a currently accepted medical use in treatment in the United States. Tramadol and other tramadol-containing products were approved for marketing by the FDA to manage moderate to moderately severe pain; and

3. Abuse of tramadol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

Based on these findings, the Deputy Administrator of the DEA concludes that tramadol [2-((dimethylamino)methyl)-1-(3-methoxyphenyl)cyclohexanol, its salts, isomers, salts of isomers, and all isomeric configurations of possible forms including tramadol, warrant control in Schedule IV of the CSA (21 U.S.C. 812(b)(4)).

Requirements for Handling Tramadol

If this rule is finalized as proposed, persons who handle tramadol would be subject to the CSA's Schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, import, export, research, and conduct of instructional activities, including the following:

Registration. Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research with, or conducts instructional activities with) tramadol, or who desires to handle tramadol would need to be registered with the DEA to conduct such activities, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Any person who handles tramadol, and is not registered with the DEA, would need to be registered with the DEA to conduct such activities by the effective date of the final rule.

Security. Tramadol would be subject to Schedules III–V security requirements and would need to be handled and stored in accordance with 21 CFR 1301.71–1301.93 pursuant to 21 U.S.C. 821, 823, and 871(b).

Labeling and Packaging. All labels and labeling for commercial containers of tramadol distributed on or after finalization of this rule would need to be in accordance with 21 CFR 1302.03–1302.07, pursuant to 21 U.S.C. 825, and 958(e).

Inventory. Every DEA registrant who possesses any quantity of tramadol on the effective date of the final rule would be required to take an inventory of all stocks of tramadol on hand as of the effective date of the rule, pursuant to 21 U.S.C. 827, 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d). Any person who becomes registered with the DEA after the effective date of the final rule would be required to take an initial inventory of all stocks of controlled substances (including tramadol) on hand at the time of registration, pursuant to 21 U.S.C. 827, 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b). After the initial inventory, every DEA registrant would be required to take a biennial inventory of all controlled substances (including tramadol) on hand, pursuant to 21 U.S.C. 827, 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Records. All registrants would be required to maintain records for tramadol or products containing tramadol pursuant to 21 U.S.C. 827, 958(e), and in accordance with 21 CFR parts 1304 and 1312, including reports to Automation of Reports and Consolidated Orders System (ARCOS).

Prescriptions. All prescriptions for tramadol or prescriptions for products containing tramadol would be required to be issued pursuant to 21 U.S.C. 829 and in accordance with 21 CFR part 1306.

Importation and Exportation. All importation and exportation of tramadol would need to be done in accordance with 21 CFR part 1312, pursuant to 21 U.S.C. 952, 953, 957, and 958.

Liability. Any activity with tramadol not authorized by, or in violation of, the CSA, occurring on or after finalization of this proposed rule would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures done "on the record after opportunity for a hearing," which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This proposed rule will not have tribal implications warranting the application of Executive Order 13175. The proposed rule will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this proposed rule is to place tramadol, including its salts, isomers, salts of isomers, and all isomeric configurations of possible forms, into Schedule IV of the CSA. No less restrictive measures (i.e., non-control or control in Schedule V) would enable the DEA to meet its statutory obligations under the CSA.

This proposed rule affects approximately 1.5 million DEA registrants. If finalized, the proposed rule on the placement of tramadol into Schedule IV of the CSA will affect all persons who handle, or propose to handle, tramadol. Tramadol handlers primarily include: manufacturers, distributors, pharmacies, individual practitioners, mid-level practitioners, and hospital/clinics. For the purpose of this analysis, the DEA assumes all legally operating manufacturers, distributors, importers/exports, pharmacies, individual practitioners, mid-level practitioners, and hospitals/clinics that handle tramadol are registered with the DEA and all distributors, importers/exporters, pharmacies, individual practitioners, mid-level practitioners, and hospital/clinics registered with the DEA are tramadol handlers. While the number of

DEA registrations forms the basis of the number of businesses affected by this rule, the number of manufacturers affected by this rule is based on industry data. Other than manufacturers, the DEA-estimated "Business-to-Registrant Ratio" is used to estimate the number of businesses represented by DEA registrants, and the "Percent of Business Below SBA Size Standard" is used to determine the number of businesses that are below the Small Business Administration (SBA) size standard (or number of businesses represented by DEA registrants that are small business." The DEA estimates that approximately 367,046 of these to be small entities. When there are no special considerations for "substantial number" or criteria prescribed by external sources, the DEA uses a general criteria based on percentage. For the purposes of this analysis, a "substantial number" is defined as greater than 30 percent. Therefore, the DEA has determined that this proposed rule will not have an impact on a substantial number of small entities.

In accordance with the RFA, the DEA evaluated the impact of this proposed rule on small entities. Specifically, the DEA examined the registration, storage, inventory and recordkeeping, and disposal requirements for the 367,046 small businesses estimated to be affected by the proposed rule. (While approximately 1.5 million DEA registrations are estimated to be affected by this rule, 273,485 registrations are in the 10 states that currently control tramadol as a Schedule IV controlled substance under state law, with requirements that meet or exceed the DEA's requirements for Schedule IV controlled substances. These states include Arkansas, Illinois, Kentucky, Mississippi, New Mexico, New York, North Dakota, Oklahoma, Tennessee, and Wyoming. Therefore, only approximately 1.2 million registrations are estimated to be *economically impacted* by this rule.) The DEA estimates that 298,354 small businesses total (across all States) would be *economically impacted* by this rule.

When there are no special considerations for "significant economic impact" or criteria prescribed by external sources, the DEA uses one of two general criteria, revenue-based or profit based. The revenue-based criteria are widely used, while the profit-based criteria can be used for some high-profit industries. For the purposes of this analysis the revenue-based general criteria is used, where if the cost of the rule is greater than one percent of annual revenue, the rule has a "significant" economic impact of the business. To estimate the number of businesses "significantly" impacted by the proposed rule, the DEA first estimated the revenue level associated with the 1 percent criteria for each North American Industry Classification System (NAICS) code associated with the affected entities. Then, using the revenue profile from the 2007 Economic Census, estimated the number of businesses where the cost of the rule is one percent or more than the revenue. This methodology was applied to all NAICS codes, except manufacturers. The estimate of small business manufacturers with significant economic impact is based on publically available data for annual sales data. The DEA estimates that the proposed rule would have a significant economic impact on 573 small businesses (0 manufacturers, 47 distributors/importers/exporters, 74 pharmacies, and 452 practitioners). Based on the DEA's estimate of 376,904 businesses to be affected by the proposed rule, and 367,046 of these estimated to be small businesses, including businesses located in states where tramadol is controlled as Schedule IV under state law, 573 (0.2 percent) of the 367,046 small businesses affected by the proposed rule are estimated to be significantly impacted economically.

The DEA examined the disproportionality of the economic impact. The DEA did not have a basis for differentiating costs for different business sizes, thus one cost estimate was made for each of the registrant business activities. The estimate suggests disproportionality, where smaller (of the small) businesses will bear a larger economic impact as a percentage of revenue. However, the DEA believes that the disproportionality will be mitigated by business volume. A smaller business will handle a lower volume of tramadol, thus requiring less secure storage.

Based on the DEA's understanding of its registrants' operations and facilities, the DEA estimates a non-recurring expense for system modification and initial inventory of $172.24 for all businesses and an additional $10,000 for secure storage for 50 percent of distributors, importers, and exporters. (Fifty percent of distributors, importers, and exporters are estimated to meet the requirements of the proposed rule without the need to expand secure storage area.) The DEA estimates these costs will have significant economic impact on 0 percent of small business manufacturers, 3.3 percent of small business distributors, 0.1 percent of small business pharmacies, and 0.1 percent of practitioners (other than pharmacies), totaling 0.2 percent of all businesses if the proposed rule were finalized. The percentage of small businesses with significant economic impact is below the 30 percent threshold for all registrant categories.

The annual economic effect on the economy is the annual cost per business times the number of affected businesses. The DEA estimated that 306,375 businesses, in States where tramadol is not controlled, were economically affected by the proposed rule. The annual cost of $974.39 is applied to the assumed 50 percent (588) of 1,175 Distributor/Importer/Exporters affected by the proposed rule. Annual cost of $30.46 is applied to remaining businesses affected by the proposed rule: 51 Manufacturer, 587 Distributor/Importer/Exporter, 40,797 Pharmacy, and 264,352 businesses that employ or hold Individual Practitioner, Mid-level Practitioner, and/or Hospital/Clinic registrations. To be conservative in analysis, the higher values for annual costs of $974.39 and $30.46 at 7 percent discount and interest rates is used rather than the annual costs of $698.22 and $26.06 at 3 percent discount and interest rates. The total annual cost is estimated to be $9,887,561.

The DEA's assessment of economic impact by size category indicates that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the "Regulatory Flexibility Act" section above, the DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*), that this action would not result in any federal mandate that may result "in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year[. . .]" Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

■ 2. Amend § 1308.14 by adding a new paragraph (b)(3) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(b) * * *

(3) Tramadol [2-((dimethylamino)methyl)-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers]—9752

* * * * *

Dated: October 25, 2013.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2013–25933 Filed 11–1–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–144990–12]

RIN 1545–BL37

User Fees for Processing Installment Agreements and Offers in Compromise; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of a notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations that amend the provider user fees for installment agreements and offers in compromise.

DATES: The public hearing originally scheduled for October 1, 2013 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on Friday August 30, 2013 (78 FR 53702) announced that a public hearing was scheduled for October 1, 2013, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under sections 6159 and 7122 of the Internal Revenue Code.

The public comment period for these regulations expired on September 30, 2013. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. The hearing was not held on October 1, 2013, due to the closure of the Federal Government. As of October 17, 2013, the date of the reopening of the Federal Government, there were no requests to speak. Therefore, the public hearing scheduled for October 1, 2013, is cancelled and will not be rescheduled.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2013–26280 Filed 11–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. OSH–2013–0005]

RIN No. 1218–AC77

Updating OSHA Standards Based on National Consensus Standards; Signage

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; withdrawal.

SUMMARY: With this notice, OSHA is withdrawing the proposed rule that accompanied its direct final rule revising its signage standards for general industry and construction.

DATES: Effective November 4, 2013, OSHA is withdrawing the proposed rule published June 13, 2013 (78 FR 35585).

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

Technical information: Contact Ken Stevanus, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2260; fax: (202) 693–1663; email: *stevanus.ken@dol.gov.*

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice: Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also is available at OSHA's Web page at *http://www.osha.gov.*

Withdrawal of the proposal: On June 13, 2013, OSHA published a companion proposed rule (NPRM) along with the direct final rule (DFR) (*see* 78 FR 35585) updating its signage standards for general industry and construction. In the DFR, OSHA stated that it would withdraw the companion NPRM and confirm the effective date of the DFR if it received no significant adverse comments to the DFR by the close of the comment period, July 15, 2013. OSHA received eight favorable and no adverse comments on the DFR by that date (*see* ID: OSHA–2013–0005–0008 thru –0015 in the docket for this rulemaking). Accordingly, OSHA is withdrawing the proposed rule. In addition, OSHA is publishing two separate **Federal Register** notices, one confirming the effective date of the DFR, and the other making minor, nonsubstantive additions and corrections to 29 CFR 1910.6, 1926.6, and 1926.200(b) and (c).

List of Subjects in 29 CFR Parts 1910 and 1926

Signage, Occupational safety and health, Safety.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this document. OSHA is issuing this document pursuant to 29 U.S.C. 653, 655, and 657, 5 U.S.C. 553, Secretary of Labor's Order 1–2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC, on October 30, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–26337 Filed 11–1–13; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

45 CFR Part 1613

Restrictions on Legal Assistance With Respect to Criminal Proceedings

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule updates the Legal Services Corporation (LSC or Corporation) regulation on legal assistance with respect to criminal proceedings. The Tribal Law and Order Act of 2010 (TLOA) amended the LSC Act to authorize LSC funds to be used for representation of persons charged with criminal offenses in tribal courts. This proposed rule will bring the regulations into alignment with the amended LSC Act. The proposed rule will also revise the conditions under which LSC recipients can accept or decline tribal court appointments to represent defendants in criminal proceedings.

DATE: Comments must be submitted by December 4, 2013.

ADDRESSES: Written comments must be submitted to Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; (202) 337–6519 (fax) or *lscrulemaking@lsc.gov*. Electronic submissions are preferred via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, (202) 295–1563 (phone), (202) 337–6519 (fax), *lscrulemaking@lsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background.

The Corporation first issued 45 CFR part 1613 in 1976 to implement a statutory prohibition on the use of LSC funds to provide legal assistance in criminal cases. Section 1007 of the LSC Act prohibited the use of LSC funds to provide legal assistance "with respect to any criminal proceeding." Public Law 93–355, § 1007(b)(2), 88 Stat. 383 (Jul. 25, 1974) (42 U.S.C. 2996f(b)(2)). The original section 1613.2 defined "criminal proceeding" as "the adversary judicial proceeding prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated 'criminal' by applicable law and punishable by death, imprisonment, or a jail sentence. A misdemeanor or lesser offense tried in an Indian tribal court is not a 'criminal proceeding.'" 41 FR 38506, Sept. 10, 1976. Neither the proposed rule nor the final rule explained why the Corporation exempted minor criminal cases in tribal courts from the general prohibition.

The following year, Congress amended the LSC Act to codify the Corporation's exemption of minor crimes in tribal courts from the types of criminal proceedings for which LSC funds could not be used. Public Law 95–222, § 10(b), 91 Stat. 1620–1623 (Dec. 28, 1977). According to the House Report on H.R. 6666, which became Public Law 95–222, it made this amendment at the Corporation's request. H.R. Rep. 95–310, 1977 U.S.C.C.A.N. 4503, 4515–16 (May 13, 1977). The Committee on the Judiciary explained:

> Section 7(b)(2) permits a legal services program to provide representation in a very narrow category of technically criminal cases that may be viewed as basically civil in nature to a person charged with an offense involving hunting, fishing, trapping or gathering fruits of the land when the principal defense asserted involves rights arising from a treaty with Indians. A number of legal services programs have developed expertise in the highly specialized area of Indian treaty law. Prior to the passage of the Legal Services Corporation Act they provided assistance to Indians charged with criminal offenses when the defense arose out of an asserted treaty right. Because an effective defense depends on knowledge of treaty law, rather than of criminal law, state-appointed private counsel and public defenders generally lack the legal background required to provide an effective defense.
>
> The provision of section 7(b)(2) authorizing representation of an Indian charged with a misdemeanor or lesser offense in an Indian tribal court is declaratory of existing law and codifies current Corporation Regulations.
>
> The committee approves the provisions of current Corporation Regulations, that appropriately define the scope of the prohibition against criminal representation and the narrow exceptions to the prohibition that are required for fulfillment of a lawyer's professional obligations and responsibilities.

In 2010, Congress enacted the TLOA. The TLOA had two major effects on tribal criminal jurisdiction. First, it authorized tribal courts to impose longer sentences, raising the maximum duration from up to one year to a total of nine years for multiple charges. Public Law 111–211, Tit. II, Subtitle C, § 234(a), 124 Stat. 2280 (Jul. 29, 2010). Second, it required tribes exercising the expanded sentencing authority to, "at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney." Public Law 111–211, Tit. II, Subtitle C, § 234(c)(2), 124 Stat. 2280. Of most relevance for LSC funding recipients, the TLOA amended section 1007(b)(2) of the LSC Act to authorize the use of LSC funds to provide representation in all criminal proceedings before tribal courts. Public Law 111–211, Tit. II, Subtitle C, § 235(d), 124 Stat. 2282.

Congress further expanded tribal court jurisdiction in 2013. Through the Violence Against Women Reauthorization Act of 2013 (2013 VAWA), Congress amended the Indian Civil Rights Act of 1968 to authorize tribal courts to exercise special criminal jurisdiction over domestic violence cases. Public Law 113–4, § 904(b)(1), 127 Stat. 120–121 (Mar. 7, 2013) (25 U.S.C. 1304(a)). This "special domestic violence criminal jurisdiction" is exercised concurrently with state or Federal jurisdictions, or both, as applicable. Public Law 113–4, § 904(b)(2), 127 Stat. 121 (25 U.S.C. 1304(b)(2)). Unlike prior congressional enactments, the 2013 VAWA explicitly authorizes tribes to exercise jurisdiction over both Indian and non-Indian defendants in certain circumstances.

In order for the tribe to assert special domestic violence criminal jurisdiction, the alleged act must have occurred within Indian country. Public Law 113–4, § 904(c), 127 Stat. 122. "Indian country" is a term of art defined in 8 U.S.C. 1151. If neither the victim nor the accused is Indian, the court may not exercise jurisdiction. Public Law 113–4, § 904(b)(4)(A)(i), 127 Stat. 121. If only the accused is a non-Indian, the court may exercise jurisdiction only if the accused resides in the Indian country over which the tribe has jurisdiction; is employed in the Indian country of the tribe; or is a spouse, intimate partner, or dating partner of a member of the tribe or an Indian who resides in the Indian country of the tribe. Public Law 113–4, § 904(b)(4)(B), 127 Stat. 122.

The 2013 VAWA also introduced another set of crimes in Indian country for which defendants are entitled to counsel at the tribal government's expense. Section 904(d)(2) states that if a sentence of any length of time may be imposed, the defendant is entitled to all of the rights laid out in Section 202(c) of the Indian Civil Rights Act. Public Law 113–4, § 904(d)(2), 127 Stat. 122.

The TLOA previously amended section 202(c) to require tribes exercising expanded criminal sentencing authority to provide counsel only to defendants facing total terms of imprisonment that would exceed one year. Public Law 111–211, § 234(a), 124 Stat. 2280.

In summary, the TLOA and the 2013 VAWA amended the Indian Civil Rights Act to expand both the sentencing authority and the jurisdiction of tribal criminal courts. The TLOA also amended the LSC Act to allow the use of LSC funds for representation of criminal defendants in tribal courts facing sentences of more than a year. LSC grant recipients now have the option of using their LSC funds to provide criminal representation. Additionally, because tribes must provide defendants with counsel at tribal government expense in certain circumstances, LSC recipients may be faced with increasing numbers of appointments to represent criminal defendants.

II. LSC Consideration of the Statutory Changes

On January 25, 2013, the Operations and Regulations Committee (the Committee) of the LSC Board of Directors (the Board) voted to recommend that the Board authorize rulemaking to conform Part 1613 to the amendments to the LSC Act and to address recipients' concerns regarding criminal appointments. On January 26, 2013, the Board authorized the initiation of rulemaking.

In response to the statutory changes described above, LSC sought input from experts in tribal law, including tribal court officials and practitioners, and the public to determine whether the Corporation needed to amend its regulations. LSC published a Request for Information (RFI) regarding the restrictions on legal assistance with respect to criminal proceedings in tribal courts. 78 FR 27341, May 10, 2013. Additionally, during its July 22, 2013 meeting of the Board of Directors, the Committee heard from a panel of five experts in tribal law representing a variety of perspectives.

During the July 22, 2013 panel presentation, the panelists' commentary focused on two main issues: the limited availability of resources to provide representation in criminal cases, and the political and cultural difficulties of representing defendants charged with domestic violence, particularly non-Indian defendants. One commentator noted that at the current time, LSC's Native American grants are too small to meet the existing needs of tribal communities. The clients tend to live far from the grantees' offices and from each other, requiring attorneys to travel long distances and incur expenses for gas and lodging. The costs associated with this travel and the limited funding available to cover them make it difficult to attend frequent court hearings. For this reason, the commentator did not anticipate LSC Native American grant recipients undertaking widespread representation under the TLOA. He recommended that any potential amendments to the regulations allow flexibility for recipients of LSC Native American grants to take on this type of representation if they determine it is a priority, but not to require grantees to do it.

In a similar vein, a member of the Board raised a concern he had heard from recipients: that tribal courts would execute their responsibility to provide representation at tribal expense by simply appointing LSC-funded attorneys. One commentator concurred with the concern and recommended that any amendments to the rule provide the flexibility that the previous panelist preferred, but at the same time protect grantees from having to accept compulsory appointments. A third commentator followed up on a related question by opining that LSC-funded grantees, as the attorneys working in tribal communities and conversant with tribal cultures, are better positioned to undertake expanded criminal representation than attorneys with expertise in criminal law, but with no background in Indian law or tribal communities.

With respect to the policy of representing defendants in domestic violence cases, panelists generally agreed that doing so would raise thorny issues of parity among victims and defendants, as well as Indian and non-Indian defendants. Two panelists noted that their organizations approach domestic violence representation from the victim's perspective and would be reluctant to represent the defendant in a domestic violence case. One panelist also identified the possibility that representation of a defendant would prevent an LSC-funded organization from representing the alleged victim in the case, thereby reducing the amount of assistance available to victims. Similarly, the two panelists also stated opposition to using LSC Native American funds to represent non-Indian defendants in cases involving Indian victims. Their opposition arose out of both the potential use of Native American grant funding to represent non-Indian defendants, thereby reducing the amount of funding available to assist Indian victims, and to the need to ensure that if non-Indian defendants had access to counsel, Indian victims would have access to counsel as well.

The RFI, published on May 10, 2013, asked commenters to answer questions about the impact of the TLOA and VAWA on criminal laws in tribal jurisdictions and on tribal appointments of defense counsel. 78 FR 27341, May 10, 2013. The comment period closed on August 23, 2013. LSC received comments from three tribes, one tribal prosecutor, and one organization representing attorneys practicing in front of tribal courts. Of the four responding tribal entities, one does not exercise criminal jurisdiction, one indicated that it was not aware of any changes that the tribe would be making to its authority to hear and hand down sentences in criminal cases, one was in the process of reviewing its criminal laws to determine whether they needed amending to be consistent with the TLOA and VAWA, and one had received a grant to begin drafting a criminal code that would comply with TLOA and VAWA. Both of the tribes that are working on their criminal codes welcomed the ability of grantees to use LSC funds to represent defendants in all criminal matters, including domestic violence cases. One tribe invited LSC's involvement as it develops its domestic violence case policies and identified direct contracts between itself and LSC grantees as a way to ensure that it can fulfill its responsibility under TLOA to provide counsel to defendants in criminal cases. Another stated its opinion that representation of indigent defendants is hindered by a lack of funding, and that LSC funds could help provide proper representation for indigent defendants facing criminal charges in its tribal court.

The representative organization's comments were substantially similar to some of the comments made by panelists at the July 22, 2013 Committee meeting. For example, the organization reiterated that LSC's Native American grant funding is limited and inadequate to meet existing needs, such that requiring grantees to provide counsel in criminal proceedings would exacerbate financial pressures. It stated that the primary mission of LSC Native American grant recipients is to provide high-quality civil legal services in matters that uniquely affect tribes, such as ensuring that the rights of tribes and tribal members guaranteed by the Indian Child Welfare Act are protected. The organization also reiterated two additional concerns stated by panelists at the July 22, 2013 Committee meeting. The first was that a provider's

representation of a defendant in a domestic violence case would create a conflict of interest that would prevent the provider from providing legal assistance to the victim. The second was that requiring representation of criminal defendants could mean using the limited LSC Native American funding to represent non-Indian defendants in tribal criminal proceedings. Finally, the commenter recommended that LSC amend Part 1613 to be consistent with the TLOA and allow grantees the option of representing defendants in tribal criminal proceedings, but not require such representation.

Pursuant to the LSC Rulemaking Protocol, LSC staff prepared a proposed rule amending Part 1613 with an explanatory rulemaking options paper. On October 22, 2013, the Board approved the proposed rule for publication in the **Federal Register** for notice and comment. A section by section discussion of the proposed rule is provided below.

III. Authority

The authority is revised to update the provision of the LSC Act governing representation in criminal proceedings and reflect the change in authorization made by the Tribal Law and Order Act of 2010.

IV. Proposed Changes

1613.1 Purpose

The Corporation proposes to revise this section to state that LSC grant recipients may not represent individuals in criminal proceedings unless authorized by Part 1613. Previously, this section only recognized that recipients were authorized to provide assistance in criminal proceedings if the attorney's responsibilities as a member of the bar required him to provide such assistance. The LSC Act has been amended twice to authorize criminal representation in tribal proceedings since the regulation was originally enacted in 1976, and the Corporation now proposes to amend Part 1613 to be consistent with those statutory amendments. For these reasons, the Corporation believes it is necessary to amend this section to recognize that, in addition to an attorney's professional responsibilities, Federal statutes and regulations may also authorize an LSC-funded attorney to undertake criminal representation.

1613.2 Definition

The Corporation proposes to amend the definition of "criminal proceeding" to remove the exclusion of misdemeanors or lesser offenses in Indian tribal courts from the definition. This change is proposed for two reasons. First, removing the exclusion of misdemeanors or lesser offenses within tribal court jurisdiction would bring the rule into alignment with section 1007(b)(2) of the LSC Act, which authorizes LSC funds to be used for representation in criminal proceedings before Indian tribal courts. Second, removing the exclusion makes clear that criminal proceedings in Indian tribal courts are "criminal proceedings" subject to the provisions in proposed 1613.5.

1613.4 Authorized Representation

The Corporation proposes to revise section 1613.4(a) to allow recipients to undertake criminal appointments after a determination that such appointment "will not impair the recipient's primary responsibility to provide civil legal services." Under the current rule, recipients must determine that accepting a criminal appointment will be "consistent with" its primary responsibility to provide civil legal services. The Corporation believes that changing the standard to impairment of the recipient's primary responsibility to provide civil legal services will allow recipients to consider the impact a criminal appointment will have at a more meaningful level because it contemplates that such appointments may have a measurable impact on a recipient's financial and human resources.

The existing language in section 1613.4(a) has been the subject of litigation in several jurisdictions in which trial courts appointed attorneys at LSC recipients in criminal cases over the Part 1613 objection of the recipients. Courts have overwhelmingly upheld recipients' declinations of criminal appointments under section 1613.4(a). *See, e.g., Rehmann* v. *Maynard,* 376 S.E.2d 169, 172 (W.Va. Dec. 21, 1988); *Central Florida Legal Servs* v. *Perry,* 406 So. 2d 111, 113 (Fla. App. 1981). Courts considering this issue placed considerable weight on the recipients' determinations that an appointment was not consistent with their duty to provide civil legal services. *See, e.g., Rehmann,* 376 S.E.2d at 173 ("We conclude . . . that a circuit judge is prohibited by 42 U.S.C.S. 2996f(b)(2) (1974) and 45 CFR 1613.4 (1978) from appointing an attorney employed by a local legal services program that receives funds from the federal Legal Services Corporation to represent an indigent criminal defendant, where the local legal services program has made a formal policy determination that such criminal representation is inconsistent with its primary responsibility to provide legal assistance to eligible clients in civil matters."); *Central Florida Legal Servs,* 406 So. 2d at 113; *Central Florida Legal Servs.* v. *Eastmoore,* 517 F.Supp. 497, 500 (M.D. Fla. 1981) ("[T]he CFLS attorneys may not represent criminal defendants in light of the CFLS determination that it does not have sufficient resources to devote to a criminal proceeding."). Because the proposed change to section 1613.4(a) does not affect a recipient's discretion to determine whether a particular court appointment will impair its ability to provide quality civil legal services, the Corporation believes that the precedents discussed above should continue to apply.

1613.5 Criminal Representation in Indian Tribal Courts

The Corporation proposes to add a new section 1613.5 to address representation in criminal cases before Indian tribal courts and the circumstances under which recipients may accept a tribal court appointment to represent a criminal defendant. Subsection (a) reiterates the statutory authorization for LSC funds to be used for representation of a person charged with an offense in an Indian tribal court. Subsection (b) is similar to section 1613.4(a) in that it allows recipients to accept court appointments when the recipient determines that the appointment will not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters. The Corporation has incorporated the revised language from section 1613.4(a) into section 1613.5(b) to make clear that, consistent with the discussion of this language and related court precedents in section 1613.4 above, the recipient remains the final arbiter of whether accepting a criminal appointment from a tribal court will impair the recipient's responsibility to provide legal assistance to eligible clients in civil proceedings.

Section 234 of the TLOA requires tribal courts exercising the expanded sentencing authority to provide indigent defendants with the assistance of a licensed attorney "at the expense of the tribal government." In conjunction with the TLOA's amendment to the LSC Act authorizing the use of LSC funds for representation in any criminal proceeding in tribal court, this provision may lead to increased interest on the part of tribal courts to appoint recipient attorneys to serve as defense counsel. Indeed, in response to the RFI, two tribes commented that they welcome the increased ability of LSC recipients to use LSC funds to serve as defense counsel. Because the provision

requiring that tribes provide defense counsel at the tribes' expense and the provision authorizing LSC recipients to use LSC funds to provide criminal representation are not linked in the TLOA, it is unclear whether tribal courts will reimburse LSC recipients for providing representation pursuant to a tribal court appointment.

Proposed section 1613.5(b) allows a recipient to consider whether accepting an appointment from an Indian tribal court will impair the recipient's responsibility to provide civil legal assistance. A recipient may evaluate many factors in determining whether impairment will occur, including but not limited to the recipient's civil legal workload, the recipient's program priorities, the recipient's existing expertise in tribal criminal law, the recipient's capacity to investigate and defend a criminal case competently, the frequency and number of proceedings in the case, and the distance to the court where the proceedings will take place. A recipient may also consider whether, and to what extent, the tribal court will compensate the recipient for accepting the appointment. The fact that a tribal court will or will not compensate the recipient may or may not be dispositive of whether the appointment will impair the recipient's responsibility to provide legal assistance in civil cases. It is within the recipient's discretion to determine what factors to consider and the weight to be given to each factor when deciding whether to accept a criminal appointment.

List of Subjects in 45 CFR Part 1613

Crime, Grant programs—law, Legal services, Tribal.

For the reasons stated in the preamble, and under the authority of 42 U.S.C. 2996g(e), the Legal Services Corporation proposes to amend 45 CFR Part 1613 as follows:

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

■ 1. The authority citation for Part 1613 is revised to read as follows:

Authority: Sec. 234(d), Pub. L. 111–211, 124. Stat. 2282; 42 U.S.C. 2996f(b)(2).

■ 2. Revise § 1613.1 to read as follows:

§ 1613.1 Purpose.

This part is designed to ensure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is authorized by this part.

■ 3. Revise § 1613.2 to read as follows:

§ 1613.2 Definition.

Criminal proceeding means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated "criminal" by applicable law and punishable by death, imprisonment, or a jail sentence.

■ 4. Revise § 1613.4(a) to read as follows:

§ 1613.4 Authorized representation.

* * * * *

(a) Pursuant to a court appointment made under a statute or a court rule of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters.

* * * * *

■ 5. Add § 1613.5 to read as follows:

§ 1613.5 Criminal representation in Indian tribal courts.

(a) Legal assistance may be provided with Corporation funds to a person charged with a criminal offense in an Indian tribal court who is otherwise eligible.

(b) Legal assistance may be provided in a criminal proceeding in an Indian tribal court pursuant to a court appointment only if the appointment is made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, and is authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters.

Dated: October 29, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–26102 Filed 11–1–13; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R6–ES–2011–0111; FWS–R6–ES–2012–0108; 4500030114]

RIN 1018–AZ20; RIN 1018–AX71

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Gunnison Sage-Grouse and Proposed Designation of Critical Habitat for Gunnison Sage-Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period; announcement of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment periods on our January 11, 2013, proposed rules to list the Gunnison sage-grouse (*Centrocercus minimus*) as endangered and to designate critical habitat for the species under the Endangered Species Act of 1973, as amended (Act). In addition, we announce the rescheduling of two public informational sessions and public hearings for both the proposed listing and proposed critical habitat rules, and the addition of a third public informational session and public hearing. We are reopening the comment periods to allow all interested parties an additional opportunity to comment on the proposed listing and the proposed designation of critical habitat, and to comment on the proposed critical habitat's associated draft economic analysis (DEA), draft environmental assessment (EA), and amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules.

DATES: *Comment submission:* We will consider comments received or postmarked on or before December 2, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational sessions and public hearings: We will hold three public informational sessions followed by public hearings on the following dates:

• November 19, 2013, from 4:00–9:00 p.m., including an information session

from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m.; and

• November 20, 2013, from 4:00–9:00 p.m., including an information session from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m.; and

• November 21, 2013, from 4:00–9:00 p.m., including an information session from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m.

See the **ADDRESSES** section, below, for information on where these public informational sessions and public hearings will be held.

ADDRESSES:

Document availability: You may obtain copies of the January 11, 2013, proposed rules on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0108 for the proposed listing, and at Docket No. FWS–R6–ES–2011–0111 for the proposed designation of critical habitat. You may obtain a copy of the draft economic analysis and the draft environmental assessment at Docket No. FWS–R6–ES–2011–0111. Alternately, you may obtain a copy of either proposed rule, the draft economic analysis, or the draft environmental assessment at *http://www.fws.gov/mountain-prairie/species/birds/gunnisonsagegrouse/* or by mail from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Submit comments on the listing proposal to Docket No. FWS–R6–ES–2012–0108, and submit comments on the critical habitat proposal and associated draft economic analysis and draft environmental assessment to Docket No. FWS–R6–ES–2011–0111.

(2) *By hard copy:* Submit comments on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2012–0108; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal, draft economic analysis, and draft environmental assessment by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2011–0111; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public informational sessions and public hearings:

The November 19, 2013, public informational session and public hearing will be held at Western State Colorado University, University Center, 600 N. Adams Street in Gunnison, Colorado.

The November 20, 2013, public informational session and public hearing will be held at the Holiday Inn Express, 1391 S. Townsend Avenue in Montrose, Colorado.

The November 21, 2013, public informational session and public hearing will be held at Monticello High School Auditorium, 164 South 200 West in Monticello, Utah.

People needing reasonable accommodations in order to attend and participate in the public hearing should contact Patty Gelatt, Western Colorado Supervisor, Western Colorado Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; by telephone (970–243–2778); or by facsimile (970–245–6933). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

On January 11, 2013, we published a proposed rule to list the Gunnison sage-grouse as endangered (78 FR 2486) and a proposed rule to designate critical habitat for the Gunnison sage-grouse (78 FR 2540). We proposed to designate as critical habitat approximately 1,704,227 acres (689,675 hectares) in seven units located in Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties in Colorado, and in Grand and San Juan Counties in Utah. Those proposals initially had a 60-day comment period, ending March 12, 2013, but we extended the comment period by an additional 21 days, through April 2, 2013 (78 FR 15925, March 13, 2013). On July 19, 2013, we published a document announcing that we were extending the timeline for making final determinations on both proposed rules by 6 months due to scientific disagreement, and we reopened the public comment period to seek additional information to clarify the issues in question (78 FR 43123). In accordance with that July 19, 2013, publication, we will submit for publication in the **Federal Register** a final listing determination and a final critical habitat designation for Gunnison sage-grouse on or before March 31, 2014.

On September 19, 2013, we reopened the comment period on these proposals for 30 days, and announced the availability of a DEA, a draft EA, and an amended required determinations section for our proposal to designate critical habitat for the Gunnison sage-grouse (78 FR 57604). In that document, we also announced two public information sessions and public hearings to be held in Gunnison, Colorado, and Monticello, Utah, on October 7 and 8, 2013. However, due to a lapse in government appropriations from October 1–16, 2013, these meetings and hearings were postponed. Therefore, this document serves to reschedule those meetings and public hearings, add an additional meeting and public hearing, and reopen the public comment period.

Public Comments

We will accept written comments and information during this comment period on: (1) Our proposed listing determination for the Gunnison sage-grouse that published in the **Federal Register** on January 11, 2013 (78 FR 2486); (2) our proposed designation of critical habitat for the Gunnison sage-grouse that published in the **Federal Register** on January 11, 2013 (78 FR 2540); (3) our DEA of the proposed critical habitat designation, which was made available on September 19, 2013 (78 FR 57604); (4) our draft EA of the proposed critical habitat designation, which was made available on September 19, 2013 (78 FR 57604); (5) the amended required determinations provided in our September 19, 2013, **Federal Register** document (78 FR 57604) for the proposed critical habitat designation; and (6) the issues raised in our July 19, 2013, **Federal Register** publication (78 FR 43123) regarding scientific disagreement about the species. We will consider information and recommendations from all interested parties.

We request that you provide comments specifically on our listing determination under Docket No. FWS–R6–ES–2012–0108.

We request that you provide comments specifically on the critical habitat determination and related DEA

and draft EA under Docket No. FWS–R6–ES–2011–0111.

For additional details on specific information we are requesting during this public comment period, please see the Public Comments section in our September 19, 2013, **Federal Register** document (78 FR 57604), which reopened the previous comment period.

Authors

The primary authors of this document are the staff members of the Regional Office and Western Colorado Field Office, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 28, 2013.

Rachel Jacobsen,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–26332 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0113; 4500030113]

RIN 1018–AY80

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition and Proposed Rule To Remove the Inyo California Towhee (Pipilo crissalis eremophilus = Melozone crissalis eremophilus) From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding; proposed rule; notice of availability of a draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Inyo California towhee (*Pipilo crissalis eremophilus* = *Melozone crissalis eremophilus*) from the Federal List of Endangered and Threatened Wildlife due to recovery. This action is based on a review of the best available scientific and commercial information, which indicates that the species is no longer threatened with extinction. This proposed rule, if made final, would also remove the currently designated critical habitat for the Inyo California towhee throughout its range. This document also constitutes our 12-month finding on a petition to remove the Inyo California towhee from the Federal List of Endangered and Threatened Wildlife. We are seeking information and comments from the public on this proposed rule and the post-delisting monitoring plan. The Inyo California towhee occurs only in Inyo County, California.

DATES: The finding announced in this document was made on November 4, 2013. We will accept comments received or postmarked on or before January 3, 2014. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is Eastern Standard Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by December 19, 2013.

ADDRESSES: *Comment submission:* You may submit comments on the proposed rule and the post-delisting monitoring plan by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R8–ES–2013–0113, which is the docket number for this rulemaking. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0113; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

Document availability: A copy of the post-delisting monitoring plan can be viewed at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0113, or at the Ventura Fish and Wildlife Office's Web site at *http://www.fws.gov/ventura/*.

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Deputy Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES**); by telephone 805–644–1766; or by facsimile (fax) at 805–644–3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

In 2011, we received a petition from The Pacific Legal Foundation to remove from the Federal List of Endangered and Threatened Wildlife (delist) the Inyo California towhee based on the analysis and recommendations contained in our 2008 5-year status review of the species (Service 2008, p. 20). In 2012, we published a 90-day finding (77 FR 32922) that concluded that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted and initiated a status review. After review of all available scientific and commercial information, we find that delisting the Inyo California towhee is warranted due to recovery and we propose to remove this taxon from the Federal List of Endangered and Threatened Wildlife. This document consists of: (1) A 12-month finding in response to a petition to remove the Inyo California towhee from the Federal List of Endangered and Threatened Wildlife; (2) a proposed rule to delist the Inyo California towhee; and (3) a notice of availability of a draft post-delisting monitoring plan.

Basis for Finding

Under the Endangered Species Act (Act), a species may be determined to be endangered or threatened because of 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 must consider the same factors in delisting a species. We may delist a species if the best scientific and commercial data indicate the species is neither threatened nor endangered for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer threatened or endangered; or (3) the original scientific data used at the time the species was classified were in error.

Threats to the Inyo California towhee at the time of listing included grazing by feral equines, recreational activities (hiking, camping, hunting, and off-highway vehicle (OHV) use), water diversion, and mining. Potential threats identified since listing include energy development, invasive and nonnative plants, predation (including nest parasitism), and climate change. We consider the Inyo California towhee to be recovered because all substantial

threats to the towhee have been ameliorated or reduced since listing. All remaining potential threats to the species and its habitat have been determined not to constitute a threat, or are being managed. Our finding is based on the following:

- Data indicate that, since 1998, the total rangewide population of Inyo California towhees has ranged from 640 to 741 individuals, indicating a self-sustaining (productivity equals or exceeds mortality rate) population for the past 13 years that has increased from the estimated population of less than 200 Inyo California towhees at time of listing in 1987 (52 FR 28780 (August 3, 1987)).
- Substantial threats to the Inyo California towhee and its habitat have been or are being addressed such that they have been ameliorated or reduced to the point where the species is not likely to become endangered in the foreseeable future throughout its range.
- The Service has entered into a cooperative management agreement with land managers to show their ongoing commitment to the conservation of the Inyo California towhee and its habitat (Service *et al.* 2010, entire) (see Recovery section for additional details).

Information Requested

We intend that this proposed rule and any final action resulting from it will be based on the best scientific and commercial data available, and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other governmental agencies, Native American tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Any threat (or lack thereof) to the Inyo California towhee;

(2) The range, distribution, and location of any additional populations, and population size of the Inyo California towhee;

(3) Habitat destruction and/or preservation in relation to the Inyo California towhee;

(4) Current or planned activities in the towhee's habitat and the possible impacts to the towhee;

(5) Data on population trends;

(6) The life history of the Inyo California towhee; and

(7) Information pertaining to the requirements for post-delisting monitoring of the towhee, including information on how best to conduct post-delisting monitoring should the proposed delisting lead to a final delisting rule (see *Post-Delisting Monitoring Plan Overview* section below, which briefly outlines the goals of the draft Post-Delisting Monitoring plan (PDM) plan). Such information might include suggestions regarding the draft objectives, monitoring procedures for establishing population and habitat baselines, or for detecting variations from those baselines over the course of at least 5 years.

We will post your entire comment on *http://www.regulations.gov*. 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.

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 Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be made in writing and addressed to the Deputy Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section above).

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that reclassifying the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

We first classified the Inyo California towhee as a category 1 species in the December 30, 1982, Notice of Review of Candidate Species (47 FR 58454) as a result of habitat loss and degradation. Category 1 candidates were those taxa for which we had substantial information on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. We proposed the towhee for listing as threatened on November 23, 1984 (49 FR 46174); critical habitat was proposed concurrently with the proposed listing. The final listing rule with critical habitat for the towhee was published on August 3, 1987 (52 FR 28780). On the same day the final listing rule for the towhee was published, we published a proposal to designate additional critical habitat (52 FR 28787); however, the designation of this additional critical habitat was never finalized.

We published a notice announcing active review and requested information from the public concerning the status of the Inyo California towhee under section 4(c)(2) of the Act on March 22, 2006 (71 FR 14538). No information regarding the status of the Inyo California towhee was received during the public comment period. In September 2008, we completed the 5-year review of the Inyo California towhee in which we recommended that the Inyo California towhee be removed from the Federal List of Endangered and Threatened Wildlife (Service 2008, p. 20). We notified the public of completion of the 5-year review on March 25, 2009 (74 FR 12878). A copy of the 2008 5-year review for the Inyo California towhee is available on the Service's Environmental Conservation Online System. (*http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=B07Q*) and at *http://www.regulations.gov*.

On December 21, 2011, we received a petition dated December 19, 2011, from The Pacific Legal Foundation, requesting the Service to delist the Inyo California towhee based on the analysis and recommendations contained in the 2008 5-year review for the taxon. On June 4, 2012 (77 FR 32922), we published in the **Federal Register** a 90-day finding that stated our conclusion that the petition presented substantial scientific or commercial information indicating that the petitioned action (delisting the Inyo California towhee) may be warranted.

Species Information

When the Inyo California towhee was listed in 1987, it was classified as the Inyo brown towhee (*Pipilo fuscus eremophilus*), which was one of eight subspecies of what was then considered the brown towhee (*Pipilo fuscus*) (52 FR 28780, August 3, 1987). In 1989, the American Ornithologists' Union (AOU) (p. 536) split the brown towhee into two unique species, the canyon towhee (*Pipilo fuscus*) and the California towhee (*Pipilo crissalis*), dropping the name brown towhee altogether. The Inyo California towhee (*Pipilo crissalis eremophilus*) is classified as a subspecies of the California towhee. More recently, the AOU (2010, p. 727) changed the scientific name of the California towhee to *Melozone crissalis*, changing the Inyo California towhee scientific name to *Melozone crissalis eremophilus*. The Inyo California towhee is listed as *Pipilo crissalis eremophilus* on the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11), which we consider equivalent to *Pipilo crissalis eremophilus*. These changes did not alter where or to what individuals protections of the Act apply.

The Inyo California towhee is restricted to the southern Argus Mountains in the Mojave Desert, Inyo County, California (Service 2008, p. 23). The towhee was thought to have been more widespread prior to climate changes at the beginning of the Pliocene Epoch (roughly 5.4–2.4 million years ago) that constrained the subspecies to its current distribution (Davis 1951, pp. 1–120). Because the range of Inyo California towhee has not changed post-Pliocene Epoch, it is considered to currently occupy its entire historical range, though there are indications that individuals have dispersed outside this range in recent years. Within its historical range, the Inyo California towhee occupies dense riparian vegetation and adjacent upland habitats. The riparian habitat, which the towhee relies on for nesting, protection from predators, and shade from the desert sun, is supported by groundwater-fed springs in most cases. However, the amount, quality, and location of habitat is dynamic and varies annually due to its dependence on water and location in the desert. The surrounding upland habitat on adjacent slopes is used extensively for foraging, making these upland areas an important component of the towhee's habitat. The distribution of the Inyo California towhee's range occurs predominantly on Federal lands: 68 percent on Department of Defense (Navy) land within the Naval Air Weapons Station, China Lake (NAWS China Lake); 26 percent on Bureau of Land Management (BLM) land; 5 percent on California Department of Fish and Wildlife (CDFW) land; and less than 1 percent on private property (LaBerteaux and Garlinger 1998, p. 7; LaBerteaux 2004, p. 1; 2008, p. 1; 2011, p. 1; Service 2008, p. 23).

California towhees, including the Inyo California towhee, are omnivorous, feeding on seeds, grain, invertebrates and fruit, with the composition of their diet changing with food availability (Davis 1957, pp. 129–166). Inyo California towhees are year-round residents, and territories, which range from 25 to 62 acres (ac) (10 to 25 hectares (ha)), are defended by both the male and female, which mate for life. The breeding season generally starts in early spring, coinciding with local plant growth and flowering periods. The most frequent clutch size is four eggs, but can range from two to four. Incubation takes about 14 days, and nestlings may fledge in as little as 8 days after hatching. Fledglings are fed by the adults for at least 4 weeks, and juveniles are independent by about 6 weeks of age, but remain within their natal territory through the subsequent fall and winter. The birds reach sexual maturity in the first breeding season after hatching (LaBerteaux 1989, pp. 42–48). For additional information on range and biology of the Inyo California towhee, see the 2008 5-year status review of the species (Service 2008, entire).

We listed the Inyo California towhee as threatened and designated critical habitat in 1987 (52 FR 28780, August 3, 1987) because of the loss and degradation of the dense riparian habitat the towhee requires. Riparian vegetation is naturally limited in extent in the desert, and destruction of this vegetation from feral animal grazing, recreational activities, water diversion, and mining (specifically from water diversion for mining activities) had significantly degraded and reduced the towhee's already limited habitat.

From 1978 to 1979, towhee populations were estimated to be 72–138 individuals (Cord and Jehl 1979, p. 154). At the time of listing in 1987, we estimated the population to have been fewer than 200 individuals (52 FR 28780). LaBerteaux estimated the minimum population size of the Inyo California towhee in 1994 to be 180 adults based on a combination of her own observations and data from several other researchers (LaBerteaux 1994, p. 6). In 1998, LaBerteaux and Garlinger conducted the first systematic surveys for the Inyo California towhee of what was then considered to be nearly all the potential habitat in the southern Argus Range, including NAWS China Lake, BLM, and CDFW lands. LaBerteaux and Garlinger detected towhees at 210 (81 percent) of the 258 sites (areas of suitable riparian habitat often, but not always, associated with springs) surveyed and estimated the total towhee population to be 640 adults (1998, p. 7). A portion of this increase over 1994 estimates was likely the result of differences in methodology; however, the species was occupying areas not occupied during the earlier surveys, and there were a greater number of towhees occupying areas that were included in previous surveys, indicating that an actual increase had occurred.

In 2004, LaBerteaux conducted systematic surveys of 93 sites located on BLM and CDFW lands (31 percent of the towhee's range) and detected towhees at 70 (75 percent) of the sites (LaBerteaux 2004, p. 11). LaBerteaux (2004, pp. ii, 57) estimated the BLM and CDFW population had increased 13.6 percent at those sites that were surveyed in both 1998 and 2004. Extrapolating the results to the 69 percent of the range not included in the survey, LaBerteaux estimated the rangewide population to be 725 adults (LaBerteaux 2004, pp. ii, 60).

In 2007, LaBerteaux (2008, entire) conducted systematic surveys of 185 sites on NAWS China Lake land (68 percent of the towhee's range) and detected towhees at 140 (76 percent) of the sites (LaBerteaux 2008, p. 10). LaBerteaux (2008, pp. iii, 11) estimated the NAWS China Lake population had increased by 2.8 percent for those sites that were surveyed in both 1998 and 2007. Based on the results of the 2007 surveys, in combination with the 2004 surveys on BLM and CDFW lands, LaBerteaux (2008, pp. iii, 85) estimated the Inyo California towhee population to be 706 to 741 adults rangewide.

In 2011, LaBerteaux (2011, entire) conducted systematic surveys of 93 sites on BLM and CDFW lands and detected towhees at 74 (80 percent) (LaBerteaux 2011, p. 12). This represents a population increase of 6.3 percent for those sites that were surveyed in both 2004 and 2011 (LaBerteaux 2011, pp. ii, 12, 63). Based on the results of the 2011 surveys (227 individuals; LaBerteaux 2011, pp. ii, 12), and in combination with the 2007 surveys on NAWS China Lake (502 individuals; LaBerteaux 2008, p. 10), the total range-wide population is estimated to be 729 adults.

Based on the results of the four systematic surveys conducted over the 13-year period from 1998 to 2011, the estimated total range-wide population of the towhee has ranged between 640 and

741 individuals (LaBerteaux 2011, p. 66). Though the total range-wide population has fluctuated, the survey results show that abundance has increased at previously surveyed sites, towhees are occupying new areas in their historical range in the Argus Range, and there has been as much as a four-fold increase in towhee abundance since the time of listing when the population was less than 200 individuals. Furthermore, the results of these surveys indicate there are stable to increasing population numbers and that the population is self-sustaining, which is likely a positive response to those conservation actions implemented by the NAWS China Lake, BLM, and CDFW. Finally, indications of potential range expansion, outside of the Argus Range, have been noted with observations of single birds in the Panamint Range. Although portions of the Coso Range (west of the Argus Range) and the Panamint Range (east of the Argus Range) have been included in surveys since 1998, no towhees were detected in these areas (LaBerteaux, and Garlinger 1998, p. 7; LaBerteaux 2011, pp. ii, 12, 19, 64). However, in April 2012, two towhees were observed in Surprise Canyon in the Panamint Range, which is roughly 20 miles (mi) (32 kilometers (km)) east of the Argus Range (Ellis 2012b, *in litt.*). While information on the species expanding outside the Argus Range is preliminary, these observations could indicate that current populations in the Argus Range may in some years be producing more individuals than the habitat can support (than there are territories available) with excess individuals dispersing to other areas with potentially suitable habitat. It is a possible indication of resilient populations with positive demographic trends where productivity is equal to or exceeds mortality.

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: "Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list." However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made "solely on the basis of the best scientific and commercial data available." Therefore, recovery criteria should help indicate when a species is no longer an endangered species or threatened species because of any of the five statutory factors.

Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

The following discussion provides a brief review of recovery planning and implementation for the Inyo California towhee, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the taxon.

The Recovery Plan for the Inyo California Towhee (Recovery Plan; Service 1998) included criteria for delisting the species. The Recovery Plan described, in part, the need for the establishment of a population of at least 400 individuals for a 5-year period (Service 1998, pp. iii, 14). This population goal, based on the best available information at the time, was estimated to be the carrying capacity of the towhee's habitat and represented a reproductively self-sustaining population (Service 1998, p. 14). In addition, the delisting criteria stated that threats to the species' habitat must be reduced and managed, and degraded habitat must be restored and maintained (Service 1998, p. iii). The recovery strategy focused on monitoring the population; managing, reducing, or eliminating threats to the habitat; and rehabilitating destroyed or degraded habitat.

The Recovery Plan identified reduction of threats to the towhee's limited riparian habitat as critical to its recovery (Service 1998, pp. 15–18). The most serious threats to the towhee's riparian habitat were grazing by feral equines, recreational activities, and water diversion; however, these threats have now all been reduced. Since 1980, Navy- and BLM-funded round-ups have removed more than 9,400 feral equines (5,884 burros (*Equus asinus*) and 3,539 horses (*Equus caballus*)) from the region where the towhee occurs (Easley 2012, *in litt.*). In addition, both the BLM and NAWS China Lake have installed and are maintaining fencing around some affected springs occupied by towhees to limit grazing by feral equines (LaBerteaux 2011, p. 65; Campbell 2012, *in litt.*; Ellis 2012a, *in litt.*, 2013a, *in litt.*). Habitat degradation from recreation has also been reduced in many riparian areas by fencing installed to protect habitat from feral grazers (Service 2008, pp. 12–13). Also, since 1998, the number of springs where water diversion was occurring has been reduced from six to four sites, or by about 33 percent (LaBerteaux and Garlinger 1998, p. 80; LaBerteaux 2008, Appendix C, Record No. 229, 230; LaBerteaux 2011, p. 15; Ellis pers. comm. 2012). For a more detailed discussion of threats to the towhee and measures taken to reduce those threats, see below under Summary of Factors.

The efforts by the BLM and NAWS China Lake to protect, improve, and expand the towhee's riparian habitat corresponded with as much as a four-fold increase in towhee abundance since the time of listing. From 1978 to 1979, towhee populations were estimated to be 72–138 individuals (Cord and Jehl 1979, p. 154). At the time of listing in 1987, the population was estimated to have been fewer than 200 individuals (52 FR 28780). Based on the results of subsequent surveys (see Background section for details), LaBerteaux (2011, p. 66) estimates the towhee population ranged from 640 to 741 adults over the 13-year period from 1998 through 2011. At the time the recovery plan was prepared, we considered that a population of 400 adults represented a self-sustaining population based on carrying capacity of the habitat. Based on current population estimates (640 to 741) and surveys (as detailed in the Background section), the carrying capacity of available towhee habitat is considered to be greater than that estimated at the time of the recovery plan. Given the stable-to-increasing population numbers over the last 13 years (and possible range expansions), the recovery goal of achieving a self-sustaining population has been achieved.

The continuation of currently implemented conservation measures will be important for maintaining the Inyo California towhee's recovery. In

2010, the Service entered into a cooperative management agreement with the NAWS China Lake, BLM, and CDFW for the ongoing conservation of the Inyo California towhee (Service *et al.* 2010, entire). Although not a regulatory document and subject to funding availability, this agreement includes a commitment by all signatories to continue implementing conservation measures for the towhee regardless of a change in its Federal and/or State status. The agreement is in effect until terminated by one of the parties, which requires written notification that termination is being considered and a meeting by all parties to attempt to resolve concerns. Conservation measures in the agreement include: The ongoing removal of feral equines; protection of riparian areas by fencing when necessary; maintaining existing fencing; regulating recreational use; monitoring and controlling or eliminating nonnative plants; and conducting periodic surveys of towhee abundance, habitat condition, and threats. These conservation measures mirror those described in the Recovery Plan, and are intended to protect, restore, and conserve the towhee's habitat. The agreement also includes a provision that it will be reviewed by all the agencies every 5 years to ensure that it is up to date, that conservation measures continue to be effective, and that any new threats to the towhee or its habitat are being addressed. Conservation measures that have been carried out since the agreement was signed in 2010 include the removal of additional feral equines from the towhee's range, inspections and repairs of fencing around springs, and surveys of towhee abundance, habitat, and threats on BLM and State lands.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of any species of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of any one or a combination 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; or (E) other natural or humanmade factors affecting its continued existence. A species may be reclassified on the same basis. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened (as is the case with the Inyo California towhee); and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is an "endangered species" for purposes of the Act if it is in danger of extinction throughout all or a "significant portion of its range" (section 3(6) of the Act) and is a "threatened species" if it is likely to become an endangered species within the foreseeable future throughout all or a "significant portion of its range" (section 3(20) of the Act). The Act does not define the term "foreseeable future." For the purposes of this rule, we define the "foreseeable future" to be the extent to which, given the amount and substance of available data, we can anticipate events or effects, or reliably extrapolate threat trends, such that reliable predictions can be made concerning the future as it relates to the status of the Inyo California towhee. Specifically, for the Inyo California towhee, we consider two factors: the management of threats and the response of the species to management. First, the threats to the species have been successfully ameliorated, largely due to management plans that are currently in place and expected to stay in place, and that are expected to successfully continue to control potential threats (BLM 1999, entire; BLM 2001, entire; BLM 2005, entire; NAWS China Lake 2000, entire; NAWS China Lake 2001, entire). Management plans that consider natural resources are required by law for all Federal lands on which the Inyo California towhee occurs, which encompass almost 95 percent of the species' range. Management plans are required to be in effect at all times (in other words, if the revision does not occur, the previous plan remains in effect) and to be in compliance with various Federal regulations. Those plans can be amended to update information or change management direction. The Regional Plans covering the range of the towhee were amended in the mid-2000's, after approximately 25 years of implementation. We anticipate the existing plans will be implemented approximately another 25 years before being amended again. Further, all Federal and State landowners have signed the cooperative management agreement to provide protection for the species (Service *et al.* 2010, entire). We anticipate that this cooperative management agreement will be considered in any future land management plan amendments completed by BLM. Second, the Inyo California towhee has demonstrated a quick positive response to management over the past 25 years since the species was listed; based on this, we anticipate being able to detect a species' response to any changes in the management that may occur because of a plan amendment. Therefore, in consideration of the Inyo California towhees' positive response to management, and the expectation that the next revision of the management plans will address continued management that benefits the towhee, we define the foreseeable future for the Inyo California towhee to be the remaining lifespan of the BLM's Regional Management Plans (last updated in 2001 and 2005, 15 years remaining) and that of the next revision (25 years), for a total of 40 years. The word "range" in the significant portion of its range (SPR) phrase refers to the range in which the species currently exists. For the purposes of this analysis, we will evaluate whether the currently listed species, the Inyo California towhee, should be considered threatened or endangered. Then we will consider whether any portions of Inyo California towhee's range are in danger of extinction or likely to become endangered within the foreseeable future.

The following analysis examines all five factors currently affecting, or that are likely to affect, the Inyo California towhee within the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Under Factor A in the final listing rule (52 FR 28780), we stated that threats to the Inyo California towhee and its habitat included grazing by feral equines, recreational activities, water diversion, and mining. Since listing, nonnative and invasive plants and climate change have also been identified as potential threats (LaBerteaux 2008, pp. 80, 83, 85; Service 2008, pp. 10, 12–13; LaBerteaux 2011, p. 67). We did not identify climate change as a potential threat to the Inyo California towhee in our 2008 5-year review. However, since that time, we have assessed new information about climate changes (See Climate Change, below). LaBerteaux (2011, p. 67) also identified energy development as a potential new threat to the towhee; however, there are no existing energy projects within the range of the Inyo California towhee, and the best available information does not indicate that any proposed energy development projects are in its range. Therefore, we do not consider energy development to be a threat to the Inyo California towhee. Additionally, we identified fire and flood as threats to the towhee and its habitat in the 2008 5-year review (Service 2008, pp. 10, 18–19). All of the above-mentioned impacts can potentially affect the towhee through degradation, fragmentation, and destruction of its habitat, as further discussed below.

Feral Equines

One of the most serious threats to the Inyo California towhee at the time of listing was loss or degradation of habitat, which was partly due to feral equines (52 FR 28780). According to Cord and Jehl (1979, pp. 79–118) and Laabs *et al.* (1992, Table 2), most springs that supported Inyo California towhees or riparian vegetation were degraded by feral burro use and/or human activities (mining, for example, discussed below). At the time of listing, grazing was widespread throughout the towhee's range and had substantially reduced the ability of these habitats to support towhees. Grazing by feral equines damages and destroys habitat through trampling and browsing of the vegetation (52 FR 28780). Feral burros are destructive to towhee habitat due to their practice of taking dust baths by rolling and rubbing themselves on the ground. Up to 10 feet (3 meters) in diameter, these "burro baths" destroy vegetation and create miniature dust bowls (Cord and Jehl 1979, pp. 79–118).

The threat of grazing has been reduced by the NAWS China Lake and BLM through the reduction in the number of feral equines within the range of the Inyo California towhee. For example, in the early 1980s as many as 7,000 feral equines were estimated to occur on NAWS China Lake (NAWS China Lake 2011, pp. i, 35). Since 1980, roundups funded by the NAWS China Lake and BLM have resulted in the removal of more than 9,400 feral equines (5,884 feral burros and 3,539 feral horses) from the region where the towhee occurs (Easley 2012, *in litt.*). This has reduced the feral equine population on NAWS China Lake to 682 feral equines, a reduction of about 90 percent of the number in the early 1980s (NAWS China Lake 2011, pp. i, 35). The BLM and NAWS China Lake have committed through a cooperative management agreement with the Service to continue working together to remove feral equines from the Argus Range, with the goal of eliminating feral burros (Service *et al.* 2010, pp. 5, 7). Based on the results of their 1998 rangewide survey, LaBerteaux and Garlinger identified 12 springs as critically in need of fencing to protect them from feral equines (1998, pp. 66–79, 91). To date, NAWS China Lake and BLM have fenced a total of 17 springs and are committed to fencing additional areas if high levels of impacts by feral equines occur (Service *et al.* 2010, entire).

Although vandals and erosion occasionally compromise the integrity of fencing, the BLM periodically monitors the condition of fences and makes repairs when necessary (Ellis 2006, pers. comm.; Ellis 2013a, *in litt.*). For example, in 2011, the BLM (Ellis 2012a, *in litt.*) repaired fencing at Christmas Spring after LaBerteaux (2011, p. 65) alerted them that feral equines were accessing the water source (LaBerteaux 2011, p. 65). NAWS China Lake has repaired, expanded, or installed fencing at several springs; however, monitoring occurs infrequently and as time allows (Campbell 2012, *in litt.*). These actions are sufficient to maintain the improved status of the habitat, and both BLM and NAWS China Lake have committed to continue actions that control threats in the cooperative management agreement (Service *et al.* 2010, entire).

Since 1998, surveys have been conducted to evaluate impacts of feral equines on the habitat around springs where towhees occur (referred to as "water source surveys"). Towhee habitat on BLM and CDFW lands was surveyed in 1998 (LaBerteaux and Garlinger 1998, pp. 5–6, 65–80, Appendix C), 2004 (LaBerteaux 2004, pp. 8–10, 41–51), and 2011 (LaBerteaux 2011, pp. 8–10, 14–16, 51–56, Appendix C), while NAWS China Lake lands were surveyed in 1998 (LaBerteaux and Garlinger 1998, pp. 5–6, 65–80, Appendix C) and 2007 (LaBerteaux 2008, pp. 8–9, 55–71, Appendix C). The data from these surveys show that recovery actions have resulted in improvements in the quality of towhee habitat throughout the species' range. On BLM and CDFW lands, the proportion of sites classified as having moderate to severe impacts from feral equines declined from 69.3 percent in 1998 to 37.4 percent in 2011. On NAWS China Lake lands, the proportion of sites classified as having moderate to severe impacts from feral equines declined from 61.1 percent in 1998 to 46.4 percent in 2007. Based on the best available information, we conclude that the current level of feral equines does not constitute a substantial threat to Inyo California towhee as population numbers have increased.

Management of feral equines is an ongoing challenge, and often funding and space at storage facilities for captured animals are limiting factors; however, the BLM and NAWS China Lake continue to coordinate their efforts and are committed to managing feral equines per the cooperative management agreement (Service *et al.* 2010, entire) and land management plans on both BLM and NAWS China Lake property. For example, the NAWS China Lake has secured funding for feral burro removals in fall 2013, and has repaired and fenced several springs (Campbell 2013, *in litt.*). All Department of Defense installations, including the NAWS China Lake, are required to operate under an Integrated Natural Resources Management Plan (INRMP), which is designed to provide for the conservation and rehabilitation of natural resources on military lands consistent with the use of military installations, per the Sikes Act (16 U.S.C. 670) (Factor D below).

As part of their updated INRMP, NAWS China Lake has developed a Wild Horse and Burro Management Plan that identifies several goals that would benefit the Inyo California towhee and its habitat. To summarize, these goals include: (1) Maintaining the Centennial Horse Herd (the herd in the Centennial Herd Management Area, which occurs adjacent to and overlaps to some degree with the range of the towhee) within a range of 100 to 168 animals, (2) achieving and maintaining a zero burro population, and (3) reducing the horse herd to minimize damage to water resources, riparian areas, and uplands, which would promote the recovery of

native plant and animal populations (NAWS China Lake 2011, pp. i, 36). Overall, the numbers of feral equines have been reduced on the NAWS China Lake by about 90 percent (NAWS China Lake, pp. i, 35). Although some feral equines remain within the range of the towhee, and management of feral equines continues to be an ongoing issue, landowners are managing for them as per the cooperative management agreement. Further, the number of towhees has increased substantially and their habitat quality has improved since listing, primarily as a result of the reduced and managed numbers of feral equines and secondarily due to the management of feral equine access to towhee habitat through fencing. Because the INRMP is a required document of all Department of Defense installations per the Sikes Act (16 U.S.C. 670) with the overarching goal of conserving and rehabilitating natural resources, we anticipate that this or a similar plan that addresses feral equine management will be in place in the future. Therefore, we conclude that the management of feral equines has successfully decreased this threat to towhees, and management of this threat will continue in the future.

Recreational Activities

Recreation (hiking, camping, hunting, and OHV use) may result in loss and degradation of habitat through crushing by vehicles; trampling by hikers, hunters, and campers; cutting for firewood; and soil compaction. Recreational impacts mainly occur on BLM and CDFW lands, which are open to the public. The NAWS China Lake is closed to most public uses (Pennix 2006, pers. comm.), and surveys of NAWS China Lake lands in 1998 and 2007 found that most sites had negligible or no human-caused impacts (86 and 96 percent of sites, respectively) (LaBerteaux and Garlinger 1998, pp. 66–79; LaBerteaux 2008, pp. 56–64).

As of 2011, recreational impacts mainly occur on BLM and CDFW lands (approximately 31 percent of the species range), but those impacts are limited in scope and severity (approximately 10 percent of sites surveyed had moderate impacts; LaBerteaux 2011, pp. 51–56). Human-caused impacts from recreation on BLM and CDFW lands have remained generally the same from 1998 through 2011 (LaBerteaux and Garlinger 1998, pp. 66–79; LaBerteaux 2011, pp. 51–56). Many of the sites have had little to no human-caused impacts, likely due to remoteness of the sites and lack of access (range, 37–48 percent of all sites), and where impacts do occur, they are at a low level (defined as those sites with slight impact on vegetation, few foot trails, no OHV activity, and no heavily used campsites) in most cases (range, 74–88 percent of affected sites) (LaBerteaux and Garlinger 1998, pp. 66–79; LaBerteaux 2004, pp. 42–46). In 1998, severe human-caused impacts on BLM and CDFW lands occurred at four sites, mainly from heavy OHV use and camping activities (LaBerteaux and Garlinger 1998, pp. 65, 71, 72, 74). However, results from the 2011 survey (LaBerteaux 2011, pp. 51, 53, 54) indicated that recreational impacts at these same four sites were reduced. This reduction was likely due to the fact that three of the four springs had been fenced to exclude feral grazers, which also excluded recreational users.

In 2004, human-caused impacts on BLM and CDFW lands were mostly low to negligible (93 percent of sites), and no springs were considered to be severely affected (LaBerteaux 2004, pp. 42–46, 47). In 2011, severe human impacts occurred at three sites on BLM lands (LaBerteaux 2011, p. 56). However, these sites were all located in the Panamint Range, which is outside the known historical range of the species. No breeding towhees are known to occur in the Panamint Range (LaBerteaux 2011, p. 41), although a few individual towhees have been observed there. Although recreational activities will continue within the range of the towhee, they have been reduced and are expected to remain at very low levels in the future due to ongoing management actions and the existing cooperative management agreement (Service *et al.* 2010, entire). Current levels of recreation are not having a major impact on the towhee as indicated by the increases in the number of towhees and amount and quality of habitat. The current level of recreation is expected to continue or decrease into the future based on management commitments. Therefore, based on the best available information, we conclude that recreational activities do not constitute a substantial threat to the Inyo California towhee now or in the future.

Water Diversion

Although water diversion has the potential to impact towhee breeding habitat, it occurs at only a few springs within the range of the towhee. Water diversion can reduce the amount of water available to maintain healthy riparian vegetation. As described in the Species Information section, towhees rely on riparian vegetation for nesting, protection from predators, and shade from the desert sun; consequently, a reduction in riparian vegetation due to water diversion could impact their survival and breeding success. Water rights have been appropriated on most springs situated on BLM-administered lands for activities such as livestock grazing and mining (52 FR 28780). In 1998, water diversion was occurring at 6 (2.3 percent) of the 264 sites surveyed for towhees (LaBerteaux and Garlinger 1998, pp. 80, 91–92). In 2007 (NAWS China Lake lands) and 2011 (BLM/State lands), water diversions were occurring at only three (two on BLM lands and one on NAWS China Lake) of the original six sites or about 1.1 percent of the 278 sites surveyed for towhees (LaBerteaux 2011, p. 15). The water diversions occurring at the two sites on BLM land are for small, domestic use, for which the landowners have legal water rights (Ellis pers. comm. 2012), while excess water from the other site is diverted by NAWS China Lake to ponds downslope (Easley 2012, *in litt.*). The NAWS China Lake may also occasionally use spring water for certain activities such as dust abatement during construction or maintenance activities. However, the INRMP includes a commitment to ensure protection of groundwater resources, which is necessary to ensure the long-term population viability of the Inyo California towhee, an objective of the plan (NAWS China Lake 2000, pp. 112, 135).

Despite these water diversions, habitat remains suitable at these sites. Researchers observed towhees with young, or displaying behavior that suggests they have young or a nest nearby at the two BLM sites during surveys in 1992, 1998, and 2004 (LaBerteaux 2011, Appendix C, Record No. 20, 31). Juveniles were also observed at the spring located on NAWS China Lake in 1998 (LaBerteaux 1998, pp. 59, 64). The presence of suitable habitat and observation of towhees indicate that sufficient water remains at these springs to support towhees and their habitat. Further, the number of water diversions at towhee-occupied sites has decreased slightly and represents approximately 1 percent of the sites (associated with water sources) surveyed in 2007 and 2011 (Service 2013). Despite the ongoing diversions, increases in the overall number of towhees and amount and quality of habitat have occurred, indicating the quantity of water diversion is not sufficient to make habitat unsuitable for the towhee. Therefore, because of the limited number of springs where water diversions occur and the limited amount of water diverted, we conclude that current levels of water diversion do

not pose a substantial threat to the Inyo California towhee now or in the future.

Mining

Mining was considered a threat at the time of listing, but is no longer occurring within the species' range. Mining operations usually require the use of water, and at the time of listing, numerous mining claims on BLM land occurred within the range of the towhee and were often associated with springs (52 FR 28780). Since our 2008 5-year status review, the one mine that remained within the Argus Mountains has been closed, and all mining claims have been relinquished (Ellis 2013b, *in litt.*). Mining was eliminated entirely from the NAWS China Lake in 1943 (52 FR 28780). Because there are no longer any mines or mining claims in Inyo California towhee habitat, we conclude that mining and associated activities, such as water diversion, are not a threat to the Inyo California towhee now or in the future.

Invasive and Nonnative Plants

A potential threat identified subsequent to listing is encroachment of invasive and nonnative plant species (LaBerteaux 2008, p. 80; Service 2008, pp. 10, 12–13). Disturbed areas, such as those caused by feral grazers, allow for the establishment of nonnative plant species including salt cedar (*Tamarix* spp.) and athel (*Tamarix aphylla*) (collectively referred to as tamarisk). Although a native plant, the invasive carrizo (*Phragmites australis*) may choke out other riparian vegetation and may not be optimal habitat for towhees. While both tamarisk and carrizo continue to occur in towhee habitat, the available information does not establish that they are increasing, and both the BLM and NAWS China Lake have active programs to remove tamarisk from springs (Service *et al.* 2010, pp. 5, 7). On the NAWS China Lake, the proportion of sites with tamarisk increased from 2 percent in 1998 (LaBerteaux and Garlinger 1998, pp. 66–79) to 6 percent in 2007 (LaBerteaux 2008, pp. 56–63), while that for carrizo remained at 10 percent. However, subsequently, personnel at the NAWS China Lake removed tamarisk from several areas (Service *et al.* 2010, entire; Campbell 2012, *in litt.*) and have indicated their commitment in the cooperative management agreement to removing tamarisk from towhee habitat in the future (Service *et al.* 2010, p. 7). The proportion of sites with tamarisk on BLM and CDFW lands increased from 4 percent in 1998 (LaBerteaux and Garlinger 1998, pp. 66–79) to 8 percent in 2004 (LaBerteaux 2004, pp. 42–46). However, the BLM has been removing tamarisk from several sites, and, as of 2011, the proportion of sites with tamarisk on BLM and CDFW lands had been reduced to 5 percent (LaBerteaux 2011, pp. 51–56, 65–66). The BLM has also indicated their commitment in the cooperative management agreement to removing tamarisk from towhee habitat in the future (Service *et al.* 2010, p. 5).

Little information exists on the effects of these plant species on the Inyo California towhee. The monitoring reports do not indicate that any towhees have been observed utilizing tamarisk, and there is no information regarding the towhee's ability to establish breeding territories in riparian habitat dominated by tamarisk (LaBerteaux 2008, p. 83). However, in 2011 an adult towhee was observed feeding its fledglings in carrizo (LaBerteaux 2011, p. 16). Additionally, other species that are adapted to riparian habitat in the southwest, such as the southwestern willow flycatcher (*Empidonax traillii extimus*), have been documented to use tamarisk when nesting and do not appear to suffer from negative physiological effects (Owen *et al.* 2005, entire), reduced survivorship, or productivity (Sogge *et al.* 2006 in Sogge *et al.* 2008; Paxton *et al.* 2007, p. 140). Although we do not know if or how these plant species (carrizo, tamarisk) affect the habitat of the towhee, these invasive and nonnative plants currently comprise only a small portion of the total amount of habitat available to the towhee and there is no indication that these plant species may negatively affect the towhee.

In summary, while these plants occur within towhee habitat, there is no indication that they are spreading to the point of being the dominant vegetation type in these riparian areas or having a negative impact on the towhee, and the BLM and NAWS China Lake are working to control, or in some cases, eliminate them (Service *et al.* 2010, pp. 5, 7). The best available information does not indicate that nonnative and invasive plants are threats to the towhee. Therefore, we do not consider the current abundance and distribution of a nonnative and invasive species in a small portion of the towhee's range a threat to the species now or in the future.

Fires and Floods

We did not identify fires or floods as a threat to the Inyo California towhee in the final listing. However, these natural and manmade disturbances may temporarily reduce the habitat of the Inyo California towhee in some areas. For example, in 2005 a human-caused fire burned about 10 percent of the towhee habitat on NAWS China Lake, and subsequently was followed by a flash flood that resulted in the additional loss of vegetation and increased erosion (LaBerteaux 2006, entire). However, within one year, LaBerteaux observed the recovery of upland and riparian vegetation and observed towhees in most of the areas impacted by the fire and flood (LaBerteaux 2006, pp. 11–14). LaBerteaux (2006, pp. 13–14) also observed nonnative plant species such as red brome (*Bromus madritensis*) and cheatgrass (*Bromus tectorum*) in the upland habitat and tamarisk in the riparian habitat.

These natural and manmade events may have had a greater impact on the Inyo California towhee had they occurred at the time when towhee numbers were low and riparian habitat had been reduced and degraded. However, towhees have increased in abundance and now have a wider distribution, and the condition of their habitat has improved, lessening the impact of such events. In addition, prior to the 2005 fire, the Navy updated their wildland fire response to include Inyo California towhee habitat as a protection priority (Pennix 2006, pers. comm.). Presently, we consider these natural and manmade factors to have the potential for short-term (one to two breeding seasons) effects on a few individuals or pairs of towhees in a few localized areas at any one time. If these natural and manmade events were to occur in the future, it is unlikely these events would cause long-term population-level effects (i.e., population declines, extirpation from a site, reduced nesting range, etc.) because these events typically result in temporary, localized impacts and only affect a small portion of the towhee's range at a time. Therefore, we conclude that fire and flood events do not constitute a threat to the Inyo California towhee now or in the future.

Climate Change

Our analysis under the Act includes 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 2007a, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (temperature or precipitation, for example) that persists

for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78). 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 2007a, 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.

Projecting future climate change still includes a considerable degree of uncertainty, due in part to uncertainties about future emissions of greenhouse gases and to differences among climate models and simulations (Stainforth *et al.* 2005, pp. 403–406; Duffy *et al.* 2006, pp. 873–874), and to the difficulty in predicting change at a local scale. Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Therefore, we use "downscaled" projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). Regional climate change models are available for the area, but lack detail to make meaningful predictions for specific areas such as the range of the Inyo California towhee (Parmesan and Matthews 2005, p. 354).

The Western Regional Climate Center's California Climate Tracker has developed 11 climate-monitoring regions for California, including a region that includes the western Mojave Desert, where the Inyo California towhee occurs. Data collected from this region indicate that mean, maximum, and minimum temperatures have increased during the last 110 years (Redmond 2008, pp. 36–46). How precipitation in the western Mojave Desert may change is less certain. The IPCC models predict that precipitation will decrease, but the frequency and magnitude of extreme precipitation events will increase. On the other hand, Kelly and Goulden (2008, p. 11824) predict that the amount and duration of precipitation may increase for California (in general).

Based on the information discussed above, temperatures in the western Mojave Desert, where the Inyo California towhee occurs, have increased and are likely to continue increasing. The uncertainty of evaluating the potential impacts of climate change is complicated by the difficulty in predicting how an animal or plant species will respond to climate change. Some published studies describe how biotic communities may respond to such changes in temperature and precipitation in the near future (Parmesan and Matthews 2005, pp. 333–374; IPCC 2007a, pp. 1–21; IPCC 2007b, pp. 1–22; Jetz *et al.* 2007, pp. 1211–1216; Kelly and Goulden 2008, pp. 11823–11826; Loarie *et al.* 2008, pp. 1–10; Miller *et al.* 2008, pp. 1–17). Climate change can affect plants and animals in a number of ways, including changes in distribution, population size, behavior, and even changes in physiological and physical characteristics (Parmesan and Matthews 2005, p. 373). Depending on the nature and degree of change within the species range, the towhee and its habitat could be negatively affected in several ways. For example, desert birds are anticipated to experience reduced survival during extreme heat waves, which could result in more frequent large mortality events (McKechnie and Wolf 2010, entire). Based on research on other species, higher temperatures could also result in shifts in nesting phenology (timing of egg laying, hatching, fledging, etc., in relationship to climatic conditions) and changes in clutch size (McCarty 2001, pp. 322–323; Both and Visser 2005, pp. 1610–1611).

As discussed in the "Species Information" section, the Inyo California towhee relies on dense, riparian vegetation. Although there is a degree of uncertainty about the effect of climate change on precipitation in the Mojave Desert, a decrease in precipitation could result in a reduction in the areal extent of riparian patches or a reduction of the density of riparian vegetation, or potentially both could occur. In some areas the amount of riparian vegetation could be reduced to the point where it could no longer support towhees. However, none of the models provide information about how climate change might affect the towhee or its habitat directly. For example, we lack the tools to assess how climate change may affect groundwater levels, which feed the springs that support the towhee's riparian habitat.

Another uncertainty in predicting the potential impact of climate change is the occurrence of periodic droughts, which are a natural feature of the Mojave Desert. The State of California has experienced cycles of drought for many years. For example, between 1928 and 1987, the U.S. Geological Survey (USGS) reported five severe droughts across California, including the longest drought in the State's history during the period 1929–1934 (USGS 2004, p. 2). Increasing temperature could result in more severe and frequent drought, especially in the Southwest (Karl *et al.* 2009, p. 42). However, we are not aware of any formal studies on the direct effect of rising global temperature on drought severity or frequency (Karl *et al.* 2009, p. 5). Drought severity and frequency are a function of a complex series of factors, such as the El-Niño–Southern Oscillation (ENSO) intensity and duration, as well as geographic variations in sea surface temperature, which may also be affected by increasing temperatures (Karl *et al.* 2009, p. 105), thereby compounding the uncertainty associated with precipitation projections (Karl *et al.* 2009, p. 105). Therefore, at this time, we lack sufficient tools to predict how climate change may influence the duration or severity of drought within the range of the Inyo California towhee, or how changes in drought patterns might impact the species.

In summary, predicting the effects of climate change upon the Inyo California towhee is difficult due to the uncertainties of climate projection models, the lack of models for projecting climate change for relatively small geographic areas, and the complexity of interacting factors that may influence vegetation changes. Because we cannot predict how climate may change within the towhee's range, we cannot make meaningful projections on how the towhee may react to climate change or how its habitat may be affected. Therefore, at this time, the best available information does not suggest that climate change is adversely affecting the Inyo California towhee.

Summary of Factor A

Impacts to the towhee identified under Factor A in the 1987 listing rule (52 FR 28780) have all been reduced. Habitat destruction from feral equines has been substantially reduced through actions taken by the NAWS China Lake and BLM. Although feral equines remain within the range of the towhee, and not all riparian areas occupied by towhees have been fenced, the current level of grazing has not hindered the recovery of the species. Habitat losses from recreation have also been reduced in many riparian areas by fencing installed to protect the habitat from feral

grazers. Water diversion has been reduced, and is occurring at only two springs occupied by towhees. There are no active mining operations within the range of the towhee, and all mining claims have been relinquished. No available information suggests that nonnative and invasive plants are affecting the towhee. While these plants occur within towhee habitat, we have no indication that they are spreading to the point of being the dominant vegetation type in these riparian areas, and the BLM and NAWS China Lake are committed to controlling, or in some cases eliminating, them (Service *et al.* 2010, pp. 5, 7). Additionally, as discussed below in Factor D, multiple laws provide protections for the Inyo California towhee and their habitat, including multiple BLM land designations that overlap with portions or the entire range of the Inyo California towhee, that will continue if the species is delisted. These regulations and land designations, and their associated land management plans, have guided many of the activities discussed above that ameliorated these threats. Further, although natural and manmade events such as fire and floods may occur within the Inyo California towhee range, they are not likely to occur on a scale or frequency to constitute a threat to the species.

Average temperatures have been rising in the western Mojave Desert, and this trend will likely continue because of climate change. Climate change may also affect precipitation and the severity, duration, or periodicity of drought. However, a great deal of uncertainty exists as to the rate at which the average temperature may increase, and the effect of climate change on both precipitation and drought. In addition to the uncertainty associated with how the overall climate of the Mojave Desert may change, the impact of climate change on the Inyo California towhee will depend on a complex array of other factors, including how the species and its habitat respond to climate change. In light of all the factors involved, the best available information does not suggest climate change is adversely impacting the Inyo California towhee now or in the future.

In addition to the progress that has been made to improve and protect the Inyo California towhee's habitat to the point that the towhee can now be delisted, we have entered into a cooperative agreement with the NAWS China Lake, BLM, and CDFW to continue protecting the towhee's habitat after delisting by means of maintaining feral equines at current levels or further reducing their numbers, maintaining existing fences or installing new fencing where necessary, monitoring towhee habitat, and controlling or eliminating nonnative and invasive plants. This agreement has resulted in actions that have decreased threats to the species and supported recovery, and it is also intended to ensure the long-term survival of the towhee following delisting. We do not consider grazing by feral equines, recreational activities, water diversion, mining, nonnative and invasive plants, or climate change to constitute a substantial threat to the Inyo California towhee now or in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational uses was not mentioned as a threat when the Inyo California towhee was listed (52 FR 28780), and the best available information does not indicate such threats exist at the present time. Therefore, based on the best available information, we conclude that overutilization is not a threat to the Inyo California towhee now or in the future.

C. Disease or Predation

Disease or predation was not mentioned as a threat when the Inyo California towhee was listed (52 FR 28780). Subsequent to the listing, LaBerteaux (2011, pp. 13–14) suggested that the nest parasitism by brown-headed cowbirds (*Molothrus ater*) or predation of nestlings by common ravens (*Corvus corax*) may negatively affect nesting success of the Inyo California towhee because both species have been observed to occur in towhee habitat. However, LaBerteaux did not provide any information that would indicate that either brown-headed cowbirds or common ravens are having an impact or are an actual threat to towhees. For example, during surveys in 2011, LaBerteaux (2011, p. 13) documented brown-headed cowbirds at only 1 (1.1 percent) of the 93 sites on BLM and CDFW lands and found no evidence of nest parasitism at any of the sites occupied by towhees. The number of cowbirds within the range of the towhee is extremely low and does not pose a threat to towhees.

Common ravens are more abundant within the range of the towhee than cowbirds. For example, in 2011 LaBerteaux (2011, p. 14) documented common ravens at 39 sites (41.9 percent) surveyed on BLM and CDFW lands, which was an increase from 13 sites in 2004. Although common ravens have not been observed preying on towhee eggs or nestlings, they have at least once been observed preying on eggs and nestlings of other desert bird species that occur in the area (LaBerteaux and Garlinger 1998, p. 64), from which it may be inferred that they also prey on towhees. However, towhee population numbers have remained stable to increasing over the last 13 years, which indicates that any predation that may be occurring is not at a level sufficient to cause negative population-level effects.

While ravens and brown-headed cowbirds have been documented in towhee habitat, towhee population numbers have remained stable to increasing over the last 13 years. This indicates that while nest parasitism and predation may occur or have the potential to occur, they are not occurring at a level sufficient to cause negative population-level effects (i.e., population declines, extirpation from a site, reduced nesting range, etc.). The best available information does not indicate that predation (including nest parasitism) is a threat to the Inyo California towhee; therefore, we conclude that predation (including nest parasitism) is not a threat to Inyo California towhee now or in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

If this proposal to delist the Inyo California towhee is finalized, the towhee will no longer be protected under the Act. However, other regulatory mechanisms will remain in place after delisting that will continue to help ensure that future impacts will be reduced or minimized, including the protective provisions of: the California Endangered Species Act of 1984 (CESA; California Fish and Game Code, section 2080 *et seq.*), the California Ecological Reserve Act of 1968, the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. 703–711; 40 Stat. 755), the Sikes Act (16 U.S.C. 670), the Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. 1701 *et seq.*), the Wilderness Act of 1964 (16 U.S.C. 1131–1136, 78 Stat. 890), and the National Environmental Policy Act of 1970 (NEPA; 42 U.S.C. 4321 *et seq.*). These protections, taken together, provide adequate regulatory mechanisms to prevent the Inyo California towhee from becoming threatened or endangered after it is removed from the Federal List of Endangered and Threatened Wildlife. The cooperative management agreement, while not a regulatory document, memorializes the commitment of the Service, BLM, NAWS China Lake, and CDFW to coordinating and implementing those

measures that will result in the long-term conservation of the species.

The Inyo California towhee is listed as endangered under the California Endangered Species Act (CESA), and the removal of the towhee from the Federal List of Endangered and Threatened Wildlife will not automatically result in its removal from the State list. We are not aware of any plans by CDFW to remove the towhee from the State list. CESA prohibits unpermitted possession, purchase, sale, or take of listed species. However, the CESA definition of take does not include harm, which under the Federal Act can include destruction of habitat that actually kills or injures wildlife by significantly impairing essential behavioral patterns (50 CFR 17.3). CESA requires State agencies to consult with CDFW on activities that may affect a State-listed species and mitigate for any adverse impacts to the species. The provisions of CESA protections would apply only on State or private lands, which make up about 5 percent of the species range while the remainder of the range is on Federal land where other regulatory mechanisms apply (see below). Therefore, the protections provided by CESA will not change if the Inyo California towhee is delisted.

The Migratory Bird Treaty Act (MBTA) affords certain regulatory protections to all native migratory bird species, including the prohibition of take, capture, killing, or possession of migratory birds, their eggs, parts, and nests. The MBTA does not protect habitat except where activities would directly kill or injure birds (such as felling a tree with an active nest), and does not provide regulatory procedures for permitting incidental take. Executive Order 13186 (January 10, 2001) was issued to address the responsibilities of Federal agencies to protect migratory birds. This Executive Order directs Federal agencies whose actions have a measurable negative impact on migratory bird populations to develop Memoranda of Understanding (MOU) with the Service to promote the conservation of migratory birds. For example, under the July 31, 2006, MOU between the Service and the Department of Defense, migratory birds will receive certain benefits on military lands by incorporation of migratory bird conservation into their INRMP, including developing and implementing monitoring programs. The MOU also provides for habitat protection on Department of Defense installations, with specific attention to riparian habitats, fire and fuels management, and invasive species management. Like INRMPs, the MOU is subject to budgetary limits; however, it provides an added level of recognition to the importance of conserving migratory birds and their habitats that are not listed under the Act. The protections of the MBTA and the requirements of the MOU will continue if the Inyo California towhee is delisted.

The continued conservation of the Inyo California towhee on the NAWS China Lake lands will also be enhanced by the provisions of the Sikes Act. The Sikes Act authorizes the Secretary of Defense to develop cooperative plans with the Secretaries of Agriculture and the Interior for natural resources on public lands. The Sikes Act Improvement Act of 1997 requires Department of Defense installations to prepare INRMPs that provide for the conservation and rehabilitation of natural resources on military lands consistent with the use of military installations to ensure the readiness of the Armed Forces. INRMPs incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. INRMPs are updated every 5 years, and each version must be approved by the Service for compliance with the Sikes Act. While INRMPs are not technically a regulatory mechanism because their implementation is subject to funding availability, they are an added conservation tool for improving and maintaining wildlife populations and habitat on military lands.

The Navy owns approximately 68 percent of the range of the Inyo California towhee. The NAWS China Lake developed an INRMP (NAWS China Lake 2000, pp. 112–113) that clearly defines objectives and guidelines to aid in the recovery of the Inyo California towhee. Specifically, the INRMP's objectives for the Inyo California towhee are to ensure the long-term population viability; continue to resolve baseline, biological data gaps, and continue habitat enhancement efforts; and support recovery plan efforts to establish stable towhee populations or eventual delisting (NAWS China Lake, pp. 112–113). Guidelines for the Inyo California towhee include such actions as: conduct range-wide surveys for towhees, assess activities that could affect riparian habitat within the towhee's range, enhance springs impacted by horses by fencing areas with a minimum of 3,500 square feet, maintain adjacent upland habitat for towhee foraging and nesting, fund and support research efforts to support towhees, survey potential habitat and riparian habitat that has not been previously surveyed for towhees, and coordinate with BLM and CDFW (NAWS China Lake, pp. 112–113). Additionally, the INRMP for NAWS China Lake has an ecosystem approach that includes conservation of water resources, control of exotic species, and other activities that benefit the towhee and its habitat (NAWS China Lake, entire).

Through implementation of the INRMP, NAWS China Lake has made significant contributions to recovery of the Inyo California towhee, such as reduction of impacts to habitat by initiating management prescriptions that eliminate feral equines from riparian areas. The NAWS China Lake is currently working to update their INRMP, which includes continuation of management of feral equines, fencing of springs as needed, and other activities that benefit the towhee. Additionally, as an active military installation, the NAWS China Lake is closed to most public uses (Pennix 2006, pers. comm.).

The Federal Land Policy and Management Act of 1976 (FLPMA) is the primary Federal law governing most land uses on BLM land, which constitutes about 26 percent of the range of the Inyo California towhee. FLPMA established a public land policy for the BLM; it provides for the management, protection, development, and enhancement of the BLM lands. FLPMA directs the development and implementation of resource management plans (RMPs), which direct management at a local level, and requires public notice and participation in the formulation of such plans and programs for the management of BLM lands. RMPs authorize and establish allowable resource uses, resource condition goals and objectives to be attained, program constraints, general management practices and sequences, intervals and standards for monitoring and evaluating RMPs to determine effectiveness, and the need for amendment or revision (43 CFR 1601.0–5(n)).

Through FLPMA in 1976, Congress designated 25 million acres as the California Desert Conservation Area (CDCA) (Sec 601 (c)), of which approximately half (12 million acres) is BLM property, and includes the entire range of the Inyo California towhee. Congress noted the fragility of the California desert ecosystem that is "easily scarred and slow to heal; the historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources in the California desert; and that certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological

and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California."

Congress charged the BLM with developing and implementing an RMP for the CDCA that provides for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple-use and sustained yield, and the maintenance of environmental quality. Within the range of the Inyo California towhee, the current BLM land management documents are the California Desert Conservation Area (CDCA) Plan 1980, as amended (BLM 1999) and other amendments to the CDCA Plan, including the West Mojave RMP (WEMO Plan) and EIS (BLM *et al.* 2005) and the Northern and Eastern Mojave RMP (NEMO) and EIS (BLM *et al.* 2002). WEMO and NEMO management areas, whose boundaries encompass the range of the Inyo California towhee, are two of six planning areas within the CDCA. Typically, RMPs are updated every 30 years, but may be done updated or less frequently. The overarching CDCA Plan defined elements, such as Wildlife Elements, which have specific goals (BLM 1999, p. 21).

Further, BLM designated Areas of Critical Environmental Concern (ACEC) as a tool to meet goals of the Wildlife Element of the CDCA Plan. The FLPMA defined ACECs as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards" (Sec. 103(a)). The CDCA Plan states that management prescriptions for ACECs for identified wildlife resources will include aggressive management actions to halt reverse declining trends and to ensure the long-term maintenance of wildlife resources (BLM 1999, p. 29). Recognizing the significance of the Inyo California towhee, the BLM established the 9000-acre Great Falls Basin/Argus Range ACEC, primarily to benefit the Inyo California towhee, with the goals of protecting and enhancing the towhee's habitat and protecting scenic resources (BLM 1987, pp. 4, 9). In the development and revision of land-use plans, the BLM is to "give priority to the designation and protection of areas of critical environmental concern" (Sec. 202(c)(3)).

In 1964, Congress enacted the Wilderness Act with the intent of establishing a National Wilderness Preservation System composed of federally owned wilderness areas to be protected in their natural condition for the use and enjoyment of the people of the United States. As originally enacted, the Wilderness Act directed only the Secretary of Agriculture to identify areas suitable for wilderness in the National Forests. In FLPMA, Congress directed the Secretary of the Interior to identify areas suitable for wilderness on BLM lands. The 65,000-acre Argus Range Wilderness Area owned by BLM was designated in 1994 and includes a portion of the Inyo California towhee's range.

Biological resources in designated wilderness areas are afforded the highest level of protection due to restriction on uses. The general management goals that apply to wilderness areas require that the BLM provide for and manage wilderness areas for long-term protection and preservation of wilderness, scenic, cultural, and natural characteristics for recreational, scientific, and educational purposes. To maintain the primeval character and provide for solitude, a variety of activities are prohibited by the Wilderness Act within designated wilderness areas. Some of the activities not allowed in wilderness areas include building roads and structures, commercial activities, use of motorized vehicles or equipment (including OHVs), and landing of aircraft.

In 1994, the State of California purchased Indian Joe Canyon, which was the only parcel of Inyo California towhee critical habitat under private ownership (Service 1998, p. 14). The area around Indian Joe Springs includes about 5 percent of the range of the Inyo California towhee. Under the State of California's Ecological Reserve Act of 1968, CDFW designated the acquired land as the Indian Joe Springs Ecological Reserve to protect the towhee and its habitat. Ecological Reserves are managed under the California Code of Regulations (CCR), Title 14, Section 630. The purpose of ecological reserves is "to provide protection for rare, threatened or endangered native plants, wildlife, aquatic organism and specialized terrestrial or aquatic habitat types." (14 CCR 630) Under 14 CCR 630(a)(1), it is prohibited in any Ecological Reserve to "take or disturb any bird or nest, or eggs thereof, or any plant, mammal, fish, mollusk, crustacean, amphibian, reptile, or any other form of plant or animal life." Therefore, this Ecological Reserve is to be managed consistent with the needs of the towhee, including restriction of activities that negatively impact the towhee or its habitat.

All Federal agencies are required to adhere to the National Environmental Policy Act of 1970 (NEPA; 42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1518) state that agencies shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects that cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR 1502). NEPA does not itself regulate activities that might affect the Inyo California towhee, but it does require full evaluation and disclosure of information regarding the effects of contemplated Federal actions on sensitive species and their habitats. Although Federal agencies may include conservation measures for Inyo California towhee as a result of the NEPA process, any such measures are typically voluntary in nature and are not required by the statute.

The inadequacy of existing regulatory mechanisms was not indicated as a threat to the Inyo California towhee at listing. Because more than 99 percent of the range of the towhee is under Federal or State ownership, existing regulatory mechanisms, including various laws, regulations, and policies administered by the U.S. Government and CDFW, aid in abating known threats and provide protective mechanisms for the species and its habitat. Primary laws that provide some benefit for the species and its habitat include the CESA, MBTA, Sikes Act, FLPMA, Wilderness Act, and NEPA. While most of these laws, regulations, and policies are not specifically directed toward protection of towhee, they mandate consideration, management, and protection of resources that benefit towhees. Additionally, these laws contribute to and provide mechanisms for agency planning and implementation directed specifically toward management of towhees and their habitat. Because most of these laws and regulations are national in scope and are not conditional on the listed status of the towhee, we expect these laws and regulatory mechanisms to remain in place after the towhee is delisted. Therefore, the inadequacy of existing regulatory mechanisms is not a threat to Inyo California towhee now or in the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

We did not identify any threats to the Inyo California towhee under Factor E in the final listing rule (52 FR 28780). However, natural and manmade disturbances, such as flooding, erosion, and fires, may result in the temporary loss or reduction of suitable habitat for the Inyo California towhee in some areas, which could result in adverse effects to the species. Because the potential effects to the towhee are due to habitat loss or destruction, these are discussed under Factor A. We conclude there are no natural or manmade factors that are a threat to Inyo California towhee now or in the future.

Conclusion of 5-Factor Analysis

The reasons for the population decline of the Inyo California towhee and its listing as threatened were habitat loss and degradation from feral grazers, recreational use, water diversion, and mining. New potential threats identified since the time of listing include invasive and nonnative plants, climate change, nest parasitism by brown-headed cowbirds and predation by common ravens. Although invasive and nonnative plants and brown-headed cowbirds and common ravens have been documented in Inyo California towhee habitat, the best available information does not support that they are having a negative impact on the species. Climate change may have some effect on the species. However, at this time, the best available information does not indicate that climate change is a threat to this species.

Although none of the factors discussed above is having a major impact on the towhee, a combination of factors could potentially have a much greater effect. For example, effects of feral equines on towhee habitat could worsen during periods of prolonged, severe drought when some water sources may dry up, resulting in greater pressure from feral equines on the remaining available water sources, which would likely degrade towhee habitat. However, the impacts of feral equines on towhee habitat can be greatly reduced or eliminated by installing fencing around springs. Almost the entire range of the towhee is under Federal and State ownership, and the BLM, NAWS China Lake, and CDFW have committed to controlling the number of feral equines and protecting towhee habitat with fences as needed in the 2010 cooperative management agreement (Service *et al.*, 2010, entire). Although the types, magnitude, or extent of cumulative impacts are difficult to predict, we are not aware of any combination of factors that has not already or would not be addressed through ongoing conservation measures.

As stated previously, NAWS China Lake and BLM own about 94 percent of the towhee's range. Conservation measures implemented by the NAWS China Lake and BLM to reduce or eliminate grazing, recreational use, water diversions, and mining throughout most of the towhee's range have improved the habitat of the towhee, which in turn, has led to a substantial increase in towhee abundance. Since 1980, the NAWS China Lake and BLM have removed more than 9,400 feral equines and have fenced 17 springs occupied by towhees to exclude equines. The NAWS China Lake is closed to the public, and the BLM has reduced recreational impacts on its land through fencing of springs (LaBerteaux 2004, p. 47). In 2007 and 2011, water diversions were occurring at approximately only 1 percent of the sites included in the surveys (LaBerteaux 2011, p. 15). The NAWS China Lake is closed to mining, and all mines on BLM land have been relinquished. These conservation measures have been highly effective in the recovery and protection of the towhee's riparian habitat and have resulted in a major increase in towhee abundance, from less than 200 at the time of listing (52 FR 28780) to a total population that, since 1998, has ranged from 640 to 741 individuals (LaBerteaux and Garlinger 1998, pp. ii, 7, 63; LaBerteaux 2004, pp. ii, 60; LaBerteaux 2008, pp. iii, 85; LaBerteaux 2011, pp. 3, 12). The towhee and its habitat are expected to continue to be protected through ongoing conservation measures, laws, and regulations. The NAWS China Lake, BLM, and CDFW own approximately 99 percent of the towhee's range. Multiple regulations provide protection for Inyo California towhee, and additionally, these agencies have entered into a cooperative management agreement with the Service to continue conducting conservation measures after the towhee is delisted (Service *et al.* 2010, entire).

As discussed above, survey results indicate that over the last 13 years the number of Inyo California towhees have been stable to increasing and that the population is self-sustaining, which meets one of the criterion for recovery outlined in the Recovery Plan. In addition, an assessment of factors that may be impacting the species did not reveal any significant threats to the species, now or in the future. We have carefully assessed the best scientific and commercial data available and determined that Inyo California towhee is no longer in danger of extinction throughout all of its range, nor is it likely to become so in the future.

Significant Portion of the Range Analysis

Having determined that the towhee does not meet the definition of threatened throughout its range, we next consider whether there are any significant portions of its range that are in danger of becoming endangered in the foreseeable future or becoming extinct. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be "significant" *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not "significant," we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is "significant." In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of "significant," such portions will not warrant further consideration.

Applying the process described above, we evaluated the range of the Inyo California towhee to determine if any area could be considered a significant portion of its range. As noted above in our Species Information section, the Inyo California towhee is considered to currently occupy its entire historical range, so there has been no loss of historic range for this species.

We consider the "range" of the Inyo California towhee to be the southern Argus Mountains in the Mojave Desert, Inyo County, California. We considered whether any portions of the range of the Inyo California towhee were likely to be both significant and in danger of extinction or likely to become so. One possible way to identify portions would be to consider land ownership because conservation actions, and, therefore, management of threats, could potentially differ depending on the policies and regulations implemented by the land owner. As noted earlier, 68 percent of the towhee's range is on Navy land, 26 percent is on BLM land, 5 percent is on CDFW land, and less than 1 percent is on private property. Potentially, the portions of the towhee's range on Navy and BLM land could be significant because of the size of those portions. However, while these lands are managed by different agencies with different laws and policies governing management practices, there is no substantial difference in the conservation actions implemented to control threats or the status of the species among the differing land ownerships.

We also considered whether any threats are geographically concentrated in some way that would indicate the species could be threatened or endangered in that area. The major threats to the Inyo California towhee at the time of listing were the loss and degradation of riparian habitat attributed to feral equines, recreational activities, water diversion, and mining. As noted above, feral equines still occur throughout the range of the towhee, and have the potential to adversely affect all towhee habitat. However, feral equines are being adequately managed throughout the range of the species, and no portion of the species range is experiencing an increased level of impacts from feral equines. Recreational activities are excluded from the NAWS China Lake because it is closed to the public; impacts on the towhee's habitat from recreational activities primarily occur on BLM and CDFW lands but are subject to management and restrictions and are considered to be occurring at low levels at a limited number of sites. This level of recreational activity does not appear to be having an impact on towhees and their habitat. Water diversion and mining were also more prevalent on BLM lands historically, but are now eliminated or reduced to negligible levels.

As we explained in detail in our analysis of the status of the species, all major threats (feral equines, recreational activities, water diversions, and mining) have been reduced across the range of the species, and the towhee population has rebounded. Another way to identify portions would be to identify natural divisions within the range that might be of biological or conservation importance. The range of the Inyo California towhee is small, but may be naturally divided by streams or watershed. However, given their patchy distribution and ability of the species to fly across land barriers, no area is likely to be of greater biological or conservation importance than any other area. We did not find that any portion of the species range has a concentration of threats or that any natural divisions in the range exist that would indicate any portion is of greater conservation importance than others and, therefore, conclude that no portion warrants further consideration. Therefore, based on our evaluation of the current and potential threats to the Inyo California towhee, we conclude that these threats are neither sufficiently concentrated nor of sufficient magnitude to indicate the species is in danger of extinction or likely to become so in any of the areas that support the species, and thus, it is likely to persist throughout its historical range.

We have carefully assessed the best scientific and commercial data available and determined that the Inyo California towhee is no longer in danger of extinction throughout all or significant portions of its range, nor is it likely to become so in the future. As a consequence of this determination, we are proposing to remove this species from the List of Endangered and Threatened Species under the Act.

Effects of This Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to remove the Inyo California towhee from the List of Endangered and Threatened Wildlife and would revise 50 CFR 17.95(b) to remove designated critical habitat for the species. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Inyo California towhee.

Other regulatory mechanisms will remain in place after delisting that will continue to ensure that future impacts will be reduced or minimized, including the protective provisions of: The California Endangered Species Act of 1984 (CESA; California Fish and Game Code, section 2080 *et seq.*), the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. 703–711; 40 Stat. 755), the Sikes Act (16 U.S.C. 670), the Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. 1701 *et seq.*), and the Wilderness Act of 1964 (16 U.S.C. 1131–1136, 78 Stat. 890). These protections, taken together, will provide adequate regulatory mechanisms to prevent the Inyo California towhee from becoming endangered throughout all of its range in the foreseeable future after it is removed from the Federal List of Endangered and Threatened Wildlife.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (50 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule and the draft post-delisting monitoring (PDM) plan. The purpose of peer review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this comment period on this proposed rule and draft PDM plan, and the specific assumptions and conclusions regarding the proposed delisting. Accordingly, the final decision may differ from this proposal.

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The PDM is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

Post-Delisting Monitoring Plan Overview

The Service has developed a draft PDM plan for the Inyo California towhee. The PDM plan is designed to verify that the towhee remains secure from risk of extinction after removal from the Federal List of Endangered and Threatened Wildlife by detecting changes in its status and habitat throughout its known range. The PDM plan would accomplish the objectives through cooperation with the NAWS China Lake, BLM, and CDFW, thus fulfilling the goal to prevent the species from needing Federal protection once again, per the Act. The following briefly describes the measures in the draft PDM plan that will be implemented during the monitoring period. These measures are discussed in more detail in the draft PDM plan.

Although the Act has a minimum PDM requirement of 5 years, the Inyo California towhee should be monitored for 12 years following delisting. A 12-year monitoring period is necessary to account for environmental variability (e.g., drought) that may affect the condition of riparian habitat and to provide for a sufficient number of surveys to document any changes in the abundance of the species. Based on the frequency of past surveys, a complete survey of known and potential towhee habitat should be conducted every 4 years. The abundance surveys should continue to be accompanied by habitat and threats surveys, as in previous years. Therefore, the 12-year monitoring period will result in a minimum of three complete surveys of the towhee's abundance, habitat condition, and threats in its known and potential range during the period of the PDM plan. However, if a decline in abundance is observed or a substantial new threat arises, post-delisting monitoring may be extended or modified as described below.

Abundance for the duration of the post-delisting monitoring period will be determined using the same survey methodology developed by LaBerteaux and Garlinger (1998), which has been used for all Inyo California towhee surveys conducted on Federal and State lands beginning with the 1998 survey. This methodology will be used because it is effective at detecting towhees and provides an accurate population estimate. Additionally, use of this methodology will maintain consistency between data sets and allow for comparison with previous population estimates. Observations from those sites visited in a single season are compared with those made at the same sites in previous years to determine any change or trend in towhee abundance. At the end of each complete survey, all observations will be used to estimate the total number of birds, number of breeding pairs, and number of unmated birds across the range of the species.

In addition to the survey methodology for determining towhee abundance, LaBerteaux and Garlinger (1998) also developed a methodology for assessing habitat condition and threats. These surveys will continue to be conducted throughout the 12-year post-delisting monitoring period to maintain consistency between data sets and allow for comparison with previous surveys. Data from these surveys will be used to calculate the percent change in the number of affected sites from the previous survey.

After each survey, the Service and its partners will compare the results with those from previous surveys and consider the implication of any observed change in abundance or threats to the conservation of the species. At the end of the PDM period, the Service will conduct a final internal review and prepare a final report summarizing the results of monitoring. The final report will include a discussion of whether monitoring should continue beyond the 12-year period for any reason.

With this notice, we are soliciting public comments and peer review on the draft PDM Plan including its objectives and procedures (see Public Comments Solicited). All comments on the draft PDM plan from the public and peer reviewers will be considered and incorporated into the final PDM plan as appropriate. The draft PDM plan will be posted on our Endangered Species Program's national Web page (*http://endangered.fws.gov*) and the Ventura Fish and Wildlife Office Web page (*http://fws.gov/ventura*) and on the Federal eRulemaking Portal at *http://www.regulations.gov*. We anticipate finalizing this plan, considering all public and peer review comments, prior to making a final determination on the proposed delisting rule. Although separate from the cooperative management agreement with NAWS China Lake, BLM, and CDFW, many of the actions in the PDM plan are consistent with those committed to in the agreement.

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:

(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 names 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.

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In concurrence with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with

recognized Federal tribes on a government-to-government basis. We have determined that there are no tribal lands affected by this proposal.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://regulations.gov* or upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this proposed rule is the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and 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—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 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.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for "Towhee, Inyo California" under "Birds" in the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

■ 3. Amend § 17.95(b) by removing the entry for "Inyo Brown Towhee *(Pipilo Fuscus Eremophilus)*".

Dated: October 23, 2013.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–26122 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–R9–MB–2011–0100; FF09M21200–134–FXMB1232099BPP0]

RIN 1018–AX92

Migratory Bird Permits; Removal of Regulations Concerning Certain Depredation Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to remove regulations that set forth certain depredation orders for migratory birds. There have been no requests for authorization of a depredation order under these regulations for many years, and no reports of activities undertaken under these regulations in the last 15 years. Because these regulations apparently are unused, we propose to remove them. Control of depredating birds could still be undertaken under depredation permits in accordance with the regulations at 50 CFR 21.41.

DATES: Electronic comments on this proposal via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern time on February 3, 2014. Comments submitted by mail must be postmarked no later than February 3, 2014.

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

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket FWS–R9–MB–2011–0100.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–R9–MB–2011–0100; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: George T. Allen, at 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The regulations we propose to remove all deal with depredating migratory birds. 50 CFR 21.42 governs control of depredating migratory game birds in the United States; under this section of the regulations, the Director of the U.S. Fish and Wildlife Service is authorized to issue, by publication in the **Federal Register**, a depredation order to permit the taking of migratory game birds under certain conditions if the Director receives evidence clearly showing that the migratory game birds have accumulated in such numbers in a particular area as to cause or about to cause serious damage to agricultural, horticultural, and fish cultural interests.

Under 50 CFR 21.45, landowners, sharecroppers, tenants, or their employees or agents, actually engaged in the production of rice in Louisiana, may, without a permit and in accordance with certain conditions, take purple gallinules (*Ionornis martinica*) when found committing or about to commit serious depredations to growing rice crops on the premises owned or occupied by such persons.

Under 50 CFR 21.46, landowners, sharecroppers, tenants, or their employees or agents actually engaged in the production of nut crops in Washington and Oregon may, without a permit and in accordance with certain conditions, take scrub jays (*Aphelocoma coerulescens*) and Steller's jays (*Cyanocitta stelleri*) when found committing or about to commit serious depredations to nut crops on the premises owned or occupied by such persons.

All of these regulations were put in place in 1974, to help commercial agricultural interests (for 50 CFR 21.42 and 21.45, see 39 FR 1157, January 4, 1974; for 50 CFR 21.46, see 39 FR 31325, August 28, 1974). 50 CFR 21.45 and 21.46 require reporting and recordkeeping on activities taken in accordance with the regulations. We have received no applications for declaration of a depredation order under § 21.42 in the last 15 years, and there have been no reports of activities conducted under § 21.45 or § 21.46 in at least 10 years. We therefore propose to remove these regulations. This action would remove outdated, unused regulations from the Code of Federal Regulations (CFR), thereby saving the Federal Government the annual cost of republishing them in the CFR.

If this proposal is adopted, control of depredating birds could still be undertaken under depredation permits, in accordance with 50 CFR 21.41. Further, issuing a depredation permit would be more likely to promptly help resolve depredation problems than would a depredation order to be published in the **Federal Register**, as the regulation at 50 CFR 21.42 currently requires.

Public Comments

We request comments on this proposed rule. You may submit your comments and supporting materials by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by email or fax, or written comments sent to an address other than the one listed in the **ADDRESSES** section.

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 that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments 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 at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. There are no costs associated with this change to our regulations. The Federal Government would see a very slight benefit, as the U.S. Fish and Wildlife Service would no longer incur the very small annual cost of republishing these three sections of the regulations in the Code of Federal Regulations (CFR), but even over many years, this monetary benefit will be so small as to be negligible.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that because this action would not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)). It would not have a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more.

b. This 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.

c. This rule 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.

Therefore, we certify that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule would not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities.

b. This rule would not produce a Federal mandate of $100 million or greater in any year. It would not be a "significant regulatory action."

Takings

This rule does not contain a provision for taking of private property. In accordance with Executive Order 12630, a takings implication assessment is not required.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a federalism impact summary statement under Executive Order 13132. It would not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the proposed change in the depredation orders that are the subject of this proposed rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

There is no information collection requirement associated with this proposed regulations change. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f) and Part 516 of the U.S. Department of the Interior Manual (516 DM). The proposed regulations change would simply remove unused regulations, and is administrative in nature. The action is categorically excluded from further NEPA consideration by 43 CFR 46.210(i).

Socioeconomic. The proposed regulations change would have no discernible socioeconomic impacts.

Migratory bird populations. The proposed regulations change would not affect native migratory bird populations.

Endangered and Threatened Species. The proposed regulation change would

not affect endangered or threatened species or habitats important to them.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that there are no potential effects on Federally recognized Indian Tribes from the proposed regulations change. The proposed regulations change would not interfere with Tribes' abilities to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

This proposed rule would affect only certain depredation orders for migratory birds, and would not affect energy supplies, distribution, or use. This action would not be a significant energy action, and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). The proposed regulations change would not affect listed species.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: 16 U.S.C. 703–712.

§ 21.42 [Removed and reserved]

■ 2. Remove and reserve § 21.42.

§ 21.45 [Removed and reserved]

■ 3. Remove and reserve § 21.45.

§ 21.46 [Removed and reserved]

■ 4. Remove and reserve § 21.46.

Dated: September 26, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–26070 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2013–0070; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AZ69

Migratory Bird Permits; Control Order for Introduced Migratory Bird Species in Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Nonnative species in Hawaii displace, compete with, and consume native species, some of which are endangered, threatened, or otherwise in need of additional protection. To protect native species, we propose to establish a control order for cattle egrets (*Bubulcus ibis*) and barn owls (*Tyto alba*), two introduced migratory bird species in Hawaii. We also make the supporting draft environmental assessment available for public comment.

DATES: Electronic comments on this proposal via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern time on February 3, 2014. Comments submitted by mail must be postmarked no later than February 3, 2014.

ADDRESSES: You may submit comments by one of the following methods only:

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket FWS–HQ–MB–2013–0070.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–HQ–MB–2013–0070; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen in Arlington, Virginia, at 703–358–1825 about the proposed rule, or Jenny Hoskins in Volcano, Hawaii, at 503–382–7056 about the draft environmental assessment.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR).

Regulations pertaining to migratory bird permits are at 50 CFR part 21. Subpart D of part 21 contains regulations for the control of depredating birds. Depredation and control orders allow the take of specific species of migratory birds for specific purposes without need for a Federal permit. In general, the Service establishes depredation orders to protect human property, such as agricultural crops, from damage by migratory birds, and we issue control orders to protect natural resources. To protect native species in Hawaii, we propose to add a control order to part 21 for cattle egrets (*Bubulcus ibis*) and barn owls (*Tyto alba*), two introduced migratory bird species in Hawaii.

Species Information

Cattle egrets and barn owls were both introduced into Hawaii in the late 1950s to deal with agricultural pests on farms and ranches. Both species have since significantly expanded in range and population size, and now pose a serious predation problem for various native Hawaiian bird species including several threatened and endangered species. Studies indicate that neither cattle egrets nor barn owls have been effective in controlling the pests for which they were introduced. In Hawaii, cattle egrets are now widespread on all of the main islands, as well as on the islands and atolls of the Northwestern Hawaiian islands. Barn owls are known to occur regularly on all of the main Hawaiian islands in all habitat types, from sea level to upper elevation forests, and in recent years have been sighted with increasing frequency on offshore islets. We are concerned that barn owls will soon have established populations in the Northwestern Hawaiian islands.

Cattle Egrets

Cattle egrets range throughout wetland areas, atolls, and open

grasslands of the State. Cattle egrets have been observed to depredate the young of the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian coot (*Fulica alai*), Hawaiian common moorhen (*Gallinula chloropus sandvicensis*), and Hawaiian duck (*Anas wyvilliana*). On managed wetlands, increased cattle egret foraging behavior has been documented just as endangered waterbird chicks are hatching. On offshore islets and in the Northwestern Hawaiian islands, including Midway Island, cattle egrets have been documented preying on chicks of native ground-nesting seabirds, including multiple species of terns, noddies, and petrels. In upland areas, cattle egrets are believed to prey upon chicks of pueo—the Hawaiian short-eared owl (*Asio flammeus sandwichensis*). Predation on pueo chicks has been documented on Lānai, and is likely to be occurring on all other islands where both pueo and cattle egret occur together. Service National Wildlife Refuge (Refuge) personnel have documented cattle egrets following staff during routine management activities and advantageously preying on newly hatched waterbird chicks encountered. Cattle egrets are also known to forage on invertebrates in wetlands, competing with native birds for food resources.

Localized nonlethal control of cattle egrets has been ineffective. Service Refuge staff have recognized that some normal land management practices, such as mowing, may attract cattle egrets to areas colonized by endangered waterbird species. Though they have altered their management in such cases, the predation continues to be a problem. Having once located prey at a site, cattle egrets continue to forage at that site, even in the absence of the activities that first attracted them. Site-specific depredation permits have been issued for take of cattle egrets on multiple islands where they have been documented to prey on endangered species, but the sites are soon recolonized by egrets moving within and between islands.

Barn Owls

Though considered a rodent specialist throughout continental North America, barn owls in Hawaii have been documented preying upon multiple avian species and may pose a significant threat to nocturnally active seabirds. Seabird predation by barn owls has been documented on offshore islets, the coast of the main islands, and in montane forests where they are known predators of endangered Hawaiian petrels (*Pterodroma sandwichensis*) and threatened Newell's shearwaters (*Puffinus auricularis newelli*). Seabird mortality due to barn owl predation has been repeatedly documented on Maui Island on wedge-tailed shearwaters (*Puffinus pacificus*), on Lānai on Hawaiian petrels, and on Oahu's offshore islets on Bulwer's petrels (*Bulweria bulwerii*). Loss of adult petrels to owls is significant. Predation on breeding adults leads to reduced breeding success, and owl predation at all life stages prevents successful implementation of planned recovery actions for the species.

Control of barn owls has been attempted through nonlethal methods and localized take, but these methods have proven ineffective. Harassment and take of barn owls at endangered bird colony sites may result in harassment and potential capture of individuals of endangered species. To avoid such disturbance of endangered species, barn owls may need to be located and removed at nesting and roosting sites away from native bird colonies. As is the case with cattle egrets, site-specific take permits may result in temporary declines in barn owl populations, but those areas are soon recolonized by recruitment of birds within and between islands.

Proposed Regulations

Because nonlethal methods have been unsuccessful in reducing the problems caused by cattle egrets and barn owls in Hawaii and because these species are nonnative to Hawaii, we are proposing regulations that would allow take by certain authorized agencies. The agencies that we are proposing to authorize to conduct control activities are those that have functional and/or jurisdictional responsibility for controlling invasive species and protecting native species in the Hawaiian islands. The control methods that we propose to authorize are similar to measures allowed in other control orders and encompass a suite of techniques that give wildlife managers flexibility in achieving control of invasive species without causing significant impacts to native species.

Public Comments on the Draft Environmental Assessment

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 432–437(f)) and have completed a draft environmental assessment (DEA), which is available at *www.fws.gov/migratorybirds* and in the docket for this proposed rule. You may submit comments on the DEA to Migratory Bird Management, U.S. Fish and Wildlife Service, 911 Northeast 11th Avenue, Portland, OR 97232–4181. You can email comments on the DEA to *PermitsR1MB@fws.gov*.

Public Comments on the Proposed Rule

We request comments on this proposed rule. You may submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax, or written comments sent to an address other than the one 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 that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments 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 at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (contact the person listed under **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA 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.

Executive Order 13112 Invasive Species

The proposed rule supports and enacts mandates of invasive species control detailed in Executive Order 13112 of February 3, 1999. Section 2 directs that:

(a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,

(1) identify such actions;

(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to;

(i) prevent the introduction of invasive species,

(ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner,

(iii) monitor invasive species populations accurately and reliably,

(iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded,

(v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species, and

(vi) promote public education on invasive species and the means to address them; and

(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. This proposed regulation change would not have a significant economic impact on a substantial number of small entities, so a regulatory flexibility analysis is not required.

This is not a major rule under the SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities:

a. This rule would not have an annual effect on the economy of $100 million or more;

b. This 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

c. This rule 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 (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

a. This rule would not affect small governments. A small government agency plan is not required. Allowing control of introduced migratory bird species would not affect small government activities; and

b. This rule would not produce a Federal mandate. It is not a significant regulatory action.

Takings

This proposed rule does not contain a provision for taking of private property. In accordance with Executive Order 12630, a takings implication assessment is not required.

Federalism

This proposed rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It would not interfere with Hawaii's ability to manage itself or its funds. No significant economic impacts are expected to result from the proposed regulations change.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. Since this rule affects only two non-Federal government agencies, the reporting requirements do not require OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 432–437(f)) and U.S. Department of the Interior regulations at 43 CFR part 46. We have completed a draft environmental assessment of the proposed change, which is included in the docket for this proposed rule. We conclude that our preferred alternative would have the following impacts:

Socioeconomic. The proposed regulation change would have no discernible socioeconomic impacts.

Migratory bird populations. The proposed regulation change would not negatively affect native migratory bird populations. Neither species to be controlled is native to Hawaii.

Endangered and threatened species. The proposed regulation change would benefit endangered or threatened species or habitats important to them by reducing predation and competition by the cattle egret and the barn owl.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that there are no potential effects on federally recognized Indian Tribes from the proposed regulation change. The proposed regulation change would not interfere with Tribes' abilities to manage themselves or their funds, or to regulate migratory bird activities on tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

This proposed rule would not affect energy supplies, distribution, or use. This action would not be a significant energy action, and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). The proposed regulation change would benefit listed species or habitats important to them by reducing predation and competition by the cattle egret and the barn owl.

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 **ADDRESSES**. 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.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority for part 21 is revised to read as follows:

Authority: 16 U.S.C. 703–712.

■ 2. Add § 21.55 to read as follows:

§ 21.55 Control order for introduced migratory birds in Hawaii.

(a) *Control of cattle egrets and barn owls.* Personnel of the agencies listed in paragraph (b) of this section may remove or destroy cattle egrets (*Bubulcus ibis*) or barn owls (*Tyto alba*), or their nests or eggs, at any time anywhere in the State of Hawaii, the Northwestern Hawaiian islands, or the unincorporated territory of Midway Atoll. No permit is necessary to engage in these actions. In this section, the word "you" means a person operating officially as an employee of one of the authorized agencies.

(b) *Authorized agencies.* (1) U.S. Fish and Wildlife Service;

(2) U.S. Department of Agriculture—Animal and Plant Health Inspection Service;

(3) U.S. Geological Survey;

(4) U.S. Department of Defense;

(5) National Park Service;

(6) Federal Aviation Administration;

(7) National Oceanic and Atmospheric Administration;

(8) Hawaii Department of Lands and Natural Resources—Division of Forestry and Wildlife;

(9) Hawaii Department of Agriculture;

(10) University of Hawaii—Pacific Cooperative Studies Units with program mandates to accomplish invasive species eradication and control. These include staff of the Kauai Invasive Species Committee, the Oahu Invasive Species Committee, the Maui Invasive Species Committee, the Molokai–Maui Invasive Species Committee, or the Big Island Invasive Species Committee.

(c) *Means of take.* (1) You may take cattle egrets and barn owls by means of egg oiling, egg and nest destruction, firearms, trapping, cervical dislocation, and CO_2 asphyxiation. Any time that euthanasia of a bird is necessary, you must follow the American Veterinary Medical Association Guidelines on Euthanasia.

(2) If you use a firearm to kill cattle egrets or barn owls under the provisions of this order, you must use nontoxic shot or nontoxic bullets to do so. See § 20.21(j) of this chapter for a list of approved nontoxic shot types. This requirement does not apply when using air rifles or air pistols.

(3) Eggs may be oiled with 100 percent corn oil, which is exempted from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act by the U.S. Environmental Protection Agency.

(4) You may use decoys, taped calls, or other luring devices as tools for locating and capture or removal of cattle egrets or barn owls.

(d) *Land access.* You must obtain appropriate landowner permission before conducting activities authorized by this order.

(e) *Relationship to other regulations.* You may kill cattle egrets and barn owls or destroy their nests or eggs under this order only in a way that complies with all applicable tribal, local, State, Federal, and/or territorial regulations. Any and all required authorizations must be obtained to conduct this activity.

(f) *Release of injured or sick cattle egrets or barn owls.* Wildlife rehabilitators, veterinarians, and all other individuals or agencies who receive sick or injured cattle egrets or barn owls are prohibited from releasing any individuals of those species back into the wild in the State of Hawaii, the Northwestern Hawaiian islands, or the unincorporated territory of Midway Atoll. All applicable local, State, Federal, and/or territorial regulations must be followed to release cattle egrets or barn owls in or transfer them to any other location.

(g) *Disposal of cattle egret or barn owl carcasses, nests, or eggs.* You may donate birds, nests, or eggs taken under this control order to public museums or public institutions for scientific or educational purposes; you may dispose of the carcasses by burial or incineration; or, if the carcasses are not safely retrievable, you may leave them in place. No one may retain for personal or cultural use, offer for sale, or sell a cattle egret or a barn owl or any body parts, nests, or eggs removed under this section.

(h) *Threatened or endangered species.* You may not remove or destroy cattle egrets or barn owls or their nests or eggs if doing so will adversely affect other migratory birds protected under the Migratory Bird Treaty Act or species designated as endangered or threatened under the authority of the Endangered Species Act.

(i) *Reporting take.* All agencies engaged in control activities under this control order must provide an annual report of take during the calendar year for each species by January 31st of the following year. The report must include a summary of the species and number of birds taken, the months in which they were taken, and the county(ies) in which they were taken. The report for

any of these agencies may be combined, as appropriate. Submit annual reports to the Regional Migratory Bird Permit Office in Portland, Oregon, at the address shown in § 2.2 of subchapter A of this chapter.

(j) *Reporting nontarget take.* If, while operating under this control order, you take any other species protected under the Endangered Species Act or the Migratory Bird Treaty Act, you must immediately report the take to the Service Regional Migratory Bird Permit Office in Portland, Oregon, at the address shown in § 2.2 of subchapter A of this chapter .

(k) *Revocation of authority to operate under this order.* We may suspend or revoke the authority of any individual or agency to operate under this order if we find that the individual or agency has taken actions that may take federally listed threatened or endangered species or any other bird species protected by the Migratory Bird Treaty Act (see § 10.13 of subchapter A of this chapter for the list of protected migratory bird species), or has otherwise violated Federal regulations. We will notify the affected agency by letter, and may change this control order accordingly.

Dated: September 17, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–26071 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–BD27

Proposed Designation of Marine Critical Habitat for the Loggerhead Sea Turtle, Caretta caretta, Under the Endangered Species Act; Public Hearing

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

ACTION: Notice of public hearing.

SUMMARY: We, NMFS, will hold a public hearing related to our Proposed Designation of Marine Critical Habitat for the Loggerhead Sea Turtle, *Caretta caretta*, under the Endangered Species Act (ESA).

DATES: The public hearing will be held on November 21, 2013, from 7 p.m. to 9 p.m., with doors opening at 6:30 p.m.

ADDRESSES: The hearing will be held at:

- Dare County Administration Building, Dare County Board of Commissioners Meeting Room, 954 Marshall C. Collins Drive, Manteo, NC 27954.

FOR FURTHER INFORMATION CONTACT: Susan Pultz, NMFS Office of Protected Resources, Silver Spring, MD, telephone: 301–427–8472, email: *susan.pultz@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS staff will present a brief overview of the Proposed Rule titled Designation of Critical Habitat for the Northwest Atlantic Ocean Loggerhead Sea Turtle Distinct Population Segment (DPS) and Determination Regarding Critical Habitat for the North Pacific Ocean Loggerhead DPS. Following this overview, members of the public will have the opportunity to go on record with comments on the proposed designation. Members of the public may also submit written comments at the hearing, or via the Federal e-Rulemaking Portal. To do the latter, go to *http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2013-0079*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments. The proposed rule was published in the **Federal Register** on July 18, 2013 (78 FR 43006) and may be obtained at *http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2013-0079-0002* or *https://www.federalregister.gov/articles/2013/07/18/2013-17204/endangered-and-threatened-species-designation-of-critical-habitat-for-the-northwest-atlantic-ocean.* More information and background documents can be found at *http://www.nmfs.noaa.gov/pr/species/turtles/loggerhead.htm.* Scroll down to "Key Documents."

Speaker Sign Up

Doors will open for registration at 6:30 p.m. for sign-up and seating. Time allotted will depend upon the number of speakers but will likely be limited to 5 minutes each. Registered speakers will be asked to indicate their full name, contact information, and the identity of any organizations on whose behalf they may be speaking.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Susan Pultz (see **ADDRESSES**) 3 days prior to the meeting.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 29, 2013.

Donna S. Wieting,

Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 2013–26135 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 213
Monday, November 4, 2013

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.

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION

Solicitation of Written Comments by the Military Compensation and Retirement Modernization Commission; Correction

AGENCY: Military Compensation and Retirement Modernization Commission.

ACTION: Notice; correction.

SUMMARY: The Commission published a document in the **Federal Register** of October 1, 2013, concerning request for comments on measures to modernize the military compensation and retirement systems. The document contained an incorrect telephone number.

FOR FURTHER INFORMATION CONTACT: Christopher Nuneviller, 703–692–2080.

Correction

In the **Federal Register** of October 1, 2013, in FR Doc. 2013–23969, on page 60243, in the first column, correct the information under the caption **FOR FURTHER INFORMATION CONTACT** to read:

FOR FURTHER INFORMATION CONTACT: Christopher Nuneviller, Associate Director Military Compensation and Retirement Modernization Commission, P.O. Box 13170. Arlington, VA 22209, telephone 703–692–2080, fax 703–697–8330, email *christopher.nuneviller@mcrmc.gov*.

Dated: October 17, 2013.

Christopher Nuneviller,

Associate Director, Military Compensation and Retirement Modernization Commission.

[FR Doc. 2013–26341 Filed 11–1–13; 8:45 am]

BILLING CODE P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. to 5:00 p.m., Tuesday, November 12, 2013. (This meeting has been rescheduled from October 10, 2013, due to the lapse in appropriations and the federal government shutdown, and the Matters To Be Considered section has been updated.)

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting of the Board of Trustees will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) Minutes of the June 10–11, 2013, Board of Trustees Meeting and resolution conferring upon David J. Hayes the position of Trustee Emeritus of the Morris K. Udall and Stewart L. Udall Foundation; (2) Appropriations Update; (3) Financial and Management Report and resolution to ratify the Executive Committee vote approving the new Udall Foundation Senior Management structure; (4) Ethics Training Update and General Counsel's Report; (5) U.S. Institute for Environmental Conflict Resolution Report; (6) Education Programs Report; (7) Udall Center for Studies in Public Policy, Native Nations Institute, and Udall Archives Report 6, Work Plan and resolutions regarding allocation and transfer of funds; and (8) personnel matters.

PORTIONS OPEN TO THE PUBLIC: All agenda items except as noted below.

PORTION CLOSED TO THE PUBLIC: Executive session to review personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Philip J. Lemanski, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: October 25, 2013.

Philip J. Lemanski,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2013–25866 Filed 11–1–13; 8:45 am]

BILLING CODE 6820–FN–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. APHIS–2013–0047]

Enhancing Agricultural Coexistence; Request for Public Input

ACTION: Request for information.

SUMMARY: We are informing the public that the U.S. Department of Agriculture (USDA) is soliciting comments to identify ways to foster communication and collaboration among those involved in diverse agricultural production systems in order to further agricultural coexistence. We are taking this action in response to recommendations from the USDA's Advisory Committee on Biotechnology & 21st Century Agriculture.

DATES: We will consider all comments that we receive on or before January 3, 2014.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0047-0001*.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2013–0047, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0047* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meghan Klingel, Acting Advisor for State and Stakeholder Relations, Office of the Deputy Administrator, LPA, APHIS, 4700 River Road Unit 51, Riverdale, MD 20737–1231; (301) 851–4055, email: *meghan.k.klingel@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Agricultural coexistence refers to the concurrent cultivation of crops produced through diverse agricultural systems, including traditionally produced, organic, identity preserved (IP),[1] and genetically engineered crops. As the complexity and diversity of U.S. agriculture increases, so does the importance of managing issues that affect agricultural coexistence, such as seed purity, gene flow, post-harvest mixing, identity testing, and market requirements.

On November 19, 2012, the U.S. Department of Agriculture's (USDA) Advisory Committee on Biotechnology & 21st Century Agriculture (AC21) presented a report[2] to Secretary Thomas J. Vilsack entitled, "Enhancing Coexistence: A Report of the AC21 to the Secretary of Agriculture." The AC21 report on coexistence made recommendations in five major areas regarding agricultural coexistence: (1) Potential compensation mechanisms, (2) stewardship, (3) education and outreach, (4) research, and (5) seed quality. In the area of education and outreach, we are seeking public input regarding the implementation of the recommendation that USDA foster communication and collaboration to strengthen coexistence. Following the comment period, USDA intends to hold a public forum to discuss input provided by commenters and further explore ways to implement the recommendations in the AC21 report on enhancing coexistence, particularly in the area of education and outreach.

USDA's goal in seeking comment is to determine how we can best foster communication and collaboration among those involved in diverse agricultural systems on the topic of coexistence as well as how USDA can best communicate and collaborate with those entities. To do this, USDA needs to better understand our stakeholders' needs and the challenges they face when it comes to communicating and collaborating about coexistence. Specific topics for input are discussed below. To aid in our evaluation of comments, we request that commenters identify which topic number(s) they are addressing in their comment when practicable. We also request that commenters indicate where any tools or information that they identify in their comment can be obtained.

1. As we seek improved communication and collaboration among agricultural stakeholders, we are interested in identifying information needs and exploring successful communication methods.

- When you or members of your organization seek information related to coexistence, what type of information are you seeking and where do you go to get it? Why?
- What information regarding coexistence, in what format, is currently available (printed or electronic brochures, factsheets, blog posts, Web sites, discussion forums, etc.)? Is this information useful? Why or why not? What additional information, in what format, would be useful to you or members of your organization?
- Please indicate your preferences with respect to receiving information or communications from USDA. Would you be interested in receiving information or communications from non-USDA sources? How might you or your organization, as agricultural stakeholders, want to be involved in disseminating information?
- Where should USDA focus its efforts to best foster communication and collaboration amongst stakeholders? What would best facilitate farmer-to-farmer communication and collaboration?
- Please share any examples of and feedback regarding successful communication models, including those that have worked well for other issues.

2. As part of USDA's outreach and education efforts, we are interested in identifying education needs and exploring the creation of "outreach toolkits" that will encourage communication, planning, and crop-specific practices to facilitate successful coexistence.

- What tools and educational services are already available? Are these tools and services useful? What tools and educational services would be useful to you?
- How might USDA assist farmers to better understand the contracts they enter into (e.g., contracts to provide organic products and IP products for specialty markets) and their commitments with respect to coexistence?
- What geographic information, in what format, is available regarding the location of crops that are planted and grown using different types of agricultural systems (e.g., pinning maps)? Is the information updated regularly? What are stakeholders doing to make this type of geographic information more widely available? What can USDA do to assist in these efforts?
- Would a decision support system, i.e., a computer-based information system that could be used to support data-based, planting-related decisions, with topics such as when and where to plant, suitable isolation distances, and gene flow, be useful? Why or why not? If such a decision support system would be useful, what data would be needed for the system to be effective?

3. Farmers and others in the food and feed production chain have an important role in collaborating to make coexistence work, particularly with reference to stewardship, contracting, and attention to gene flow. As we seek to improve collaboration among those involved in diverse agricultural systems, we are interested in hearing what practices and activities that support collaboration are available or in use and how USDA can help make collaboration and coexistence work for everyone involved.

- What are factors that might prevent or promote the broad adoption of local, voluntary solutions aimed at facilitating coexistence?
- Please provide examples of effective coexistence practices (e.g., between neighboring farmers or among regional networks of farms) and on-farm and off-farm techniques for mitigating the potential economic risks from occurrences that affect successful coexistence. How might they be made to be more effective?
- What types of coexistence practices could be supported in potential joint coexistence plans,[3] i.e., voluntary written plans specifying farming practices (such as farmer-to-farmer communication, cropping plans, temporal and physical isolation, and harvesting techniques) that can be used to support coexistence and identity-preserved production? What might an effective, supportable, joint coexistence plan look like? How might USDA encourage adoption of joint coexistence plans?

4. We also welcome any recommendations regarding collaborative meeting formats that would best ensure coexistence issues will be frankly and fully explored at the public forum that USDA intends to hold following the close of the public comment period.

Any comments submitted will be available for review as indicated under **ADDRESSES** above. USDA will evaluate

[1] An identity preserved crop is a crop of an assured quality in which the identity of the material is maintained from the germplasm or breeding stock to the processed product on a retail shelf.

[2] To view the report and learn more about the AC21, go to *http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=AC21Main.xml.*

[3] The AC21 report (see footnote 2) recommends that USDA consider supporting the development of such plans among neighboring farmers.

all the comments received during the comment period. Input provided by commenters and ways to implement the recommendations in the AC21 report on enhancing coexistence (see footnote 2), particularly in the area of education and outreach, will be further explored at a public forum that USDA intends to hold following the close of the public comment period. The time and place of the public forum will be announced in the **Federal Register**.

Dated: October 28, 2013.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2013–26288 Filed 11–1–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land Management Plan for the Flathead National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of initiating the development of a land management plan revision for the Flathead National Forest.

SUMMARY: The Flathead National Forest, located in Montana, is initiating the forest planning process pursuant to the 2012 Forest Planning Rule. This process results in a Forest Land Management Plan which describes the strategic direction for management of forest resources for the next ten to fifteen years on the Flathead National Forest. The first phase of the process, the assessment phase, has begun and interested parties have been invited to contribute in the development of the assessment (36 CFR 219.6). The Forest has posted preliminary assessment information to its Web site as well as hosted field tours and an open house. The assessment is expected to be completed in December 2013. The trends and conditions identified in the assessment will help in identifying the need for plan components. The Forest is inviting the public to help us identify the appropriate plan components that will become a proposed action for the land management plan revision.

DATES: The assessment for the Flathead National Forest is expected to be completed by December 31, 2013 and will be posted on the following Web site at *www.fs.usda.gov/goto/flathead/forestplanrevision.*

From October 2013 through June 2014, the public is invited to engage in a collaborative process to identify appropriate plan components to be considered for the proposed action. The Forest will then initiate procedures pursuant to the NEPA and prepare a forest plan revision.

ADDRESSES: Written comments or questions concerning this notice should be addressed to Flathead National Forest, Attn.: Plan Revision, 650 Wolfpack Way, Kalispell, Montana, 59901.

FOR FURTHER INFORMATION CONTACT: Joe Krueger, Planning Team Leader, 406–758–5243. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

More information on the planning process can also be found on the Flathead National Forest Web site at *www.fs.usda.gov/goto/flathead/forestplanrevision.*

SUPPLEMENTARY INFORMATION: The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop a land management plan. On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule), which provides broad programmatic direction to National Forests and National Grasslands for developing and implementing their land management plans. Forest plans describe the strategic direction for management of forest resources for ten to fifteen years, and are adaptive and amendable as conditions change over time.

Under the 2012 Planning Rule, the assessment of ecological, social, and economic trends and conditions is the first stage of the planning process. The second stage is a development and decision process guided, in part, by the National Environment Policy Act (NEPA) and includes the preparation of a draft environmental impact statement and revised Forest Plan for public review and comment, and the preparation of the final environmental impact statement and revised Forest Plan. The third stage of the process is monitoring and feedback, which is ongoing over the life of the revised forest plans.

With this notice, the agency invites other governments, non-governmental parties, and the public to contribute to the development of the proposed action. The intent of public engagement during development of the proposed action is to identify the appropriate plan components that the Forest Service should consider in developing its land management plan. We encourage contributors to share material about desired conditions, standards and guidelines, land suitability determinations, management area designations, and plan monitoring. Collaboration in the development of the proposed action supports the development of relationships of key stakeholders throughout the plan development process and is an essential step to understanding current conditions, available data, and feedback needed to support a strategic, efficient planning process.

As public meetings, other opportunities for public engagement, and public review and comment opportunities are identified to assist with the development of the forest plan revision, public announcements will be made, notifications will be posted on the Forest's Web site at *www.fs.usda.gov/goto/flathead/forestplanrevision* and information will be sent out to the Forest's mailing list. If anyone is interested in being on the Forest's mailing list to receive these notifications, please contact Joe Krueger, Planning Team Leader, at the mailing address identified above, by sending an email to *flatheadplanrevision@fs.fed.us,* or by telephone 406–758–5243.

Responsible Official

The responsible official for the revision of the land management plan for the Flathead National Forest is Chip Weber, Forest Supervisor, Flathead National Forest, 650 Wolfpack Way, Kalispell, MT 59901.

Dated: October 28, 2013.

Chip Weber,

Forest Supervisor.

[FR Doc. 2013–26289 Filed 11–1–13; 8:45 am]

BILLING CODE 3410–83–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of meeting of the Black Hills National Forest Advisory Board.

SUMMARY: The U. S. Department of Agriculture, Forest Service, Black Hills National Forest cancelled the October 16, 2013 meeting of the Black Hills National Forest Advisory Board (Board), due to the Federal Government furlough which began on October 1, 2013. The original Notice of Meeting for the October 16, 2013 meeting was published in the **Federal Register**, Volume 78, Number 187, Thursday, September 26, 2013, pages 59337–59338.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Management Officer, USDA, Forest Service, Black Hills National Forest by telephone at (605) 673–9216, by FAX at (605) 673–9208, or by email at *sjjacobson@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Dated: October 29, 2013.

Dennis Jaeger,

Acting Forest Supervisor.

[FR Doc. 2013–26298 Filed 11–1–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey of Fish Processors and Business Disruptions Caused by Hurricane Sandy.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 43 (annualized to 14).

Average Hours per Response: 1 hour and 30 minutes.

Burden Hours: 65 (annualized to 22).

Needs and Uses: This request is for a new information collection.

The Northeast Fisheries Science Center's Social Sciences Branch seeks to collect data on distribution networks and business practices from fish processors that process groundfish and sea scallops in the Northeast United States. It also seeks to collect data on business disruptions due to Hurricane Sandy for those firms. The data collected will improve research and analysis on the economic impacts of potential fishery management actions, consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Protection Act, and Presidential Executive Order 12866.

Affected Public: Business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: October 29, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–26274 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2013]

Foreign-Trade Zone 277—Western Maricopa County, Arizona; Schoeller Arca Systems, Inc. (Plastic Containers Production); Goodyear, Arizona

On June 13, 2013, the Greater Maricopa Foreign Trade Zone, Inc., grantee of FTZ 277, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Schoeller Arca Systems, Inc., in Goodyear, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400) including notice in the **Federal Register** inviting public comment (78 FR 39707, 07/02/2013). Pursuant to Section 400.37, the FTZ Board has determined that further review is warranted and has not authorized the proposed activity. If the applicant wishes to seek authorization for this activity, it will need to submit an application for production authority, pursuant to Section 400.23.

Dated: October 28, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–26372 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–67–2013]

Foreign-Trade Zone 44—Mt. Olive, New Jersey; Authorization of Production Activity; Givaudan Fragrances Corporation (Fragrance and Flavor Products); Mt. Olive, New Jersey

On June 11, 2013, Givaudan Fragrances Corporation submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Site 1 of FTZ 44 in Mt. Olive, New Jersey.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 39707, 07–02–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: October 28, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–26370 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings

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

ACTION: Change in Practice to the Department's Respondent Selection in Certain Antidumping Duty Proceedings and Elimination of Conditional Review of the NME Entity.

SUMMARY: The Department of Commerce ("Department") is hereby refining its practice with respect to the methodology for respondent selection in certain antidumping ("AD") proceedings. Specifically, the Department is making changes to its current practice in antidumping administrative reviews for (1) respondent selection; and (2) conditional review of the NME entity. Normally, the Department makes these

types of changes to its practice in the context of its case proceedings, on a case-by-case basis.[1] For these particular changes in practice, the Department sought comments in advance of making changes in practice. However, the Department expects to continue to consider, and make changes in practice, as necessary, in the context of its proceedings based upon comments from interested parties submitted in the course of such proceedings.[2]

DATES: *Applicability date:* The Department expects to apply these changes in practice in AD administrative reviews for which the notice of opportunity to request an administrative review is published on or after December 4, 2013.

FOR FURTHER INFORMATION CONTACT: Shauna Biby, International Trade Analyst, Import Administration, U.S. Department of Commerce, at 202–482–4267.

SUPPLEMENTARY INFORMATION: The Department is hereby refining its practice with respect to the methodology for respondent selection in certain AD proceedings. Specifically, the Department intends to select respondents by sampling where certain criteria are met in AD administrative reviews. Further, while considering issues related to respondent selection and sampling, the Department has also reconsidered its practice of "conditionally" reviewing the nonmarket economy ("NME") entity. In an administrative review of an AD order, the Department's current practice is to consider the NME entity to be "conditionally" under review. This means that even absent a request for review of the entity, the entity will become subject to review if an exporter subject to the review does not demonstrate that it is separate from the entity, and the entity's entries will be potentially subject to a new cash deposit and assessment rate. The Department has determined to discontinue such conditional reviews. If interested parties wish to request a review of the entity, such a request must be made in accordance with the Department's regulations.

The Department notes that in June 2005, it requested and received comments on the timing of assessment instructions for AD orders involving NME cases.[3] Many commenters expressed support for a practice that would not delay assessment instructions of certain entries based on the Department's conditional review of the NME entity.[4] Although the Department did not revise its practice with respect to conditional review of the NME entity at that time, the Department's experience to date indicates that there is no ongoing benefit to be achieved in maintaining conditional review of the entity. Furthermore, by eliminating the practice of conditional review, the Department eliminates an unnecessary delay in liquidation.

The notice-and-comment requirements of the Administrative Procedures Act do not apply to interpretive rules, general statements of policy or procedure, or practice. 5 U.S.C. 553(b)(3)(A). Although the notice-and-comment requirements of the Administrative Procedure Act do not apply, the Department provided an opportunity for the public to comment on the Department's proposed refinement to respondent selection in a notice published on December 16, 2010; and for the public to comment on the Department's practice with respect to the timing of assessment instructions in NME cases in a notice published on June 21, 2005.

Sampling Methodology

Background

On December 16, 2010, the Department proposed a refinement to its practice regarding its methodology for respondent selection in AD proceedings.[5] As explained in the *Proposed Methodology*, when the number of producers/exporters ("companies") involved in an AD investigation or review is so large that the Department finds it impracticable to examine each company individually, the Department has the statutory authority to limit its examination to: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or (2) exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can reasonably be examined.[6] The Department has, to date, generally used the second option in proceedings in which limited examination has been necessary. One consequence of this is that companies under investigation or review with relatively small import volumes have effectively been excluded from individual examination. Over time, this creates a potential enforcement concern in AD administrative reviews because, as exporters accounting for smaller volumes of subject merchandise become aware that they are effectively excluded from individual examination by the Department's respondent selection methodology, they may decide to lower their prices as they recognize that their pricing behavior will not affect the AD rates assigned to them. Sampling such companies under section 777A(c)(2)(A) of the Tariff Act of 1930, as amended (the "Act"), is one way to address this enforcement concern.

The statute requires that the sample be "statistically valid."[7] The Department has interpreted this as referring to the manner in which the Department selects respondents.[8] Therefore, to ensure the statistical validity of samples, in the *Proposed Methodology*, the Department proposed employing a sampling technique that: (1) Is random; (2) is stratified; and (3) uses probability-proportional-to-size ("PPS") samples. Random selection ensures that every company has a chance of being selected as a respondent and captures potential variability across the population. Stratification by import volume ensures the participation of companies with different ranges of import volumes in the review, which is key to addressing the enforcement concern identified above. Finally, PPS samples ensure that the probability of a company being chosen as a respondent is proportional to its share of imports in the respective stratum.

The Department's Sampling Methodology

In general, the Department will normally rely on sampling for

[1] In the context of its proceedings, Commerce is entitled to change its practice and adopt a new administrative practice provided it explains the basis for the change, and the change is a reasonable interpretation of the statute. *Saho Thai Steel Pipe Company* v. *United States*, 635 F.3d 1335, 1341 (2011).

[2] In particular, under 19 U.S.C. 1677f–1(b), the authority to select "statistically valid samples rests exclusively with the administering authority." Commerce must retain the ability to alter its sampling methodology in each case, as is clear from the above provision that Commerce "shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers, or types of products under this section."

[3] *See* Timing of Assessment Instructions for Antidumping Duty Orders Involving Non-Market Economy Countries, 70 FR 35634 (June 21, 2005).

[4] *See* public comments received July 15, 2005, available at *http://io.ita.doc.gov/download/nme-ossessment/nme-ossessment-timing.html*.

[5] *See* Proposed Methodology for Respondent Selection in Antidumping Proceedings; Request for Comment, 75 FR 78678 (December 16, 2010) ("*Proposed Methodology*").

[6] *See* sections 777A(c)(2)(A) and (B) of the Act.

[7] *See* section 777A(c)(2)(A) of the Act.

[8] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006) and accompanying Issues and Decision Memorandum at Comment 1A ("*Brake Rotors*").

respondent selection purposes in AD administrative reviews[9] when the following conditions are met: (1) There is a request by an interested party for the use of sampling to select respondents; (2) the Department has the resources to examine individually at least three companies for the segment; (3) the largest three companies (or more if the Department intends to select more than three respondents) by import volume of the subject merchandise under review account for normally no more than 50 percent of total volume; and (4) information obtained by or provided to the Department provides a reasonable basis to believe or suspect that the average export prices and/or dumping margins for the largest exporters differ from such information that would be associated with the remaining exporters.[10]

Accuracy of the Sampling Method

Many of the commenters who oppose the proposed methodology focus on the issue of accuracy, and query how a small sample can be "statistically valid" within the meaning of the statute. However, in a previous proceeding, the Department explained that the phrase "statistically valid" in section 777A(c)(2)(A) of the Act refers to the manner or process by which the sample is taken, not the sample results.[11] In that proceeding, the Department explained that "the phrase 'statistically valid sample' was added to the statute in 1994 merely to conform the language of the statute with that of the World Trade Organization ("WTO") AD Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994), and is not different in substance from the phrase 'generally recognized sampling techniques' used in the Act prior to the URAA."[12] The Department determined that the "statistical validity" of the sample "refers only to the manner in which the respondents are selected, and not to the size of the sample under review."[13]

Statistical Validity of the Department's Sampling Method

The statistical tools in the methodology described herein satisfy the requirements for statistical validity. The population average (mean) dumping margin of concern to the Department is the export trade-weighted average dumping margin across all firms (exporters under review). Because this trade-weighted average margin, in turn, is equivalent to the stratum-weighted average of the stratum means, the estimation of the population mean equates to estimation of the stratum means. Each stratum mean is estimated on the basis of a PPS-based sample mean,[14] which accounts for the variance in trade shares across exporters in the stratum and is, therefore, an unbiased estimator of the stratum mean in the sense that there is no systematic error associated with repeated sampling. Without PPS sampling, the sample mean would be over-weighted toward smaller-exporter margins and a bias would result. PPS sampling removes this bias.

Finally, stratification of the sample population into appropriate size categories, *e.g.*, small, medium and large-sized exporters by import volume, ensures a maximum degree of cross-sectional representation of the population in the sample.

Definition of Sampling Population

Currently, the Department generally chooses companies for individual examination based on import volumes reported in case-specific U.S. Customs and Border Protection ("CBP") import data. It also assigns an AD rate to all other companies that are not selected for individual examination. The Department currently does not require any evidence of shipment from a non-selected company before making its respondent-selection decision. However, in the sampling context, the existence of shipments will be required in order to both define the population, and if the company is selected, establish a dumping margin for the company. Therefore, the Department will normally use CBP data as the basis for the volume of subject merchandise and expects to define the population from which to sample as all companies named in a review with shipments of subject merchandise.

In NME cases, only those exporters who receive a separate rate will be included in the sample population. Companies that do not receive a separate rate will not be subject to review pursuant to the elimination of the conditional review of the NME entity practice described below. Therefore, in order to establish the appropriate sample population at the time of the sampling selection, it is necessary for the Department to make its determinations regarding the separate rate status of the companies under review before the sample is determined. For the purpose of constructing the sample rate, the Department expects that companies' separate rate status will remain unchanged once the sample is determined.

Calculating and Assigning Sample Rates

After examination of selected respondents by the sampling method, the Department will need to assign a rate to all non-selected companies. To do so, the Department will calculate a "sample rate," based upon an average of the rates for the selected respondents, weighted by the import share of their corresponding strata. The respondents selected for individual examination through the sampling process will receive their own rates; all companies in the sample population who were not selected for individual examination will receive the sample rate.

Implementation of Sampling Methodology

The Department expects to implement the sampling methodology in the context of its administrative reviews by providing interested parties with notice of the schedule for submissions related to sampling on a case-by-case basis. The Department is publishing concurrently with this notice a proposed rule to amend section 351.301 of its regulations, "Time limits for submission of factual information," to implement procedural changes, as needed, with respect to submissions related to sampling in antidumping administrative reviews.

In sum, the rule proposes to require interested parties to submit requests for the Department to conduct sampling in antidumping duty administrative reviews together with their comments on CBP data within seven days following the release of the CBP data, unless otherwise specified. The rule proposes that the submission include: (1) A request that the Department conduct sampling; and (2) factual

[9] This sampling methodology has been developed for AD administrative reviews, not AD investigations, or countervailing duty investigations or reviews.

[10] This information may include for example: (1) Company margins from previous segments of the proceeding; (2) market and company pricing information; (3) the nature and structure of the foreign industry in question, including cost structure and/or actual pricing data; and (4) the U.S. Customs and Border Protection import entry database.

[11] *See Brake Rotors*, 77 FR 66304 and accompanying Issues and Decision Memorandum at Comment 1A.

[12] *Id.*, (*citing* Statement of Administrative Action, H.R. Rep. No. 103–316, at 872 (1994)).

[13] *Id.*

[14] The sample mean is the arithmetic average of the data values in the sample. For a sample of ten numbers, the sample mean is $(x_1 + x_2 \ldots)/10$. In the AD respondent sampling context, the sample mean for a stratum is the simple average of the dumping margins of the sampled respondents from the stratum.

information [15] and comments on whether this factual information provides a reasonable basis to believe or suspect that the average export prices and/or dumping margins for the largest exporters differ from such information that would be associated with the remaining exporters. Under the proposed rule, if an interested party were to submit a request for the Department to conduct sampling, all other interested parties will then have a ten-day comment period and a five-day rebuttal period to comment on the sampling request.[16]

Apart from the proposed rule, in cases in which the Department determines to sample for respondent selection, it expects to conduct the sampling following the conclusion of the 90-day period for withdrawal of requests for administrative reviews under 19 CFR 351.213(d)(1). In cases in which the Department decides to sample, the Department does not expect to exercise its discretion to extend the 90-day period for withdrawal of review requests.

Comments and Responses

The Department received 18 comments on the proposed use of sampling for selecting mandatory respondents. A summary of these comments are presented below and have been grouped by the issues raised in the submissions. The Department's response follows immediately after each comment.

Issue: Statutory and International Requirements, Including That of "Statistical Validity"

Some commenters generally support the increased use of sampling, with several commenters noting that the proposed methodology is consistent with statutory requirements. Citing the Statement of Administrative Action ("SAA") and previous instances in which the Department has sampled, several commenters note that the Department is only required to use a methodology "designed to give representative results based on the facts known at the time of sampling." Further, the Department must contend with limited time and resources and has the discretion under the law to devise an appropriate sampling methodology. Other commenters note that the Department should retain as much flexibility as possible, and should not confine itself to one sampling methodology for all cases and industries.

Other commenters raised a number of concerns with whether the proposed methodology meets the Department's statutory and international obligations. Further, these commenters generally questioned whether the proposed methodology is "statistically valid," arguing that the Department must make some finding about the degree of precision it will require. Specifically, there is no reference to size or "precision" of the sample in the proposed methodology. Some commenters asserted that a "statistically valid sample" is a higher standard than a "generally recognized sampling technique." Moreover, "statistically valid" must "include the key ideas of the size of the sample and the relationship of the sample to the whole." The core problem, some commenters noted, is that, in most cases, the Department does not have the resources to investigate the large number of companies that would be required to make the sample statistically valid. These commenters generally note that sample size cannot be fixed at the start, but rather one determines sample size based on three factors: the number of companies whose behavior is being measured, the margin of error likely to result, and finally, the "confidence" level desired.[17] These commenters assert that 90 or 95 percent is a typical confidence level. In sum, sample size must be large enough to permit a statistically valid inference. The statute therefore provides an alternative: Choose the largest exporters. This method, the commenters assert, will normally yield the most accurate and comprehensive results.

With respect to the Department's international obligations, one commenter submitted that any respondent selection practice must comply with the Antidumping Agreement ("ADA") Article 9.3, under which a company's margin is linked to its behavior, stating further that the proposed sampling methodology lacks any such link. Further, the selection process must not produce results that deprive respondents of the right to revocation under Articles 11.1 and 11.3 of the ADA. Companies not selected as mandatory respondent have no opportunity to assert these rights.

The Department's response: The Department addresses the majority of these issues herein and otherwise will address any particular circumstances as they arise on a case-by-case basis. Specifically, the statute requires that the sample be "statistically valid." The Department has interpreted this as referring to the manner in which the Department selects respondents and not to the size of the sample or precision of the sample results. Therefore, to ensure the statistical validity of samples, the Department will employ a sampling technique that: (1) Is random; (2) is stratified; and (3) uses PPS samples. Random selection ensures that every company has a chance of being selected as a respondent and captures potential variability across the population. Stratification by import volume ensures the participation of companies with different ranges of import volumes in the review, which is key to addressing the enforcement concerns identified herein. Finally, PPS samples ensure that the probability of a company being chosen as a respondent is proportional to its share of imports in the respective stratum. The Department intends to address any further comments on the statistical validity of its sampling methodology on a case-by-case basis as they arise. Finally, the Department will address any specific concerns with respect to revocation as they arise on a case-by-case basis.

Issue: Clarifying the Rationale for Increased Use of Sampling

Several commenters asserted that the Department failed to define the objective of its sampling proposal nor had it described or explained what benefits it perceives from sampling, for example, how sampling would advance any statutory or policy objective. Noting resource constraints, one commenter urged the Department to recall its authority under the Act to simplify and streamline procedures, including the use of averaging and statistically valid samples. Further, these commenters generally asserted that the Department should maintain its preference for selecting the largest exporters based on volume, which will result in "dumping margins that more accurately reflect the pricing of subject merchandise in the U.S."

The Department's response: As noted herein, the Department has, to date, generally chosen the largest respondents in proceedings in which limited examination has been necessary. One consequence of this is that companies under review with relatively small

[15] A detailed description of what this information may include is listed in footnote 10 under "The Department's Sampling Methodology" section of this **Federal Register** notice.

[16] In NME cases, parties must submit their separate rate applications or certifications no later than 60 days after the notices of initiation of the reviews are published, unless otherwise specified in the notices of initiation.

[17] "Confidence level" relates to the probability that a sample-based estimate falls within specified error limits of the estimated parameter value, and the range of values defined by an estimate plus or minus the specified error limit is a "confidence interval."

import volumes have generally been effectively excluded from individual examination. This creates a potential enforcement concern in AD administrative reviews because, as exporters accounting for smaller volumes of subject merchandise become aware that they are effectively excluded from individual examination by the Department's respondent selection methodology, they may decide to lower their prices as they recognize that their pricing behavior will not impact the AD rates assigned to them. Sampling companies under section 777A(c)(2)(A) of the Act is one way to remedy this enforcement concern. Therefore, the Department is exercising its discretion to use sampling in its respondent selection procedures.

Issue: The Use of CBP Data and Other Issues Regarding Import Shares for Purposes of Defining the Sample Population

Several commenters also raised issues regarding the use of CBP data. These comments generally focused on those instances where CBP data may be problematic due to, for example, fraud, miscalculations, or multiple affiliations of sellers and resellers. Some commenters urged the Department to consider greater use of quantity and value ("Q&V") questionnaires, while others also recognized that Q&V questionnaires are time-consuming and will probably lead the Department to an incomplete picture of the industry, especially in large industries.

Some commenters argued that the Department should exclude producers with statistically insignificant export volumes (for example, less than two percent). Such companies' sales may not be *bona fide* sales, and selecting such companies may result in a skewed sample. These companies should be excluded from the sample pool while still assigning them the sample rate from that review. One commenter further recommended establishing a rebuttable presumption that entries accounting for less than one percent of the import volume are not *bona fide* sales.

The Department's response: For the reasons explained herein, the Department intends to follow its current practice of relying upon CBP data. Consistent with that practice, the Department will consider any specific problems or issues identified concerning the reliability of CBP data on a case-by-case basis. The Department recognizes that the use of Q&V questionnaires is time-consuming and not always necessary and therefore intends to use them only where warranted, such as AD investigations in non-market economy countries.

With respect to the proposal to exclude producers based on low export volumes, at this time, the Department does not intend to implement a general rule to exclude any respondents based on sales volumes, especially in light of utilizing the PPS methodology, which ensures that any single respondent is not over-represented in the sample population, as implementing such a singular approach would be inappropriate in many cases. But, the Department will consider comments raised by interested parties on a case-by-case basis and make determinations based upon the facts and circumstances in each case. The Department will consider all information and allegations regarding specific CBP data and other sales volume issues on a case-by-case basis.

Issue: Stratification

Commenters questioned whether the Department should forgo stratification, define the strata based on different criteria than proposed, as well as consider defining the population (and probability of selection) by production, by import volume rather value, and by whether the respondents requested a review or whether respondents were named in a request for a review. One commenter argued that the Department has no factual basis for using size as a basis for stratification, which "must be based on some relationship between the criteria used or the strata and the variable being measured." If the Department wishes to stratify, it must base strata on variables relevant to margins. One commenter proposed bifurcating the population into two groups: (1) Those respondents who requested a review of their own entries; and (2) respondents requested by the domestic parties. Under this novel methodology, the Department would stratify and sample the two populations separately, and assign rates to individual strata.

The Department's response: The Department intends to stratify on the basis of volume, as this best meets the policy intentions described above; namely, creating the potential for individual examination for some of those respondents under review that otherwise would not normally be selected. Where circumstances warrant, especially in light of the enforcement concerns described herein, the Department may consider other characteristics by which to stratify on a case-by-case basis.

Issue: Whether the Department Should Limit Sampling to Reviews

The Department also received comments regarding the use of sampling in investigations as well as whether sampling should be the "default" method for respondent selection. At least one commenter argued that the Department should use sampling as the "default" procedure for respondent selection in administrative reviews. However, given the complexities and short time frames of investigations, the commenter recommends that the Department should establish deadlines under which petitioners must request sampling in investigations, with "selecting the largest" as the default procedure in investigations. Other commenters suggest only allowing sampling in investigations when doing so is requested in the petition. Another group of comments recommended that choosing the largest should remain the Department's "default" procedure for respondent selection, given the issues to which sampling gives rise. Many commenters urged the Department to retain its discretion in choosing its respondent selection methodology as the facts warrant.

The Department's position: Section 777A(c)(2)(A) of the Act provides the Department with authority to employ samples in both AD investigations and administrative reviews. The methodology described herein, however, was developed for purposes of administrative reviews. In large part, the enforcement concerns raised herein are not as salient in the case of investigations, where there has been no previous expectation of participating in (or being excluded from) a proceeding. Accordingly, the Department intends to consider sampling when the criteria described above are met in administrative reviews. Requests for sampling in investigations, for example, may give rise to other concerns that the Department has not yet considered. Therefore, the Department will address other requests for sampling as they arise in specific proceedings.

Issue: Whether the Department Should Reconsider Certain Aspects of the Proposed Methodology

The Department also received comments on the methodology itself, with some commenters arguing that the Department should retain the discretion to sample when selecting only two respondents, and other commenters arguing that three respondents is insufficient to meet the statutory requirements with respect to sampling. Further, the Department also received

comments on the initially proposed 75 percent threshold, *i.e.*, the percentage of imports represented by the largest respondents.

One commenter noted that the Department should use this limitation (*i.e.*, the threshold) when sampling in investigations, but not in reviews, since this will not address the issues sampling is intended to remedy in industries dominated by a few large exporters. Another commenter noted that the Department has not articulated any rational basis to reject the greater coverage of 75 percent in favor of the lower percentage of imports likely to be covered by a sample. Rather, the Department should be required to individually examine a number of respondents proportional to the number of respondents in the population.

The Department's response: For the reasons described in greater detail earlier in the preamble and for purposes of this notice, the Department has determined to consider sampling when it can select a minimum of three respondents to examine individually and when the three largest respondents (or more if the Department intends to select more than three respondents) by import volume of the subject merchandise under review account for normally no more than 50 percent of total volume. The Department considers 50 percent to be a reasonable threshold because in these circumstances the agency would be able to calculate specific dumping margins for the majority of imports during a period of review. However, when selecting the largest respondents does not allow the Department to calculate dumping margins for the majority of imports, and the Department has the resources to review at least three respondents, the Department may choose to sample in view of the enforcement concerns discussed herein.

Issue: Respondent Characteristics

Several commenters noted that the Department should clarify what information it will consider with respect to variations in the population. Further, while the proposed methodology does acknowledge that significant differences in the population may affect the decision to sample, it does not address how the Department will assess these differences. In this vein, another commenter contended that the comments the Department receives in the proposed 10-day deadline should be used by the Department not only to determine whether to sample, but also how to sample. Several commenters warned against relying on the information presented in the comments as the basis to avoid sampling.

The Department's response: In general, the Department may consider sampling for respondent selection purposes in AD administrative reviews when (among other conditions) information obtained by or submitted to the Department provides a reasonable basis to believe or suspect that the average export prices and/or dumping margins for the largest exporters differ from such information that would be associated with the remaining exporters. Such a fact pattern supports the existence of potentially significant enforcement concerns, as variation in the dumping behavior of the population gives rise to concerns that a non-random means of respondent selection may systematically exclude certain dumping behavior. The Department has identified several types of information that a party may submit, including: Company margins from previous segments of the proceeding; market and company pricing information; the nature and structure of the foreign industry in question, including cost structure and/or actual pricing data; and the U.S. Customs and Border Protection import entry database. The Department may consider other information on a case-by-case basis.

Issue: Timing

Several commenters contended that the Department should clarify that the clock for the 10-day comment period should start running when parties have all the information necessary to submit comments (*i.e.*, after the deadline for seeking separate-rate status, no-shipment status, Q&V/CBP data is complete, etc.). The same commenters proposed establishing a 40-day deadline for submitting and clarifying no-shipment and separate-rate information, with a 10-day comment period following that.

One commenter proposed waiting to sample until the window for withdrawing review requests has expired (currently 90 days from initiation), while another commenter proposed amending 19 CFR 351.213(d)(1) to be 60 days from initiation or 15 days following the deadline for filing. However, these commenters also noted that the Department should retain discretion to adjust this deadline on a case-by-case basis, keeping the deadline at 90 days for cases where sampling is not employed.

The Department's response: The Department expects to clarify many of these timing issues by giving interested parties notice of the procedural requirements during the course of the particular proceeding, and will address any concerns as they arise on a case-by-case basis. In addition, the Department is promulgating an amendment to section 351.301 of its regulations to address procedures for submissions related to sampling in administrative reviews. With respect to withdrawal of review requests and its potential impact on the timing of sampling, in cases where the Department determines to employ sampling for respondent selection, it will conduct its sampling following the conclusion of the 90-day period for withdrawal of requests for administrative reviews under 19 CFR 351.213(d)(1). In cases where the Department decides to sample, the Department expects that it will not exercise its discretion to extend the 90-day period for withdrawal of review requests. In this way, the Department preserves the ability of firms to withdraw their review requests during the first 90 days of the review as required by section 351.213(d)(1) of its regulations, but also ensures that later withdrawals do not adversely impact the Department's ability to conduct its sampling in a timely manner given the time constraints for completion of administrative reviews.

Issue: Rate Assignment

One commenter maintained that the Department should assign each stratum's rate to the members of that stratum and should not average the rates together to calculate and assign a population-wide average rate; each stratum's rate is predictive of the behavior of members of that stratum, and averaging the rates together does not yield representative results for any member of the population.

The Department received a range of comments regarding the inclusion of adverse facts available ("AFA"), *de minimis* and zero rates in the sample rate, including that: (1) The Department should include all AFA, zero, and *de minimis* margins in the sample rate; (2) the Department should include AFA rates and exclude *de minimis*/zero rates; and (3) the Department should exclude all total AFA, zero, and *de minimis* margins, but should include margins based on partial AFA in the sample rate.

Several commenters submitted that the Department should use the weighted average of all calculated rates where there is at least one rate not based on AFA. Recognizing that there is no statutory directive when no calculated rates are available, this commenter noted that Court of International Trade and WTO precedent require the Department to "consider the

significance" of zero and *de minimis* rates. However, these commenters and others further argued that international obligations are unambiguous with respect to this issue: AFA cannot be included in all-other or sample rates. Article 6.8 and Annex II list limited situations in which AFA may be applied, and that is only when a party does not cooperate.

The Department's response: As noted above, the aim of the sampling methodology is to obtain the population average (mean) dumping margin which is the trade-weighted average dumping margin across all firms under review. The Department considered the approaches suggested by the commenters, but found that the methodology described herein remains the most appropriate approach. The Department intends, however, to address any comments on how to assign rates on a case-by-case basis as they arise within a particular proceeding. Thus, in assigning all non-selected companies a rate, the Department will calculate a "sample rate," based upon an average of the rates for all selected respondents, weighted by the import share of their corresponding strata. In line with the Department's practice heretofore, the Department will include all rates in the sample. Therefore, consistent with the statute, the Department will assign one rate to all respondents in the sample population that were not individually examined. The Department will address any further issues as they relate to the facts of specific proceedings on a case-by-case basis.

Issue: Replacement Respondents and the Use of Voluntary Respondents

Several commenters noted that the Department should address the potential need to replace a respondent. In such an event, one commenter suggested, the Department could rank all respondents in each stratum, and simply go down the list to replace a respondent. Alternatively, the Department can "re-run" the selection within that stratum. One commenter warned against "re-shuffling" the strata after a withdrawal, noting that the sample methodology need only be based on the facts known to the Department at the time of selection. Another commenter asserted that replacement of a respondent must be achieved through the PPS selection methodology in the affected stratum, "otherwise the sample will be skewed and any pretense of statistical validity will be further undermined." It was also noted that, if the Department waits to sample until the population is set (after withdrawals and separate-rate applications), the issue of whether to replace respondents should not regularly occur. One commenter stated that inclusion of smaller companies increases the likelihood of non-cooperation and that the Department must increase the number of companies sampled in order to accommodate this eventuality. A number of commenters requested that the Department provide explicit guidelines for its selection of one or more additional mandatory respondents where a company initially selected does not cooperate.

With respect to voluntary respondents, several commenters contended that the Department should not alter its current voluntary respondent practice. Further, voluntary respondents should receive their own rates and those rates should not be used in the weighted average rate. At least one commenter contended that the Department should not allow for voluntary respondents when sampling, but stated that if any voluntary respondents are examined, those rates should not be included in the sample rate.

A number of commenters submitted that increasing opportunities for voluntary respondents provides a means to meet the Department's legal obligations, and that the Department's current policy of examining no voluntary responses whenever it has determined to limit the number of respondents ignores its own statute and international obligations. In general, these commenters urge the Department to encourage voluntary participation and be liberal in accepting voluntary respondents.

The Department's response: Prior to selecting its sample, the Department intends to establish the population from which to draw its sample by first accounting for withdrawals of requests for review and also the separate-rate status of respondents in NME cases. However, the exact replacement procedure, when replacement is considered, as well as whether the Department will accept any specific requests for individual-examination by voluntary respondents, will depend, as it must, on the facts of the specific case. In addition, the Department finds the comments, such as the impact of company size on the sample, to be speculative at this point, but will consider such comments raised by interested parties in the course of its proceedings on a case-by-case basis.

Review of the NME Entity

Background

While considering the many issues involved in sampling in administrative reviews, the Department determined that one of the issues that may impact the use of sampling in future segments is the Department's review of the NME entity in its administrative reviews. Specifically, in proceedings involving NME countries, the Department has a rebuttable presumption that the export activities of all companies within the country are subject to government control and, thus, imports from all companies should be assessed a single AD rate (*i.e.*, the NME-entity rate).[18] It is the Department's practice to assign this single rate to all exporters of merchandise in an NME country subject to an AD investigation or review unless an exporter can demonstrate that it is sufficiently independent in its export activities, on both a *de jure* and *de facto* basis, so as to be entitled to a "separate rate" (*i.e.*, a dumping margin separate from the margin assigned to the NME entity). The Department analyzes each entity exporting the subject merchandise that applies for a separate rate under a test first articulated in *Sparklers*,[19] and further developed in *Silicon Carbide*.[20]

Exporters named in the initiation of an AD administrative review that do not establish that they are independent of government control are considered part of the NME entity. In such instances, it has been the Department's practice to consider the NME entity under review, even if no request for review was made specifically for the entity.[21] Under this practice, the assessment rate for entries from exporters that are part of the NME entity is not determined until the final results of the review. Thus, the Department typically does not instruct CBP to liquidate entries for any exporters whose deposits were made at the rate of the NME entity pending the final results of the administrative review. As a result, importers with entries from exporters that are part of the NME entity, but that were not named in the initiation of the review,

[18] *See* 19 CFR 351.107(d) (providing that "in an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers").

[19] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588* (May 6, 1991) ("*Sparklers*").

[20] *See Final Determination of Sales at Less Than Fair Value: Silican Carbide from the People's Republic of China, 59 FR 22585* (May 2, 1994) ("*Silican Carbide*").

[21] This practice was affirmed in *Transcam, Inc., v. United States*, 294 F.3d 1371 (Fed. Cir. 2002).

must nevertheless wait until the final results of review before final liquidation. However, in most cases, the assessment rate is not different from the cash deposit rate at the time of entry for such imports. Consequently, the Department's conditional review practice has resulted in the delayed liquidation (often over a year after the date of initiation) of NME entity entries, even though the NME entity rate is unlikely to change when the NME entity is under review.

Statement of Practice Regarding Review of the NME Entity

The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[22] In administrative reviews of AD orders from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate. This change in practice will eliminate the unnecessary delay in liquidation of entries from the NME entity.

Dated: September 30, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–26266 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–DS–P

[22] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1, 2013 through June 30, 2013.

DATES: Comments must be submitted within thirty days after publication of this notice.

ADDRESSES: *See* the Submission of Comments section below.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on June 19, 2013. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period January 1, 2013 through June 30, 2013. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that only one country, Canada, exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1, 2013 through December 31, 2013, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where a government authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.[1]

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comments

Persons wishing to comment should file comments by the date specified above. Comments should only include publicly available information. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments or materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department requests submission of comments filed in electronic Portable Document Format (PDF) submitted on CD–ROM or by email to the email address of the EC Webmaster, below.

The comments received will be made available to the public in PDF on the Enforcement and Compliance Web site at the following address: *http://*

[1] *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

enforcement.trade.gov/public-comments.html. Any questions concerning file formatting, access on the Internet, or other electronic filing issues should be addressed to Laura Merchant, Enforcement and Compliance Webmaster, at (202) 482–0367, email address: *mailto:webmaster_support@trade.gov.*

All comments and submissions in response to this Request for Comment should be received by the Department no later than 5 p.m. on the above-referenced deadline date.

Dated: October 29, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–26368 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Fishing Expenditure Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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: Written comments must be submitted on or before January 3, 2014.

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).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Sabrina Lovell, 301–427–8153 or *sabrina.lovell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new collection of information.

The objective of the survey is to collect information on both trip expenditures and annual durable good expenditures made by marine recreational anglers. The survey will be conducted in two parts. The first part of the survey, planned for 2014, will ask anglers about their purchases of durable goods such as fishing gear, boats, vehicles, and second homes. The second part, planned for 2016, will ask anglers about the expenses incurred on their most recent marine recreational fishing trip. As specified in the Magnuson-Stevenson Fishery Conservation and Management Act of 1996 (and reauthorized in 2007), NMFS is required to enumerate the economic impacts of the policies it implements on fishing participants and coastal communities. The expenditure data collected in this survey will be used to estimate the economic contributions and impacts of marine recreational fishing to each coastal state and nationwide.

II. Method of Collection

The survey will be conducted using two modes: in-person interviews and/or mail.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 114,527: 14,781 for durable goods and 99.746 for trip expenditure surveys.

Estimated Time per Response: Durable goods survey, 15 minutes; trip expenditures survey, 5 minutes.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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: October 29, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–26273 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 041229366–5088–02]

RIN 0648–XC884

Fisheries of the Northeastern United States; Monkfish Fisheries Management Plan; Reallocation of 2013 Monkfish Research Set-Aside Days-at-Sea

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

ACTION: Notice; reallocation of monkfish research set-aside days-at-sea.

SUMMARY: This notice announces the reallocation of 2013 Monkfish Research Set-Aside days-at-sea. These days are being reallocated because they were not awarded through the 2013 Monkfish Research Set-Aside Program grant process. The reallocated days-at-sea are available to conduct monkfish research activities during fishing year 2013 (May 1, 2013–April 30, 2014).

DATES: Effective November 4, 2013, through April 30, 2014. Days-at-sea reallocated through this Monkfish Research Set-Aside Program must be used by April 30, 2014.

ADDRESSES: Applications for an exempted fishing permit can be sent to the Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, (978) 281–9177.

SUPPLEMENTARY INFORMATION: Amendment 2 to the Monkfish Fishery Management Plan (FMP) (70 FR 21927, April 28, 2005) established the Monkfish Research Set-Aside (RSA) Program, which annually sets-aside 500 of the total monkfish DAS as RSA DAS to be used to conduct monkfish research. Amendment 2 also established the Monkfish Exemption Program, which requires NMFS to make any unallocated RSA DAS available as exempted DAS. These exempted DAS

may be used to conduct monkfish research activities during the current fishing year. In September 2012, NMFS published a notice announcing the 2013 Monkfish RSA Program, and solicited proposals for monkfish research activities to be conducted under the RSA program. Four proposals were received, and two were granted awards totaling 426 RSA DAS. As a result, there are 74 DAS that were not awarded and are now available as exempted DAS. Therefore, pursuant to the regulations governing the monkfish fishery at 50 CFR 648.92(c)(1)(v), NMFS is reallocating the unused 2013 RSA DAS as exempted DAS that may be used to conduct monkfish research during the remainder of fishing year 2013 (through April 30, 2014). Requests for exempted DAS must be submitted to NMFS along with a complete application for an exempted fishing permit. The exempted DAS differ from RSA DAS in that research must occur in conjunction with the exempted DAS. The exempted DAS cannot be used solely to generate funds. A summary of the requirements for submitting an exempted fishing permit are available online at: *www.nero.noaa.gov/permits/forms/EFPLOAEEAAPossessionLOA.Guidance.pdf.*

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866. Pursuant to 5 U.S.C.553(b)(B), there is good cause to waive prior notice and opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest because the action is administrative in nature, and because it provides the public (*i.e.*, researchers) the opportunity to reduce costs associated with conducting monkfish related research activities. Additionally, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effective date because the action is administrative in nature.

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

Dated: October 30, 2013.

James P. Burgess,

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

[FR Doc. 2013–26322 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC950

Caribbean Fishery Management Council; Scoping Meeting

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

ACTION: Notice of a scoping meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold a scoping meeting to obtain input from fishers, the general public, and the local agencies representatives on the development of compatible regulations for three seasonally closed areas off Puerto Rico. The Council is considering modifying the seasonal closures of Abrir La Sierra, Bajo de Sico, and Tourmaline Bank. The goal of modifying the closures is to protect the red hind spawning aggregations and large individuals of snappers and groupers from directed fishing pressure to achieve a more natural sex ratio, age, and size structure, while minimizing adverse social and economic effects. See **SUPPLEMENTARY INFORMATION.**

DATES: The scoping meeting will be held on November 25, 2013, from 7 p.m. to 10 p.m.

ADDRESSES: The scoping meeting will be held at the Holiday Inn Mayagüez, 2701 Highway #2, Mayagüez, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Options Paper entitled "Developing Compatible Regulations for Three Seasonally Closed Areas off Puerto Rico: Abrir La Sierra Bank, Bajo de Sico, and Tourmaline Bank," considers the following alternative actions:

Action 1: Modify the length of the closed season for Abrir La Sierra.

Option 1: No Action—do not modify the seasonal closure of Abrir La Sierra.

Option 2: Modify the seasonal closure of Abrir La Sierra to a 6 month closure from October 1–March 31.

Option 3: Modify the seasonal closure of Abrir La Sierra to a 6 month closure from December 1–May 31.

Option 4: Modify the closure of Abrir La Sierra to 12 months.

Action 2: Modify the length of the closed season for Tourmaline Bank.

Option 1: No Action—do not modify the seasonal closure of Tourmaline Bank.

Option 2: Modify the seasonal closure of Tourmaline Bank to a 6 month closure from October 1–March 31.

Option 3: Modify the seasonal closure of Tourmaline Bank to a 6 month closure from December 1–May 31.

Option 4: Modify the closure of Tourmaline Bank to 12 months.

Action 3: Modify the length of the closed season for Bajo de Sico.

Option 1: No Action—do not modify the seasonal closure of Bajo de Sico.

Option 2: Modify the seasonal closure of Bajo de Sico to a 3 month closure from December 1–End of February.

Option 3: Modify the seasonal closure of Bajo de Sico to a 6 month closure from December 1–May 31.

Option 4: Modify the closure of Bajo de Sico to 12 months.

Action 4: Prohibit Fishing Activities in Abrir La Sierra.

Option 1: No Action—Do not modify the species prohibited during the seasonal closure of Abrir La Sierra.

Option 2: During the seasonal closure of Abrir La Sierra specified in Action 1, prohibit fishing for council-managed reef fish.

Option 3: During the seasonal closure of Abrir La Sierra specified in Action 1, prohibit fishing for and possession of council-managed reef fish species.

Option 4: During the seasonal closure of Abrir La Sierra specified in Action 1, prohibit fishing for spiny lobster.

Option 5: During the seasonal closure of Abrir La Sierra specified in Action 1, prohibit fishing for and possession of spiny lobster.

Option 6: During the seasonal closure of Abrir La Sierra specified in Action 1, prohibit fishing for and possession of all species.

Action 5: Prohibit Fishing Activities in Tourmaline Bank.

Option 1: No Action—Do not modify the species prohibited during the seasonal closure of Tourmaline Bank.

Option 2: During the seasonal closure of Tourmaline Bank specified in Action 2, prohibit fishing for council-managed reef fish.

Option 3: During the seasonal closure of Tourmaline Bank specified in Action 2, prohibit fishing for and possession of council-managed reef fish species.

Option 4: During the seasonal closure of Tourmaline Bank specified in Action 2, prohibit fishing for spiny lobster.

Option 5: During the seasonal closure of Tourmaline Bank specified in Action 2, prohibit fishing for and possession of spiny lobster.

Option 6: During the seasonal closure of Tourmaline Bank specified in Action 2, prohibit fishing for and possession of all species.

Action 6: Prohibit Fishing Activities in Bajo de Sico.

Option 1: No Action—Do not modify the prohibition on fishing for or possession of Council-managed reef fish during the seasonal closure of Bajo de Sico.

Option 2: During the seasonal closure of Bajo de Sico specified in Action 3, prohibit fishing for Council-managed reef fish.

Option 3: During the seasonal closure of Bajo de Sico specified in Action 3, prohibit fishing for spiny lobster.

Option 4: During the seasonal closure of Bajo de Sico specified in Action 3, prohibit fishing for and possession of spiny lobster.

Option 5: During the seasonal closure of Bajo de Sico specified in Action 3, prohibit fishing for all species.

Option 6: During the seasonal closure of Bajo de Sico specified in Action 3, prohibit fishing for and possession of all species.

Action 7: Prohibit Anchoring in Abrir La Sierra.

Option 1: No Action—do not prohibit anchoring by vessels in Abrir La Sierra.

Option 2: Prohibit anchoring for 3 months in Abrir La Sierra. The 3-month closure will coincide with the closure period chosen in Action 1.

Option 3: Prohibit anchoring for 6 months in Abrir La Sierra. The 6-month closure will coincide with the closure period chosen in Action 1.

Option 4: Prohibit anchoring year-round in Abrir La Sierra.

Action 8: Prohibit Anchoring in Tourmaline Bank.

Option 1: No Action—do not prohibit anchoring by vessels in Tourmaline Bank.

Option 2: Prohibit anchoring for 3 months in Tourmaline Bank. The 3-month closure will coincide with the closure period chosen in Action 2.

Option 3: Prohibit anchoring for 6 months in Tourmaline Bank. The 6-month closure will coincide with the closure period chosen in Action 2.

Option 4: Prohibit anchoring year-round in Tourmaline Bank.

Action 9: Prohibit Anchoring in Bajo de Sico.

Option 1: No Action—maintain the year-round prohibition on anchoring by vessels in Bajo de Sico.

Option 2: Prohibit anchoring for 6 months in Bajo de Sico. The 6-month closure will coincide with the closure period chosen in Action 2.

Option 3: Prohibit anchoring for 3 months (December 1 through the end of February) in Bajo de Sico.

Option 4: Do not prohibit anchoring in Bajo de Sico.

Action 10: Prohibit Spearfishing in Abrir La Sierra.

Option 1: No Action—do not prohibit spearfishing in Abrir La Sierra.

Option 2: Prohibit spearfishing in Abrir La Sierra for 3 months. The 3-month closure will coincide with the closure period chosen in Action 1.

Option 3: Prohibit spearfishing in Abrir La Sierra for 6 months. The 6-month closure will coincide with the closure period chosen in Action 1.

Option 4: Prohibit spearfishing year-round in Abrir La Sierra.

Action 11: Prohibit Spearfishing in Tourmaline Bank.

Option 1: No Action—do not prohibit spearfishing in Tourmaline Bank.

Option 2: Prohibit spearfishing in Tourmaline Bank for 3 months. The 3-month closure will coincide with the closure period chosen in Action 2.

Option 3: Prohibit spearfishing in Tourmaline Bank for 6 months. The 6-month closure will coincide with the closure period chosen in Action 2.

Option 4: Prohibit spearfishing year-round in Tourmaline Bank.

Action 12: Prohibit Spearfishing in Bajo de Sico.

Option 1: No Action—do not prohibit spearfishing in Bajo de Sico.

Option 2: Prohibit spearfishing in Bajo de Sico for 3 months. The 3-month closure will coincide with the closure period chosen in Action 3.

Option 3: Prohibit spearfishing in Bajo de Sico for 6 months. The 6-month closure will coincide with the closure period chosen in Action 3.

Option 4: Prohibit spearfishing year-round in Bajo de Sico.

The Caribbean Fishery Management Council will hold a scoping meeting to receive public input on the management options mentioned above. The complete document is available at: *www.caribbeanfmc.com* or you may contact Ms. Livia Montalvo at *livia_montalvo_cfmc@yahoo.com*, or the Council office at (787) 766–5926 to obtain copies.

Written comments can be sent to the Council not later than 5:00 p.m., December 6, 2013, by regular mail to the address below, or via email to *graciela_cfmc@yahoo.com*.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: October 30, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–26360 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC955

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder Monitoring Committee, Scup Monitoring Committee, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Friday, November 22, 2013, from 9 a.m. to 5 p.m. See **SUPPLEMENTARY INFORMATION** for meeting agenda.

ADDRESSES: The meeting will be held at the Doubletree by Hilton BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; telephone: (410) 859–8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet to recommend recreational management measures for the summer flounder, scup, and black sea bass fisheries for the 2014 fishing year. Multi-year recreational measures may be considered for all three species into 2015.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens

Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: October 30, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–26361 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC935

Atlantic Highly Migratory Species; Advisory Panel for Atlantic Highly Migratory Species Southeast Data, Assessment, and Review Workshops

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

ACTION: Notice; nominations for Advisory Panel.

SUMMARY: NMFS solicits nominations for the Advisory Panel (AP) for Atlantic Highly Migratory Species (HMS) Southeast Data, Assessment, and Review (SEDAR) Workshops (this AP is also called the "SEDAR Pool"). The SEDAR Pool is comprised of a group of individuals who may be selected to consider data and advise NMFS regarding scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Nominations are being sought for a 3-year appointment (2014–2016). Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, or non-governmental organizations will be considered for membership on the SEDAR Pool.

DATES: Nominations must be received on or before December 4, 2013.

ADDRESSES: You may submit nominations and request the SEDAR Pool Statement of Organization, Practices, and Procedures by any of the following methods:

- *Email: SEDAR.pool@noaa.gov.*
- *Mail:* Karyl Brewster-Geisz, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Include on the envelope the following identifier: "SEDAR Pool Nomination."
- *Fax:* 301–713–1917.

Additional information on SEDAR and the SEDAR guidelines can be found at *http://www.sefsc.noaa.gov/sedar/.* The terms of reference for the SEDAR Pool, along with a list of current members, can be found at *http://www.nmfs.noaa.gov/sfa/hms/SEDAR/SEDAR.htm.*

FOR FURTHER INFORMATION CONTACT: Delisse Ortiz or Karyl Brewster-Geisz, (301) 425–8503.

SUPPLEMENTARY INFORMATION:

Introduction

Section 302(g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, states that each Council shall establish such advisory panels as are necessary or appropriate to assist in carrying out its functions under the Act. The Magnuson-Stevens Act provides that this section is applicable to HMS Management by the Secretary as well as by Councils. As such, NMFS has established the SEDAR Pool under this section. The SEDAR Pool currently consists of 26 individuals who can be selected to review data and advise NMFS regarding scientific information, including but not limited to data and models, used in stock assessments for oceanic sharks in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. While the SEDAR Pool was created specifically for Atlantic oceanic sharks, it may be expanded to include other HMS, as needed.

The primary purpose of the individuals in the SEDAR Pool is to review, at SEDAR workshops, the scientific information (including but not limited to data and models) used in stock assessments that are used to advise NMFS about the conservation and management of the Atlantic HMS, specifically but not limited to, Atlantic sharks. Individuals in the SEDAR Pool, if selected, may participate in the various data, assessment, and review workshops during the SEDAR process of any HMS stock assessment. In order to ensure that the peer review is unbiased, individuals who participated in a data and/or assessment workshop for a particular stock assessment will not be allowed to serve as reviewers for the same stock assessment. However, these individuals may be asked to attend the review workshop to answer specific questions from the reviewers concerning the data and/or assessment workshops. Members of the SEDAR Pool may serve as members of other APs concurrent with, or following, their service on the SEDAR Pool.

Procedures and Guidelines

A. Participants

The SEDAR Pool is comprised of individuals representing the commercial and recreational fishing communities for Atlantic sharks, the environmental community active in the conservation and management of Atlantic sharks, and the academic community that have relevant expertise either with sharks or shark-like species and/or stock assessment methodologies for marine fish species. Members of the SEDAR Pool must have demonstrated experience in the fisheries, related industries, research, teaching, writing, conservation, or management of marine organisms. The distribution of representation among the interested parties is not defined or limited.

Additional members of the SEDAR Pool may also include representatives from the five Atlantic Regional Fishery Management Councils, the 18 states in the Atlantic and Gulf of Mexico, both the U.S. Virgin Islands and Puerto Rico, and the interstate commissions: the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

If NMFS requires additional members to ensure a diverse pool of individuals for data or assessment workshops, NMFS may request individuals to become members of the SEDAR Pool outside of the annual nomination period.

Panel members serve at the discretion of the Secretary. Not all members will be selected to attend each SEDAR workshop. Rather, NMFS will invite certain members to participate at specific stock assessment workshops dependent on their ability to participate, discuss, and recommend scientific decisions regarding the species being assessed. If an invited SEDAR Pool member is unable to attend the workshop, the member may send a designee who may represent them and participate in the activities of the workshop. In order to ensure the designee meets the requirements of participating in the data and/or assessment workshop, the designee must receive written approval of the Director of the Office of Sustainable Fisheries at least six weeks in advance of the beginning of the relevant data and/or assessment workshop. Written notification must include the name,

address, telephone, email, and position of the individual designated. A designee may not name another designee.

NMFS is not obligated to fulfill any requests (e.g., requests for an assessment of a certain species) that may be made by the SEDAR Pool or its individual members. Members of the SEDAR Pool who are invited to attend stock assessment workshops will not be compensated for their services but may be reimbursed for their travel-related expenses to attend such workshops.

B. Nomination Procedures for Appointments to the SEDAR Pool

Member tenure will be for 3 years. Nominations are sought for terms beginning early in 2014 and expiring three years later in 2016. Nomination packages should include:

1. The name, address, phone number, and email of the applicant or nominee;

2. A description of his/her interest in Atlantic shark stock assessments or the Atlantic shark fishery;

3. A statement of background and/or qualifications; and

4. A written commitment that the applicant or nominee shall participate actively and in good faith in the tasks of the SEDAR Pool, as requested.

C. Meeting Schedule

Invitations to individual members of the SEDAR Pool to participate in stock assessments are at the discretion of the Office of Sustainable Fisheries, NMFS. Stock assessment timing, frequency, and relevant species will vary depending on the needs determined by NMFS and SEDAR staff. Currently, NMFS anticipates holding stock assessments for smoothhound sharks (i.e., Mustelus canis, M. norrisi, and M. sinusmexicanus) in 2014. The specific number and type of meetings or dates for those stock assessments have not yet been determined. Meetings and meeting logistics will be determined according to the SEDAR Guidelines. All meetings are open for observation by the public.

Dated: October 28, 2013.

James P. Burgess,

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

[FR Doc. 2013–26128 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0196]

Notice of Availability (NOA) for Strategic Network Optimization (SNO) Environmental Assessment Finding of No Significant Impact (FONSI)

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of Availability (NOA) for Strategic Network Optimization (SNO) Environmental Assessment (EA) Finding of No Significant Impact (FONSI).

SUMMARY: On September 20, 2013, Defense Logistics Agency (DLA) published a NOA in the **Federal Register** (78 FR 57845) announcing the publication of the Strategic Network Optimization EA. The EA was available for a 30-day public comment period which ended October 19, 2013. The EA was prepared as required under the National Environmental Policy Act (NEPA) (1969). In addition, the EA complied with DLA Regulation (DLAR) 1000.22. No comments were received during the comment period. This FONSI documents the decision of DLA to select the Global Distribution Network alternative to implement the SNO Program for the Department of Defense (DoD). DLA has determined that the proposed action was not a major federal action significantly affecting the quality of the human environment within the context of NEPA and that no significant impacts on the human environment are associated with this decision.

FOR FURTHER INFORMATION CONTACT: Ann Engelberger at (703) 767–0705 during normal business hours Monday through Friday, from 8:00 a.m. to 4:30 p.m. (EST) or by email: *Ann.Engelberger@dla.mil.*

SUPPLEMENTARY INFORMATION: The SNO Program originated in June 2009 at DOD to: (1) Improve the distribution process, (2) improve surface and air delivery performance, (3) stage inventories in forward locations in anticipation of future demand, (4) optimize the distribution network and (5) generate cost savings/avoidances. In January 2012, the DoD's Joint Logistics Board (JLB) approved a course of action for Phase I to implement the SNO Program. The development of the SNO Program adheres to the intent of the JLB decision.

Purpose and Need for Action: The purpose of the SNO Program is to improve DLA's distribution network, including supply, distribution, disposition and transportation of materials for warfighter support. The SNO Program is needed to reduce operating costs and maintain operational readiness.

Proposed Action and Alternatives: Under the Proposed Action, DLA would optimize the DoD distribution network with a reconfigured transportation network as the critical factor in reducing costs and maintaining or improving service levels to end customer.

DLA would expand the existing Forward Flow Network from two main distribution hubs (DLA Distribution San Joaquin, California and DLA Distribution Susquehanna, Pennsylvania) to three hubs by adding DLA Distribution Red River, Texas. DLA Distribution Red River is an existing DoD facility, so no new construction is required. DLA would also optimize the DoD Reverse Flow Network (disposing of excess property) by reducing the number of current customer service locations, co-locating with existing DLA distribution centers, instituting process changes and personnel restructuring.

As an alternative to the reconfigured Global Distribution Network, DLA considered taking no action. Under the no action alternative, DLA would continue the current storage, distribution, disposition and transportation networks. The no action alternative would not satisfy the project's purpose and need; however, the alternative was included in the environmental analysis to provide a baseline for comparison with the proposed action and was analyzed in accordance with Council on Environmental Quality regulations for implementing NEPA.

Potential Environmental Impacts: Potential environmental impacts of the reconfigured Global Distribution Network alternative have been assessed and compared to the impacts of the no action alternative with following impacts:

- No significant impacts to transportation resulting from the reduction in travel time from distribution hub to installation.
- Any slight increase in activity from the change in the type of distribution at the San Joaquin and Susquehanna sites would not alter existing emissions from mobile sources, resulting in no significant impacts.
- An increase in emissions from mobile sources at DLA Distribution Red River, with more daily truck trips in and out of the facility. Emissions from this increase would however be localized and would not be expected to impact national or regional emission levels or the attainment status of Bowie County, resulting in no significant impacts to air quality.

• A beneficial impact to socioeconomics from a boost in primary, secondary and induced employment at DLA Distribution Red River associated with the potential increase in transportation requirements at this facility.

• No significant impacts to land use from the increased activity at DLA Distribution Red River.

Determination: DLA has determined that implementation of the reconfigured Global Distribution Network will not have a significant effect on the human environment. Human environment was interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. Specifically, no highly uncertain or controversial impacts, unique or unknown risk or cumulatively significant effects were identified. Implementation of the reconfigured Global Distribution Network will not violate any federal, state or local laws. Based on the results of the analyses performed during the preparation of the programmatic environmental assessment, David Rodriguez, Director, DLA Installation Support, concludes the selection of the reconfigured Global Distribution Network to implement the SNO Program does not constitute a major federal action significantly affecting the quality of the human environment within the context of NEPA. Therefore, an environmental impact statement for the proposed action is not required.

Dated: October 30, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–26329 Filed 11–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0062]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Defense Logistics Agency proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This notice adds S890.11, Defense Agencies Initiative (DAI) Civilian Time and Labor Records.

DATES: This proposed action will be effective on December 5, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 4, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dixon, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notice 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**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 21, 2013, 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: October 30, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S890.11

SYSTEM NAME:

Defense Agencies Initiative (DAI) Civilian Time and Labor Records.

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center Ogden, 7879 Wardleigh Road, Hill AFB, UT 84056–5997.

Defense Information Systems Agency, Defense Enterprise Computing Center Columbus, 3990 E Broad Street, Columbus, OH 43213–1152.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense civilian employees within the Defense Technical Information Center; the Office of the Under Secretary of Defense (Comptroller); the Defense Media Activity; the Missile Defense Agency; the Uniform Services University of Health Sciences; the Defense Threat Reduction Agency; the TRICARE Management Agency; the Defense Technology Security Administration; the Defense Security Service; the Defense Advanced Research Projects Agency; the Office of Economic Adjustment; the Defense Prisoner of War/Missing Personnel Office; the Office of the Defense Chief Financial Officer; the Defense Information Systems Agency; the Defense Acquisition University; the National Defense University; the Defense Finance and Accounting Service; the Defense Human Resources Activity; the Department of Defense Inspector General; the Department of Defense Education Activity; the Defense Contract Audit Agency; the Defense Contract Management Agency; the Defense Commissary Agency; the Defense Security Cooperation Agency; the Washington Headquarters Service; the Pentagon Force Protection Agency; the Defense Legal Services Agency; the Defense Testing Resources Management Center; the Director, Operational Test and Evaluation; the Center for Countermeasures; the Defense Microelectronic Agency and the Business Transformation Agency (Disestablished).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained include individual's name, Social Security Number (SSN), DoD ID Number, citizenship; pay; employee's status, position, accounting codes, organization and office location, email address, rate, leave balances; work and shift schedule, project and workload records, regular and overtime work hours and leave hours, time and attendance records (timesheet), and information on telework, temporary duty and special assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 61, Hours of Work; Chapter 53, Pay Rates and Systems; Chapter 57, Transportation, and Subsistence; and Chapter 63, Leave; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 31 U.S.C., Chapter 35, Accounting and Collection; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Records are used to prepare time and attendance records, to record employee pay rates and status, including overtime, the use of leave, and work absences; to track workload, project activity for analysis and reporting purposes; for statistical reporting on leave and overtime use/usage patterns, number of employees teleworking, and to answer employee queries on leave, overtime, and pay.

Information from this system of records is provided to the Defense Finance and Accounting Service for issuing payroll.

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, 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:

The DoD Blanket Routine Uses may apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by employee's name and\or DoD ID Number.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to computerized data is restricted by Common Access Cards. Access to records is limited to person(s) responsible for servicing the records in the performance of their official duties and who are properly screened and cleared for need-to-know. All individuals granted access to this system of records are required to have taken Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Initialed Leave Application Files (LAF) are destroyed at end of the following pay period, un-initialed LAFs are destroyed after GAO audit or when 3 years old, whichever is sooner. Time and Labor Source Records and Input Records are destroyed after GAO audit or when 6 years old, whichever is sooner. Leave Records are destroyed when 3 years old. Payroll system reports and data used for personnel management purposes are destroyed when 2 years old. Project and workload records will be destroyed after 6 years, 3 months or when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Defense Agencies Initiative (DAI) Program Management Office, 2221 South Clark Street, Arlington, VA 22202–3745. Write to the above address for a list of system managers at the DAI using activities.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name, DoD ID Number and return mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name, DoD ID Number and return mailing address.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject, supervisors, timekeepers, leave slips and automated payroll systems, such as, the Defense Cash Accountability System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–26320 Filed 11–1–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting cancellation notice.

SUMMARY: 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, the Department of Defense announces that the following Federal advisory committee meeting will not take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Wednesday, October 16, 2013.

3. *Time:* 2:00 p.m.–5:30 p.m.

4. *Location:* Haig Room, Jefferson Hall, West Point, New York 10996

5. *Reason for Cancellation:* Due to the lack of a continuing resolution and appropriated funds, the USMA Board of Visitors Meeting originally scheduled for October 16, 2013 was postponed until a date to be determined.

6. *Committee's Designated Federal Officer or Point of Contact:* Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@us.army.mil.*

7. Due to the lapse of appropriations, the Department of Defense cancelled the meeting of the U.S. Military Academy Board of Visitors on October 16, 2013. As a result, the Department of Defense was unable to provide appropriate notification as required by 41 CFR 102–3.150(a). Therefore, 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.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@us.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–26294 Filed 11–1–13; 8:45 am]

BILLING CODE 3710–08–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Draft Revised Strategic Plan for FY 2014–2018

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–11, the Defense Nuclear Facilities Safety Board (DNFSB) is soliciting comments from all interested and potentially affected parties on its draft revised strategic plan. DNFSB will consider all comments received as a result of this outreach effort. The draft plan is available for review on DNFSB's Web site at *http://www.dnfsb.gov/*. Comments may be sent to the acting Deputy General Manager at *mailbox@dnfsb.gov* or the address below.

DATES: Comments will be accepted during the period November 1, 2013 through November 30, 2013.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Welch, Acting Deputy General Manager, 202–694–7060.

SUPPLEMENTARY INFORMATION: This draft strategic plan will replace DNFSB's FY 2011–2016 Strategic Plan, dated March 1, 2011.

Dated: October 29, 2013.

Peter S. Winokur,

Chairman.

[FR Doc. 2013–26363 Filed 11–1–13; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–258–D]

Application to Export Electric Energy; Brookfield Energy Marketing Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Brookfield Energy Marketing Inc. (BEMI) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before December 4, 2013.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov*, or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On March 26, 2009, DOE issued Order No. EA–258–C to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on April 23, 2014. On October 24, 2013, BEMI filed an application with DOE for renewal of the export authority contained in Order No. EA–258–C for an additional five-year term.

BEMI states that it does not own, operate, or control any physical assets such as electric generating or transmission facilities, and it does not have a franchised service area. The electric energy that BEMI proposes to export to Canada would be surplus energy purchased from electric utilities and other suppliers within the United States. The existing international transmission facilities to be utilized by BEMI have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the BEMI application to export electric energy to Canada should be clearly marked with OE Docket No. EA–258–D. An additional copy is to be provided directly to Shaun Logue, Vice President of Legal Services and General Counsel, Brookfield Energy Marketing Inc., 480 de la Cite Blvd., Gatineau, Quebec J8T 8R3. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR Part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845*, or by emailing Angela Troy at *Angela.Troy@hq.doe.gov*.

Issued in Washington, DC, on October 29, 2013.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–26295 Filed 11–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–145–E]

Application To Export Electric Energy; Powerex Corp.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Powerex Corp. (Powerex) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before December 4, 2013.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@*

hq.doe.gov, or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On February 19, 2009, DOE issued Order No. EA–145–D, which authorized Powerex to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. That authority expires on February 19, 2014. On August 29, 2013, Powerex filed an application with DOE for renewal of the export authority contained in Order No. EA–145–D for an additional five-year term.

In its application, Powerex states that it does not own any electric generating or transmission facilities, and it does not have a franchised service area. The electric energy that Powerex proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States and/or Canada. The existing international transmission facilities to be utilized by Powerex have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the Powerex application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–145–E. An additional copy is to be provided directly to Ms. Karen McDonald, Powerex Corp., 666 Burrard Street, Suite 1300, Vancouver, British Columbia, Canada V6C 2X8 and Deana E. King, Bracewell and Giuliani LLP, 111 Congress Avenue, Suite 2300, Austin, TX 78701 and Tracey L. Bradley, Bracewell and Giuliani LLP, 2000 K Street NW., Suite 500, Washington, DC 20006. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845*, or by emailing Angela Troy at *Angela.Troy@hq.doe.gov*.

Issued in Washington, DC, on October 29, 2013.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–26299 Filed 11–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, November 18, 1:00 p.m.–5:15 p.m.

Tuesday, November 19, 8:30 a.m.–4:45 p.m.

ADDRESSES: Double Tree Hotel, 2651 Perimeter Parkway, Augusta, GA 30909.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, November 18, 2013

1:00 p.m. Combined Committees Session
Order of committees:
- Strategic & Legacy Management
- Nuclear Materials
- Administrative & Outreach
- Facilities Disposition & Site Remediation
- Waste Management

5:00 p.m. Public Comments Session
5:15 p.m. Adjourn

Tuesday, November 19, 2013

8:30 a.m. Opening, Pledge, Approval of Minutes, Chair and Agency Updates
10:00 a.m. Public Comments Session Break
Waste Management Report
Strategic & Legacy Management Report
11:45 a.m. Public Comments Session
12:00 p.m. Lunch Break
1:30 p.m. Nuclear Materials Report
Facilities Disposition & Site Remediation Report
4:15 p.m. Administrative & Outreach Committee Report
- Election of Officers

4:30 p.m. Public Comments Session
Results of election announced directly after Public Comment session
4:45 p.m. Adjourn

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the

address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC on October 25, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–26300 Filed 11–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

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

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 21, 2013, from 3:30 p.m. to 4:00 p.m. (Eastern Time). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer (DFO) at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Julie Hughes, STEAB Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington DC 20585. Phone number 202–320–9703, and email at: *Julie.Hughes@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Receive an update on the activities of the STEAB's Taskforces and discuss the formation of new Task Forces to assist EERE with the Clean Energy Manufacturing Initiative and other proposed programs, provide an update to the Board on routine business matters and EERE areas of interest, and work on agenda items and details for the December 2013 meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Julie Hughes at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: *www.steab.org.*

Issued at Washington, DC, on October 24, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–26301 Filed 11–1–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–05–OP]

Notice of Availability for Public Review and Comment: Draft EPA Climate Change Adaptation Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Scientific evidence demonstrates that the climate is changing at an increasingly rapid rate, outside the range to which society has adapted in the past. Climate change can pose significant challenges to the EPA's ability to fulfill its mission. The U.S. Environmental Protection Agency is committed to identifying and responding to the challenges that a changing climate poses to human health and the environment. It is essential therefore, that the EPA adapt to climate change in order to continue fulfilling its statutory, regulatory and programmatic requirements, chief among these protection of human health and the environment. Adaptation will involve anticipating and planning for changes in climate and incorporating considerations of climate change into many of the Agency's programs, policies, rules and operations to ensure they are effective under changing climatic conditions. Adaptation also necessitates close coordination between EPA and its many partners and stakeholders.

In February 2013, EPA published its draft *Agency Climate Change Adaptation* Plan (draft *Plan*) in response to the President's October 2009 Executive Order (E.O. 13514—"Federal Leadership in Environmental, Energy, and Economic Performance") and the March 2011 "Implementing Instructions to all Federal Department and Agencies." The *Plan* is being finalized based upon comments received during a 60-day public review and comment period earlier in 2013. EPA's Program and Regional Offices have produced draft *Climate Change Adaptation Implementation Plans* ("*Implementation Plans*") that provide more detail on how they will carry out the work called for in the Agency-wide Plan.

Today, EPA announces the availability of public review drafts of its draft *Implementation Plans;* one for each of its ten Regions and seven National Programs. The draft *Implementation Plans* will be available for a 60-day public review and comment period.

The public review drafts of EPA's draft *Implementation Plans* have been posted to a public docket and they are available on the Agency Web site at this URL address: *http://epa.gov/climatechange/impacts-adaptation/fed-programs/EPA-impl-plans.html.* The Docket for public comment can be found on the Federal Government Regulations Web site (*http://www.regulations.gov/#!home*). It is Docket Number EPA–HQ–OA–2013–0568.

DATES: The public should respond to the EPA with comment via the public docket no later than January 3, 2014. Only comments received by the deadline will be considered by the Agency in finalizing its plan.

ADDRESSES: If you have questions about responding to this notice, please contact Gerald Filbin by phone (202–566–2182), or by mail (1200 Pennsylvania Ave. NW., Washington, DC 20460).

SUPPLEMENTARY INFORMATION: EPA is working to fulfill its mission to protect human health and the environment. As EPA articulated in its draft *Agency Climate Change Adaptation Plan*, many of the goals EPA is working to attain (*e.g.*, clean air, safe drinking water) are sensitive to changes in weather and climate. Until now, EPA has been able to assume that climate is relatively stable and future climate would mirror past climate. However, with climate changing at an increasingly rapid rate and outside the range to which society has adapted in the past, climate change is posing new challenges to EPA's ability to fulfill its mission. The Agency's draft *Implementation Plans* provide a road map for the Agency to

address future changes in climate and to incorporate considerations of climate change into its mission-driven activities.

EPA considers public input to be essential for the development of these draft *Implementation Plans*. This input will also help the Agency strengthen its partnerships with states, tribes, local communities, and non-governmental organizations, many of which have already begun to develop and implement adaptation measures.

Dated: October 30, 2013.

Shannon Kenny,

Acting Associate Administrator, Office of Policy.

[FR Doc. 2013–26354 Filed 11–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–32–OW]

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a meeting of the National Drinking Water Advisory Council (Council), established under the Safe Drinking Water Act (SDWA). The meeting is scheduled for December 11 and 12, 2013. This meeting of the Council was postponed from October 9 and 10, 2013, due to the government shutdown. The Council typically considers various issues associated with drinking water protection and public water systems. During this meeting, the Council will focus discussions on the proposed regulatory revisions to the Lead and Copper Rule under the SDWA as well as other program issues.

DATES: The meeting on December 11, 2013, will be held from 8:30 a.m. to 5:00 p.m., Eastern Time, and on December 12, 2013, from 8:30 a.m. to 2:30 p.m., Eastern Time.

ADDRESSES: The meeting will be held in Room 1117–A, EPA—East William Jefferson Clinton Building, 1201 Constitution Avenue NW., Washington, DC 20460 and the meeting will be open to the public. All attendees must go through a metal detector, sign in with the security desk, and show government issued photo identification to enter government buildings.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to register and receive pertinent information, present an oral statement or submit a written statement for the December 11 and 12 meeting should contact Roy Simon, by November 25, 2013, by email at *Simon.Roy@epa.gov;* by phone at 202–564–3868; or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460. Further details about participating in the meeting can be found in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Details About Participating in the Meeting: If you wish to attend the meeting, you should provide your email address when you register. The EPA will provide updated information on the December 11 and 12 meeting to registered individuals and organizations by December 6, 2013. The Council will allocate one hour for the public's input (1:00 p.m.–2:00 p.m., Eastern Time) at the meeting on December 11, 2013. Oral statements will be limited to five minutes at the meeting. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Roy Simon no later than November 25, 2013. Any person who wishes to file a written statement can do so before or after the Council meeting. Written statements intended for the meeting must be received by December 2, 2013, to be distributed to all members of the Council before any final discussion or vote is completed. Any statements received on or after the date specified will become part of the permanent file for the meeting and will be forwarded to the Council members for their information.

National Drinking Water Advisory Council: The Council was created by Congress on December 16, 1974, as part of the SDWA of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Council was established under the SDWA to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA.

Special Accommodations: For information on access or services for individuals with disabilities, please contact Roy Simon at 202–564–3868 or by email at *Simon.Roy@epa.gov*. To request accommodation of a disability, please contact Roy Simon at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: October 24, 2013.

Peter Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2013–26355 Filed 11–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–42–OA; EPA–HQ–OA–2013–0124]

Good Neighbor Environmental Board; Notification of Public Advisory Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Advisory Committee Teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will hold a public teleconference on Friday, November 15, 2013. The meeting will take place from 12 p.m. to 2 p.m. Eastern Standard Time. Due to the government shutdown resulting in administrative backlogs, EPA is announcing this teleconference with less than 15 calendar days public notice. The meeting is open to the public. For further information regarding the teleconference and background materials, please contact Ann-Marie Gantner at the number listed below.

DATES: Friday, November 15, 2013. The meeting will take place from 12 p.m. to 2 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

Background: GNEB is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: The purpose of this teleconference is to discuss the Good Neighbor Environmental Board's Sixteenth Report and preliminary advice letter. The report and advice letter will focus on ecological restoration in the U.S.-Mexico border region.

General Information: The agenda and meeting materials will be available at *http://www.regulations.gov* under Docket ID: EPA–HQ–OA–2013–0124.

General information about GNEB can be found on its Web site at *www.epa.gov/ofacmo/gneb.*

If you wish to make oral comments or submit written comments to the Board, please contact Ann-Marie Gantner at least five days prior to the meeting. Written comments should be submitted at *http://www.regulations.gov* under Docket ID: EPA–HQ–OA–2013–0124.

Meeting Access: For information on access or services for individuals with disabilities, please contact Ann-Marie Gantner at (202) 564–4330 or email at *gantner.ann-marie@epa.gov.* To request accommodation of a disability, please contact Ann-Marie Gantner at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: October 23, 2013.

Ann-Marie Gantner,

Acting Designated Federal Officer.

[FR Doc. 2013–26342 Filed 11–1–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Renewal of FASAB Charter

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of OMB, and the Comptroller General (the Sponsors) have agreed to continue an advisory committee to consider and recommend accounting standards and principles for the federal government.

For Further Information, or to Obtain a Copy of the Charter, Contact: Ms. Wendy M. Payne, Executive Director, 441 G St. NW., Mail Stop 6H20, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: October 30, 2013.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2013–26325 Filed 11–1–13; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, Office of the Managing Director, at (202) 418–2918, or email: *Cathy.Williams@ fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1190.

OMB Approval Date: August 21, 2013.

OMB Expiration Date: August 31, 2016.

Title: Section 87.287(b), Aeronautical Advisory Stations (Unicoms)—"Squitters."

Form No.: N/A.

Respondents: Business or other for-profit entities, not for profit institutions and state, local or tribal government.

Number of Respondents and Responses: 200 respondents; 200 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On-occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 200 hours.

Annual Cost Burden: $28,750.

Obligation to Respond: Require to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309 of the Communications Act of 1934, as amended.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: In this proceeding, the Commission amends its Part 87 rules to authorize new ground station technologies that will promote aviation safety, and allow use of frequency 1090 MHz by aeronautical utility mobile stations for airport surface detection equipment, commonly referred to as vehicle "squitters," to help reduce collisions between aircraft and airport ground vehicles.

Section 87.287(b) requires that before submitting an application for an aircraft data link land test station, an applicant must obtain written permission from the licensee of the aeronautical enroute stations serving the areas in which the aircraft data link land test station will operate on a co-channel basis. The Commission may request an applicant to provide documentation as to this fact.

The written permissions will aid the Commission in ensuring that licensees are complying with its policies and rules, while allowing the owners of antenna structures and other aviation obstacles to use Audio Visual Warning Systems (AVWS) stations, thereby helping aircraft avoid potential collisions and enhancing aviation safety, without causing harmful interference to other communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–26362 Filed 11–1–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13–178; DA 13–1885; DA 13–2033]

Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Rescheduled for January 22 2014; Notice of Filing Requirements, Reserve Price, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 96; Notice of Changes to Auction 96 Schedule Followlng Resumption of Normal Commission Operations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures, reserve price, and minimum opening bids for the upcoming auction of H Block licenses (Auction 96) and provides the revised schedule for Auction 96. This document is intended to familiarize prospective applicants with the procedures and other requirements for participation in the auction.

DATES: Applications to participate in Auction 96 must be filed prior to 6:00 p.m. Eastern Time (ET) on November 15, 2013. Bidding for H Block licenses in Auction 96 is scheduled to begin on January 22, 2014.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal and general auction questions: Valerie Barrish (attorney) at (202) 418–0660; *Broadband Division:* For licensing and service rule questions: Matthew Pearl (attorney) or Janet Young (engineer) at (202) 418–2487. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 96 Procedures Public Notice* released on September 13, 2013, and the *Auction 96 Rescheduling Public Notice* released on October 21, 2013. The complete text of the *Auction 96 Procedures Public Notice* and its attachments and the *Auction 96 Rescheduling Public Notice,* as well as related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 96 Procedures Public Notice, the Auction 96 Rescheduling Public Notice,* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 13–1885 or DA–2033. The *Auction 96 Procedures Public Notice, the Auction 96 Rescheduling Public Notice,* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/96/,* or by using the search function for AU Docket No. 13–178 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. General Information

A. Introduction

1. The Wireless Telecommunications Bureau (Bureau) establishes the procedures, reserve price, and minimum opening bid amounts for the upcoming auction of licenses in the 1915–1920 MHz (Lower H Block) and 1995–2000 MHz (Upper H Block) bands (collectively, the H Block). This auction, which is designated as Auction 96, is scheduled to start on January 22, 2014. The *Auction 96 Procedures Public Notice* provides an overview of the procedures, terms, and conditions governing Auction 96 and the post-auction application and payment processes. The *Auction 96 Rescheduling Public Notice* announces the rescheduled date for the start of Auction 96, and revises the schedule of pre-auction deadlines for Auction 96 announced in the *Auction 96 Procedures Public Notice.* All other procedures, terms and requirements as set out in the *Auction 96 Procedures Public Notice* remain unchanged.

2. The Federal Communications Commission (Commission or FCC) is offering the licenses in Auction 96 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in the H Block using a system of competitive bidding no later than February 23, 2015.

3. On July 15, 2013, the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 96. Twelve comments and ten reply comments were submitted in response to the *Auction 96 Comment Public Notice,* 78 FR 45524, July 29, 2013.

B. Description of Licenses To Be Offered in Auction 96

4. In the *H Block Report and Order,* 78 FR 50213, August 16, 2013, the Commission concluded that licenses for H Block spectrum should be awarded on an Economic Areas (EA) basis in all areas, including the Gulf of Mexico. Auction 96 will offer one license for each of the 176 EAs. The H Block frequencies will be licensed as paired 5 megahertz blocks, with each license having a total bandwidth of 10 megahertz; 1915-1920 MHz for mobile and low power fixed (i.e., uplink) operations and 1995-2000 MHz for base station and fixed (i.e., downlink) operations. A complete list of the licenses offered in Auction 96 is available in Attachment A to the *Auction 96 Procedures Public Notice.*

C. Rules and Disclaimers

i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective bidders should also familiarize themselves with the Commission's rules relating to the H Block frequencies, including cost-sharing obligations for H Block licensees, and rules relating to applications, environment, practice and procedure. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 96 Procedures Public Notice,* the revised schedule for Auction 96 as announced in the *Auction 96 Rescheduling Public Notice,* and any future public notices that may be issued in this proceeding.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.*

ii. Prohibited Communications and Compliance With Antitrust Laws

7. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for licenses in any of the same or overlapping geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

8. 47 CFR 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for licenses in the same or overlapping geographic license area. Thus, unless they have identified

each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same or overlapping geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants that submit short-form applications regardless of whether such applicants ultimately become qualified bidders or actually bid.

9. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureau has found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

10. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies. The Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

11. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating 47 CFR 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.

12. Auction 96 applicants selecting licenses for any of the same or overlapping geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation likewise could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

13. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

14. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in auction 96. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

15. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly." Moreover, the Commission has found a violation of 47 CFR 1.2105(c) where an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets," and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions." Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as is the case for Auction 96, an applicant's statement to the press that it has lost bidding eligibility and intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, an applicant's public statement of intent not to participate in Auction 96 bidding could also violate the rule.

16. Applicants are also hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of 47 CFR 1.2105(c) that prohibit certain communications. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures.

17. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 96. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

18. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being

auctioned, including any agreements relating to post-auction market structure.

19. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

20. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.

e. 47 CFR 1.2105(c) Certification

21. By electronically submitting a short-form application, each applicant in Auction 96 certifies its compliance with 47 CFR 1.2105(c). In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular licenses on which it will or will not bid. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring." Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty To Report Prohibited Communications

22. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

23. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

24. 47 CFR 1.65(a) and 1.2105(c) requires each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureau to act expeditiously on those changes when such action is necessary.

g. Procedure for Reporting Prohibited Communications

25. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

26. 47 CFR 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 96 Procedures Public Notice*. For Auction 96, such reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: *auction96@fcc.gov*. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Room 6423, Washington, DC 20554.

27. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports. The *Auction 96 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.

h. Winning Bidders Must Disclose Terms of Agreements

28. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

29. A summary listing of documents issued by the Commission and the Bureau addressing the application of 47 CFR 1.2105(c) may be found in Attachment F to the *Auction 96 Procedures Public Notice*. These documents are available on the Commission's auction Web page at *http://wireless.fcc.gov/auctions/prohibited_communications*.

j. Antitrust Laws

30. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. Similarly, the Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."

31. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

iii. Cost-Sharing Obligations

32. As noted in the *H Block Report and Order*, the spectrum in the Lower H Block and the Upper H Block is subject to cost-sharing requirements related to the past clearing and relocation of incumbent users from these bands. Consistent with its long-standing policy that cost-sharing obligations for both the Lower H Block and the Upper H Block be apportioned on a *pro rata* basis against the relocation costs attributable to the particular band, the Commission adopted cost-sharing rules in the *H Block Report and Order* that require H Block licensees to pay a *pro rata* share of expenses previously incurred by UTAM, Inc. (UTAM) and by Sprint Nextel, Inc. (Sprint) in clearing incumbents from the Lower H Block and the Upper H Block, respectively.

33. Under the cost sharing formula adopted in the *H Block Report and Order*, the reimbursement amount owed (RN) to UTAM with respect to the 1915-1920 MHz band will be determined by dividing the gross winning bid (GWB) for an H Block license by the sum of the gross winning bids for all H Block licenses won in Auction 96 and then multiplying that result by $12,629,857—the total amount owed to UTAM for clearing the Lower H Block. The cost-sharing formula for the Lower H Block is as follows: RN = (EA GWB/Sum of GWBs) × $12,629,857.

34. The *H Block Report and Order* adopted the same cost-sharing formula for the Upper H Block (1995-2000 MHz band) related to Sprint's clearing costs of $94,875,516: RN = (EA GWB/Sum of GWBs) × $94,875,516.

35. Winning bidders are required to pay UTAM and Sprint, as applicable, the reimbursement amounts owed within thirty days after the grant of the winning bidders' long-form license applications.

36. The Commission also adopted a contingency plan in the *H Block Report and Order* that will be triggered in the unlikely event that licenses won in this auction cover less than forty percent of the U.S. population. If such an event occurs, winning bidders—in this auction and in subsequent H Block auctions—will be required to timely pay UTAM and Sprint, respectively, their *pro rata* share calculated by dividing the population of the individual EA by the total U.S. population and then multiplying this quotient by $12,629,857 for UTAM and by $94,875,516 for Sprint.

37. The cost-sharing rules and contingency plan adopted in the *H Block Report and Order* are designed to ensure the UTAM and Sprint receive full reimbursement after this auction even if some of the licenses are not sold. The rules accomplish this by apportioning the reimbursement costs associated with any unsold H Block licenses among the winning bidders, except in cases where the contingency plan is triggered or a successful bidder's long-form application is not filed or granted. If any of the licenses won in this auction are not awarded, the license at issue will be deemed to have triggered a reimbursement obligation that will be paid by the licensee acquiring the license in a subsequent auction.

iv. International Coordination

38. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the H Block frequencies they acquire in the auction is subject to international agreements with Canada and Mexico. As the Commission noted in the *H Block Report and Order*, because of its shared borders with Canada and Mexico, the Commission routinely works in conjunction with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas. Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations in the H Block frequency bands must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

v. Quiet Zones

39. H Block licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

vi. Due Diligence

40. The Bureau reminds each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations, and that the Commission's statutory authority, under the Communications Act, to add, modify and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise. In addition, a Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

41. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureau strongly encourages each potential bidder to review all Commission orders establishing rules and policies for the H Block bands, including cost-sharing obligations for H Block licensees. Additionally, each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 96 license, it will be able to build and operate facilities that will fully comply with all applicable technical and regulatory requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

42. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 96 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction. The Bureau strongly encourages each participant in Auction 96 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 96 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

43. The Bureau also reminds each applicant that pending and future judicial proceedings, as well as pending and future proceedings before the Commission—including applications, applications for modification, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular applicants or the licenses available in Auction 96 (or the terms and conditions thereof, including all applicable Commission rules and regulations). Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction.

44. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 96. Each potential bidder is responsible for undertaking research to ensure that any licenses won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

vii. Use of Integrated Spectrum Auction System

45. Bidders will be able to participate in Auction 96 over the Internet using the Commission's web-based Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

viii. Environmental Review Requirements

46. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility. These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains, and surface features. In addition, the licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

D. Auction Specifics

i. Bidding Methodology

47. The bidding methodology for Auction 96 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

ii. Pre-Auction Dates and Deadlines

48. The following dates and deadlines, as announced in the *Auction 96 Rescheduling Public Notice,* apply: (1) Auction tutorial available (via Internet) by November 4, 2013; (2) short-form application (FCC Form 175) filing window opens on November 4, 2013, at 12:00 noon ET; (3) short-form application (FCC Form 175) filing window closes on November 15, 2013, at 6:00 p.m. ET; (4) upfront payments (via wire transfer) due on December 18, 2013 at 6:00 p.m. ET; (5) a mock auction will be held on January 17, 2014; and (6) Auction 96 will begin on January 22, 2014.

iii. Requirements for Participation

49. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on November 15, 2013, following the electronic filing procedures set forth in Attachment D to the *Auction 96 Procedures Public Notice;* (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on December 18, 2013, following the procedures and instructions set forth in Attachment E to the *Auction 96 Procedures Public Notice;* and (3) comply with all provisions outlined in the *Auction 96 Procedures Public Notice* and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

A. General Information Regarding Short-Form Applications

50. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below. In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

51. Every entity and individual seeking a license available in Auction 96 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on November 15, 2013, following the procedures prescribed in Attachment D to the *Auction 96 Procedures Public Notice*. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing.

52. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Each applicant should read carefully the instructions set forth in Attachment D and should consult the Commission's rules to ensure that, in addition to the materials described in the *Auction 96 Procedures Public Notice*, all the information required is included within its short-form application.

53. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

54. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

55. An applicant must select the licenses on which it wants to bid from the "Eligible Licenses" list on its short-form application. Applicants must review and verify their license selections before the deadline for submitting short-form applications. License selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on licenses that were not selected on the applicant's short-form application.

C. Disclosure of Bidding Arrangements

56. An applicant will be required to identify in its short-form application all real parties in interest with whom it has entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

57. Each applicant will also be required to certify under penalty of perjury in its short-form application that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of its bids, bidding strategies, or the particular licenses on which it will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

58. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (i) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While 47 CFR 1.2105(c) of the rules does not prohibit non-auction-related business negotiations among auction applicants, the Bureau reminds applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further, compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

D. Ownership Disclosure Requirements

59. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

60. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

E. Foreign Ownership Disclosure Requirements

61. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing the short-form application (FCC Form 175), an applicant will be required to disclose information concerning any foreign ownership of the applicant. An applicant must certify in its short-form application that, as of the deadline for filing a short-form application to participate in Auction 96, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.

F. National Security Certification Requirement for Auction 96 Applicants

62. Section 6004 of the Spectrum Act prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the Spectrum Act. In the *H Block Report and Order*, the Commission implemented the national security restriction in Section 6004 by adding a certification to the various other certifications that a party must make in any short-form application. This newly-adopted national security certification requires any applicant seeking to participate in Auction 96 to certify in its short-form application, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant, and who are thus statutorily prohibited from participating in such a Commission auction. As with other required certifications, an auction applicant's failure to include the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice.

G. Designated Entity Provisions

63. Eligible applicants in Auction 96 may claim small business bidding credits. In addition to the information provided in the *Auction 96 Procedures Public Notice*, Applicants should review carefully the Commission's decisions regarding the designated entity provisions.

i. Bidding Credits for Small Businesses

64. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 96, bidding credits will be available to small businesses and consortia thereof.

a. Bidding Credit Eligibility Criteria

65. In the *H Block Report and Order*, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the H Block.

66. The level of bidding credit is determined as follows: (1) A bidder with attributed average annual gross revenues that do not exceed $40 million for the preceding three years will receive a 15 percent discount on its winning bid; and (2) A bidder with attributed average annual gross revenues that do not exceed $15 million for the preceding three years will receive a 25 percent discount on its winning bid.

67. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit on its winning bid, but not both. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license to an entity not qualifying for the same level of bidding credit.

b. Revenue Disclosure on Short-Form Application

68. An entity applying as a small business must provide gross revenues for the preceding three years of each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, (4) the affiliates of its controlling interests, and (5) the entities with which it has an attributable material relationship. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.

ii. Attributable Interests

a. Controlling Interests

69. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

70. Applicants should refer to 47 CFR 1.2110(c)(2) and Attachment D to the *Auction 96 Procedures Public Notice* to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

b. Affiliates

71. Affiliates of an applicant or controlling interest include an individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an "identity of interest" with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment D to the *Auction 96 Procedures Public Notice*.

c. Material Relationships

72. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships—referred to as "attributable material relationships"—in determining designated entity eligibility for bidding credits. An applicant or licensee has an "attributable material relationship" when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent

of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for designated entity benefits and (ii) liability for "unjust enrichment" on a license-by-license basis.

73. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for existing benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, in such circumstances, the Commission reexamines the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

d. Gross Revenue Exceptions

74. The Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors.

75. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions. Additional guidance on claiming this exemption may be found in Attachment D.

e. Bidding Consortia

76. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business. Thus, each member of a consortium of small businesses that applies to participate in Auction 96 must individually meet the criteria for small businesses. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

H. Tribal Lands Bidding Credit

77. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

I. Provisions Regarding Former and Current Defaulters

78. Current defaulters or delinquents are not eligible to participate in Auction 96, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a "former defaulter" or a "former delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

79. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110 are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

80. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

81. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement its obligations under the Debt Collection Improvement Act of

1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules "are not affected" by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

82. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current "red light" status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

83. Moreover, prospective applicants in Auction 96 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application.

J. Optional Applicant Status Identification

84. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.

K. Minor Modifications to Short-Form Applications

85. After the deadline for filing initial applications, an Auction 96 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline. Thus, any change in control of an applicant—resulting from a merger, for example—will be considered a major modification, and the application will consequently be dismissed.

86. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

87. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and license selections.

88. Any letter describing changes to an applicant's short-form application must be submitted by email to *auction96@fcc.gov*. The email summarizing the changes must include a subject or caption referring to Auction 96 and the name of the applicant, for example, "Re: Changes to Auction 96 Short-Form Application of ABC Corp." The Bureau requests that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418–0660.

89. As with the short-form application, any application amendment and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority, and that the contents of the amendment or statement of fact are true and correct.

90. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 96. Further, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 96. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2105(c).

L. Maintaining Current Information in Short-Form Applications

91. 47 CFR 1.65 and 1.2105(b) requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a "major amendment," as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly

summarizing the changes must be submitted by email to *auction96@fcc.gov*. This email must include a subject or caption referring to Auction 96 and the name of the applicant. The Bureau requests that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2105(c).

III. Pre-Auction Procedures

A. Online Auction Tutorial—Available November 4, 2013

92. No later than Monday, November 4, 2013, an auction tutorial will be available on the Auction 96 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and H Block service rules. The tutorial will also provide an avenue to ask Commission staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

93. The auction tutorial will be accessible from the Commission's Auction 96 Web page at *http://wireless.fcc.gov/auctions/96/* through an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 96 Procedures Public Notice*.

B. Short-Form Applications—Due Prior to 6:00 p.m. ET on November 15, 2013

94. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment D to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on November 15, 2013. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.

95. Applications may generally be filed at any time beginning at noon ET on November 4, 2013, until the filing window closes at 6:00 p.m. ET on November 15, 2013. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on November 15, 2013.

96. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment D. FCC Auctions Technical Support is available at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

97. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

98. After the application filing deadline on November 15, 2013, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).

99. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to *auction96@fcc.gov*.

D. Upfront Payments—Due December 18, 2013

100. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 96 Procedures Public Notice* and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on December 18, 2013.

i. Making Upfront Payments by Wire Transfer

101. Wire transfer payments must be received before 6:00 p.m. ET on December 18, 2013. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The specific information needed to make upfront payments by wire transfer is outlined in the *Auction 96 Procedures Public Notice*.

102. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418–4232. On the fax cover sheet, write "Wire Transfer—Auction Payment for Auction 96." In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 96 before the deadline.

103. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Auctions Accounting Group at (202)

418–0578, or alternatively, Theresa Meeks at (202) 418–2945.

104. Please note the following information regarding upfront payments: (1) all payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 96 go to a lockbox number different from the lockboxes used in previous Commission auctions; and (4) failure to deliver a sufficient upfront payment as instructed by the December 18, 2013, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

ii. FCC Form 159

105. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to the *Auction 96 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

106. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction. An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

107. Applicants that are former defaulters must make upfront payments that are fifty percent greater than non-former defaulters. For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

108. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed in the *Auction 96 Comment Public Notice* that the amount of the upfront payment would determine a bidder's initial bidding eligibility, i.e., the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175 for Auction 96, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with licenses on which it wishes to place bids and hold provisionally winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given license.

109. In the *Auction 96 Comment Public Notice,* the Bureau proposed to make the upfront payments equal to the minimum opening bids. The Bureau further proposed that each license be assigned a specific number of bidding units equal to the upfront payment listed for the license, on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The Bureau received no specific comments on the proposal, and thus adopts its proposed upfront payments. The complete list of licenses for Auction 96 and the specific upfront payments and bidding units for each license are available as separate "Attachment A" files at *http://wireless.fcc.gov/auctions/96/.*

110. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all licenses on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

111. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified licenses by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

112. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information delineated in the *Auction 96 Procedures Public Notice* be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire transfer instructions can also be faxed to the Commission using the instructions provided in the *Auction 96 Procedures Public Notice.*

F. Auction Registration

113. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

114. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the "Integrated Spectrum Auction System (ISAS) Bidder's Guide," and the Auction Bidder Line phone number.

115. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, January 15, 2014, call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

116. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's

short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (TTY).

G. Remote Electronic Bidding

117. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the "Integrated Spectrum Auction System (ISAS) Bidder's Guide" are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 96.

118. Please note that the SecurID® tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding has closed.

H. Mock Auction—January 17, 2014

119. All qualified bidders will be eligible to participate in a mock auction on Friday, January 17, 2014. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureau strongly recommends that all bidders participate in the mock auction. Details will be announced by public notice.

IV. Auction

120. The first round of bidding for Auction 96 will begin on Wednesday, January 22, 2014. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction Without Package Bidding

121. In the *Auction 96 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 96 in a single auction using a simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses.

122. The Bureau also proposed to incorporate provisions for a simple form of package bidding called hierarchical package bidding (HPB) into the SMR auction under which, in addition to being able to bid on individual licenses, bidders would be able to bid on certain tiered, non-overlapping packages of licenses. The Bureau proposed that the basic bidding tier under HPB would be EA licenses, with possible predefined packages of EAs corresponding to Major Economic Areas (MEAs), Regional Economic Area Groupings (REAGs), and/or all markets in the contiguous 48 states. The Bureau sought comment generally on the proposed SMR format with HPB, including what predefined packages should be available for various tiers.

123. The Bureau received significant comment on its proposals. While all parties that commented on this topic generally support the Bureau's proposal to use the SMR format, most oppose implementing any form of package bidding in Auction 96. The Bureau concludes based on the record, that it will use a standard SMR auction format in Auction 96, without HPB.

124. Commenters that oppose implementing any form of package bidding, including HPB, claim that it creates competitive issues by (1) adding unnecessary complexity to the auction, which would be most felt by smaller bidders, (2) tilting the playing field in favor of larger/incumbent carriers to the detriment of small, rural, and new entrant carriers, (3) potentially allowing certain licenses to be acquired at a discount, and (4) adding uncertainty for bidders that bid on any collection of licenses smaller than the largest package being bid. Because the Bureau is not implementing package bidding for Auction 96, it need not address each of these comments in detail. The commenters that favor incorporating HPB into an SMR auction with package bidding, AT&T, Holt and Goeree, and T-Mobile, maintain that an SMR–HPB auction provides flexibility by allowing smaller companies to bid on "bite size" licenses, while offering major providers the chance to establish a regional or national footprint with a winning package bid. Holt and Goeree explain that the SMR–HPB format is simple and transparent, and that a structure with one or more middle tiers of regional packages offers flexibility advantages without significant increases in complexity or reductions in transparency or computational complexity. Both AT&T and Holt and Goeree observe that the proposed multi-round HPB auction format goes a long way towards solving an exposure problem, especially if more than two tiers are used. AT&T further notes that the Bureau's proposal to offer pre-defined, non-overlapping packages would greatly simplify the process of determining the provisionally winning bid in an EA (as compared to other package bidding formats) and that this reduced computational complexity should provide for transparency.

125. The Bureau concludes based on the record and in light of its experience with previous spectrum auctions, including auctions of Advanced Wireless Service ("AWS") and Personal Communications Service ("PCS") licenses, that a standard SMR auction format will offer adequate opportunity for bidders to aggregate licenses in order to obtain the level of coverage they desire consistent with their business plans. Accordingly, the Bureau declines to implement HPB, and will use a standard SMR auction format for Auction 96. Bids will be accepted on all licenses in each round of the auction until bidding stops on every license unless otherwise announced.

126. In the *Auction 96 Comment Public Notice*, the Bureau alternatively proposed to conduct Auction 96 as a single round sealed bid ("SRSB") auction, given that Auction 96 offers only a single spectrum block and that a single round auction might simplify the process for bidders and reduce auction participation costs. The Bureau sought comment on this alternative format and on any others it should consider. The four parties that took a position on the Bureau's alternative SRSB auction format proposal all oppose it. Given both the lack of support in the record for the Bureau's alternative SRSB auction proposal and the overwhelming record support for the SMR auction format, the Bureau will not conduct Auction 96 as a SRSB auction, and will conduct the auction using a standard SMR format.

ii. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction

127. Consistent with its practice in several prior wireless spectrum auctions, the Bureau proposed in the *Auction 96 Comment Public Notice* to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments

and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau sought comment on the proposal to implement anonymous bidding and on any alternatives for Auction 96.

128. The Bureau received several comments on its proposal to use anonymous bidding procedures for Auction 96, both in support and in opposition. After carefully considering the record on this issue, the Bureau concludes that it will employ its standard anonymous bidding procedures in Auction 96. The Bureau agrees with commenters that assert that the anonymous bidding procedures used in past auctions help protect against potential anticompetitive behavior such as retaliatory bidding and collusion. The Bureau finds that the competitive benefits associated with anonymous bidding outweigh the potential benefits of full information disclosure, particularly in this case where the Bureau offers one block of spectrum licenses, and therefore rejects the assertions of opponents of anonymous bidding, who argue that anonymous bidding procedures are unnecessary or harmful to smaller bidders.

129. The Bureau therefore adopts the limited information procedures proposed in the *Auction 96 Comment Public Notice*. Nothing in the record persuades the Bureau that it should depart from the now-established Commission practice of implementing anonymous bidding procedures in wireless spectrum auctions. Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

130. The Bureau, however, retains the discretion not to use limited information procedures if the Bureau, after examining the level of potential competition based on the short-form applications filed for Auction 96, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior.

131. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of, or compliance with, the Commission's prohibition of certain communications. 47 CFR 1.2105(c)(1) provides that, after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.

132. In Auction 96, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. The Commission will disclose the other portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

133. To assist applicants in identifying other parties subject to 47 CFR 1.2105(c), the Bureau will notify separately each applicant in Auction 96 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 96, have applied for licenses in any of the same or overlapping geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 96, it will send to each applicant in Auction 96 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas as the licenses it has selected in its application. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly-accessible online short-form application database.

134. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's prohibition of certain communications, pursuant to 47 CFR 1.2105(c), particularly in light of the Commission's procedures regarding the availability of certain information in Auction 96. While applicants' license selections will not be disclosed until after Auction 96 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

135. If an applicant is found to have violated the Commission's rules or the antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

136. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and 47 CFR 1.2105(c). To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the SEC, the Bureau strongly urges that the applicant consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.

137. In opposing the use of anonymous bidding procedures for Auction 96, US Cellular claims that smaller bidders face greater legal risks

and potential consequences because of the inherent conflict between anonymous bidding and the public disclosure requirements of the SEC concerning financially-material information. The Bureau is not persuaded by US Cellular's suggestion that SEC rules requiring bidders to disclose financially-material information may force bidders to disclose bidding information during the auction. US Cellular has raised this issue in the past, but has failed to cite any specific SEC rule that explicitly requires disclosure of bidding information. Until the SEC addresses the issue, the Bureau will not presume that SEC rules require public disclosure of information about bidding while an auction is still underway.

iii. Eligibility and Activity Rules

138. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 96. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units as listed in the complete list of licenses available as separate "Attachment A" files at *http://wireless.fcc.gov/auctions/96/*. Bidding units assigned to each license do not change as prices change during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

139. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with licenses covered by the bidder's new and provisionally winning bids.

140. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

141. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Bureau adopts them for Auction 96. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iv. Auction Stages

142. In the *Auction 96 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Commission received no specific comments on this proposal.

143. The Bureau finds that, for now, a two-stage activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages as described in the *Auction 96 Procedures Public Notice*.

144. When the Bureau moves the auction from Stage One to Stage Two, the Bureau will first alert bidders by announcement in the bidding system. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

v. Stage Transitions

145. In the *Auction 96 Comment Public Notice*, the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureau further proposed that it would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no specific comments on this issue.

146. The Bureau adopts its proposal for stage transitions. Thus, the auction will start in Stage One, and the Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

vi. Activity Rule Waivers

147. The Bureau proposed in the *Auction 96 Comment Public Notice* that each bidder in the auction be provided with three activity rule waivers. The Bureau received no specific comments on this issue. Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

148. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round

in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

149. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

150. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

vii. Auction Stopping Rules

151. In the *Auction 96 Comment Public Notice*, the Bureau proposed to employ a simultaneous stopping rule under its SMR proposal. Under this rule, all licenses remain available for bidding until bidding stops simultaneously on every license. More specifically, bidding will close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Thus, under the Bureau's SMR proposal, unless it announces alternative stopping procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license, regardless of whether bids are placed on individual licenses or packages of licenses.

152. The Bureau also proposed that it retain discretion to exercise any of the alternative versions of the simultaneous stopping rule for Auction 96 described in the *Auction 96 Procedures Public Notice*. The Bureau proposed to exercise these alternative versions of the simultaneous stopping rule only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau also proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. Sprint, the only party that commented on the stopping rules, supports them. The Bureau adopts its proposals for Auction 96.

viii. Auction Delay, Suspension, or Cancellation

153. In the *Auction 96 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no specific comment on this issue.

154. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that it will exercise this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

155. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately ten days before the start of the auction. Each bidding round is followed by the release of round results. Details regarding formats and locations of round results will also be included in the qualified bidders public notice. Multiple bidding rounds may be conducted each day.

156. The Bureau has the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' needs to study round results and adjust their bidding strategies. The Bureau may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

157. Section 309(j) of the Communications Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for Commission licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.

a. Reserve Price

158. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public a portion of the value of that resource. With respect to the H Block licenses being offered in Auction 96, the Spectrum Act specifically directs that proceeds from an auction of H Block spectrum be deposited into the Public Safety Trust Fund and be used for, among other things, funding (or reimbursement to the U.S. Treasury for the funding) of the nationwide, interoperable public safety broadband

network by the First Responder Network Authority. In view of the various public interest objectives the Bureau must consider, the Bureau proposed to establish a reserve price for the H Block licenses offered in Auction 96. The Bureau further proposed to utilize an aggregate reserve price based on the total of the bids for the H Block licenses, rather than license-by-license reserve prices. The Bureau sought comment on its proposals, and on factors the Bureau should consider in determining a reserve price. The Bureau also sought comment on whether, if the Bureau adopts a reserve price for the H Block licenses in Auction 96, it should disclose the reserve price publicly prior to the auction.

159. The limited comment the Bureau received on this issue is generally supportive of its reserve price proposals, and the Bureau received no opposition to the use of a reserve.

160. In light of the support in the record, the Bureau adopts its proposal to establish a reserve price for the H Block licenses in Auction 96 that is higher than the sum of minimum opening bids, and here the Bureau publicly discloses it. For the H Block licenses in Auction 96, there will be an aggregate reserve price of $1.564 billion. This reserve price was calculated by using a minimum spectrum value of $0.50/MHz-pop, as suggested by a commenter, and rounding the result to the nearest million. The Bureau believes this amount will appropriately recover for the public a portion of the value of the spectrum, especially in light of the Spectrum Act's requirement to deposit proceeds from this auction into the Public Safety Trust Fund to be used for a nationwide, interoperable public safety broadband network by the First Responder Network Authority.

161. When determining whether the reserve price has been met, the Bureau will use the gross bid amounts rather than net bid amounts that take into account bidding credits. The Bureau will also count the gross amount of any withdrawn bids for licenses toward meeting the reserve price. Thus, the Bureau will count the gross amount of either the provisionally winning bid on a license or, if higher, the highest withdrawn provisionally winning bid on a license when determining whether the reserve price has been met. The Bureau will not count more than one bid per license, be it a provisionally winning or withdrawn bid, toward meeting the relevant reserve price. In the case of licenses with multiple withdrawn bids or a withdrawn bid and a provisionally winning bid, the Bureau will count the highest of the gross bid amounts toward the reserve price. Other than the gross amounts of withdrawn bids licenses without provisionally winning bids will not count toward meeting a reserve price.

162. The Bureau will issue an announcement in the FCC Auction System stating that the reserve price has been met immediately following the first round in which that occurs, which will be viewable through the Commission's Web site. The current total of the relevant provisionally winning bids may not determine whether the reserve has been met, given that the Bureau also will count withdrawn bids toward meeting the reserve. By making an announcement when the reserve is met, the Bureau will free auction observers and participants from a need to monitor withdrawn bids over the course of the auction in order to determine whether the reserve has been met and avoid any uncertainty.

b. Minimum Opening Bids

163. In addition to proposing an aggregate reserve price, the Bureau proposed in the *Auction 96 Comment Public Notice* to establish minimum opening bid amounts for each license in Auction 96. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

164. In the *Auction 96 Comment Public Notice*, the Bureau proposed to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population, similar to its approach in many previous spectrum auctions. The Bureau proposed to use a calculation based on $0.07 per MHz-pop. Additionally, the Bureau proposed to incorporate pricing information from previous auctions to tailor the results of its calculation to the relative prices for each EA. For this, the Bureau proposed to create an index of the relative price of each EA using the winning bid amounts for the EA licenses of paired spectrum from Auctions 66 and 73. This modification to the use of $0.07 per MHz-pop results in amounts ranging from less than $0.01 per MHz-pop to $0.16 per MHz-pop. The Bureau further proposed a minimum of $1000 per license. For the license covering the Gulf of Mexico, the Bureau proposed to set the minimum opening bid at $20,000.

165. Broadband Properties, the only party that commented on the Bureau's proposed minimum opening bids, maintains that indexing minimum opening bids and reserve prices to prior auctions takes the market forces out of the auction process. Broadband Properties requests that the Bureau instead set the minimum opening bid at $.01 per MHz-pop and let the market decide the values. The Bureau disagrees with Broadband Properties that indexing minimum opening bids amounts takes market forces out of the auction process. Minimum opening bids are not meant to set market values. Rather, they ensure that a portion of the value of the spectrum is recovered for the public. Additionally, minimum opening bids help the efficiency of the auction process by avoiding numerous additional rounds that may otherwise be required to reach the winning bid amount. Accordingly, the Bureau declines to modify opening bids proposed in the in *Auction 96 Comment Public Notice*. The minimum opening bid amount for each H Block license available in Auction 96, calculated pursuant to the above-described procedures, is set forth in Attachment A to the *Auction 96 Procedures Public Notice*.

iii. Bid Amounts

166. In the *Auction 96 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. No specific comments were received on this issue. Based on the Commission's experience in prior auctions, the Bureau adopts this proposal for Auction 96.

a. Minimum Acceptable Bids

167. The Bureau proposed in the *Auction 96 Comment Public Notice* to calculate minimum acceptable bids based on "current price estimates" (CPEs) and an activity-based formula. In light of the Bureau's decision not to use package bidding, and consistent with its usual procedures, it will calculate minimum acceptable bids based on provisionally winning bids instead of CPEs, which serve as proxies for provisionally winning bids under HPB procedures. The Bureau will use the activity-based formula, as proposed.

168. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount

calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

169. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount ("the additional percentage") is calculated at the end of each round based on an activity index. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Bureau will round the results using the Commission's standard rounding procedures for auctions. The Bureau proposed to initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.25 (25%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty-five percent higher than the provisionally winning bid, depending upon the bidding activity covering the license. Equations and examples are shown in Attachment B to the *Auction 96 Procedures Public Notice*.

170. The Bureau did not receive any specific comments on calculating minimum acceptable bids. The Bureau adopts its proposal to begin the auction with the weighting factor set at 0.5, the minimum percentage at 0.1 (10%) and the maximum percentage at 0.25 (25%).

b. Additional Bid Amounts

171. Consistent with the Bureau's practice in past wireless spectrum auctions, the Bureau proposed in the *Auction 96 Comment Public Notice* to calculate any additional bid amounts using the minimum acceptable bid amount and a bid increment percentage — more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.10; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions. The Bureau proposed in the *Auction 96 Comment Public Notice* initially to set the bid increment percentage at five percent.

172. The Bureau also proposed in the *Auction 96 Comment Public Notice* to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts). The Bureau received no specific comments on these proposals, but it did receive comments supporting the use of its standard range of auction procedures if the Bureau adopts a simultaneous multiple-round auction without package bidding. The Bureau notes that proposing three bid amounts per license was consistent with its past experience using a simultaneous multiple-round auction format with HPB. Because the Bureau is not using package bidding for Auction 96, it instead adopts nine acceptable bid amounts per license, which is consistent with its past practice for most spectrum auctions.

c. Bid Amount Changes

173. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. The Bureau also retains the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a $10 million limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if the activity-based formula calculates a minimum acceptable bid amount that is $20 million higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at $10 million above the provisionally winning bid. The Bureau sought comment in the *Auction 96 Comment Public Notice* on the circumstances under which it should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters—such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts.

174. The Bureau received no specific comments on this proposal. Therefore, the Bureau will start the auction without a limit on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if it determine that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

175. At the end of each bidding round, a "provisionally winning bid" will be determined based on highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

176. In the *Auction 96 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids). No specific comments were received on this proposal. Accordingly, the Bureau adopts the tied bids proposal. The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

177. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 96. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

178. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

179. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

180. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts, provided they have sufficient eligibility to place bids on the particular license. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows text files containing bid information to be uploaded.

181. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for the following round will be determined.

182. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific license), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with licenses for which the bidder has removed or withdrawn bids do not count towards current activity.

183. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

184. In the *Auction 96 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Bureau proposed not to permit any bids, provisionally winning or otherwise, to be dropped or withdrawn from consideration in Auction 96 if the SMR with HPB format is used. The Bureau noted in the *Auction 96 Comment Public Notice* that the benefits that bidders may realize from withdrawing bids in a typical SMR auction are minimized under the proposed package bidding format. In addition, in an SMR auction with package bidding, there are significant risks associated with bid withdrawals that are not present in an SMR auction without package bidding. In the *Part 1 Third Report and Order*, the Commission explained that under its typical SMR auction format without package bidding, allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses.

185. *Bid Removal.* The Bureau received no specific comment on its proposed bid removal procedures, and therefore adopts these procedures for Auction 96. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bids" function in the FCC Auction System, a bidder may effectively "undo" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. If a bid is placed on a license during a round, it will count towards the activity for that round, but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, i.e., a bid that is removed does not count toward bidding activity.

186. *Bid Withdrawal.* RDL, the only party that commented on the Bureau's proposed bid withdrawal procedures, supports providing participants with unlimited bid withdrawal rights, particularly if the SMR–HPB format is used. In light of the Bureau's decision to use a standard SMR format without HPB for Auction 96, the Bureau will permit bid withdrawals consistent with the Bureau's practice in recent wireless spectrum auctions.

187. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds using the "withdraw bids" function in the FCC Auction System. Each bidder is limited to withdrawing provisionally winning bids in only one round during the course of the auction. The round in which a bidder may withdraw bids will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that may be withdrawn during that round. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

188. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

189. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent

winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

190. 47 CFR 1.2104(g)(1) sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 96 Comment Public Notice,* the Bureau sought comment on the appropriate interim withdrawal payment percentage to apply if it were to permit withdrawals under procedures for an SMR auction without package bidding for Auction 96. The Bureau proposed to establish this percentage at fifteen percent if withdrawals are permitted in Auction 96 and sought comment on the proposal.

191. The Bureau received no specific comment on this issue. The Bureau adopted a fifteen percent payment amount for prior AWS and PCS auctions, believes this to be an appropriate amount in this case, and therefore adopts its proposal for a fifteen percent payment amount for this auction. The Commission will assess an interim withdrawal payment equal to fifteen percent of the amount of the withdrawn bids. The fifteen percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. 47 CFR 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

192. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC-held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. These reports will be publicly accessible. Moreover, after the auction closes, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

viii. Auction Announcements

193. The Commission will use auction announcements to report necessary information such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

194. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, long-form applications, and ownership disclosure information reports.

A. Down Payments

195. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 96 to twenty percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit).

B. Final Payments

196. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

197. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 96. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

198. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order.* Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.

D. Ownership Disclosure Information Report (FCC Form 602)

199. Within ten business days after release of the auction closing public notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its long-form application.

200. If an applicant already has a complete and accurate FCC Form 602 on file in the Commission's Universal Licensing System (ULS), it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

201. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

202. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

203. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction

when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii).

204. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions/* and clicking on the Tribal Lands Credits link.

F. Default and Disqualification

205. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 96 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

206. As noted in the *Auction 96 Comment Public Notice*, the percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. The amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered. Accordingly, the Bureau sought comment in the *Auction 96 Comment Public Notice* on an appropriate additional default payment percentage in the event it does not conduct Auction 96 with package bidding procedures. As the Bureau noted in the *Auction 96 Comment Public Notice*, the Commission explained in the *CSEA/Part 1 Report and Order* that defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and that an additional default payment of up to twenty percent will be more effective in deterring defaults than the three percent used in some earlier auctions. However, as the Bureau further noted, it does not believe the detrimental effects of any defaults in Auction 96 are likely to be unusually great. Balancing these considerations, the Bureau proposed to establish an additional default payment for Auction 96 of fifteen percent of the applicable bid. The Bureau received no specific comments on this proposal, and therefore adopts it for Auction 96.

207. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

G. Refund of Remaining Upfront Payment Balance

208. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments.

209. Bidders are encouraged to file their refund information electronically using the Refund Information icon found on the *Auction Application Manager* page or through the Wire Transfer for Refund Purposes link available on the *Auction Application Submit Confirmation* page in the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant must send a written request.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2013–26264 Filed 11–1–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 13–2025; WC Docket No. 05–337; IB Docket No. 13–230; WT Docket No. 13–225; WC; Docket Nos. 13–223, 13–228, 13–235, 13–237]

Revised Filing Deadlines Following Resumption of Normal Commission Operations

AGENCY: Federal Communications Commission.

ACTION: Notice; revised filing deadlines.

SUMMARY: The Commission is further extending certain filing deadlines for regulatory and enforcement filings (with the exception of Network Outage Reporting System (NORS) and specifically docketed proceedings [1]) because the public did not have access to electronic docket and other online Commission resources during the suspension of operations due to the government-wide lapse in funding.

DATES:

- Filings (except NORS filings or otherwise specified filings) that were due between October 1 and October 6, 2013, will be due on October 22, 2013. Filings (except NORS filings or otherwise specified filings) that were due between October 7 and October 16, 2013 are due 16 calendar days after the original filing date.
- Filings (except NORS filings or otherwise specified filings) due to be filed between October 17 and November 4, 2013, are due November 4, 2013.
- Comments in WC Docket No. 05–337 are due by November 4, 2013; reply comments are due by November 19, 2013.
- Comments in IB Docket No. 13–230, are due October 25, 2013, and reply comments are due November 1, 2013.
- Reply comments WT Docket No. 13–225 are due October 28, 2013.
- Comments in WC Docket Nos. 13–223, 13–228, 13–235, 13–237, are due

[1] A separate **Federal Register** notice is being published for filing deadlines in pending rulemaking proceedings. The Wireless Telecommunications Bureau and Wireline Competition Bureau will release a separate Public Notice in the near future announcing new dates and deadlines applicable to Auction 902, AU Docket No. 13–53.

on October 22, 2013; reply comments are due October 29, 2013.

• Comments in all ULS applications and notifications filed in accordance with the Commission's rules that were originally due on October 1, 2013, through and including November 4, 2013, are due November 4, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyle, Assistant General Counsel, 202–380–2348.

SUPPLEMENTARY INFORMATION: As a result of the recent government-wide lapse in funding, the Commission suspended normal operations from October 1, 2013 through October 16, 2013, for a total of 16 days. Among other things, the Commission's filing window, mail room, and all electronic filing systems, with the exception of the Network Outage Reporting System (NORS), were unavailable from October 1, 2013, until October 17, 2013. In addition, many Commission resources normally accessible through the Commission's Web site, including access to electronic dockets, were inaccessible for the same period.

On October 1, 2013, the Commission issued a public notice stating that "any materials, with the exception of NORS filings, that otherwise would be required to be filed with the Commission (at its headquarters, Gettysburg, PA or U.S. Bank), during the suspension of operations or on the day of return to normal operations, will be due on the business day following the day of return to normal operations." Upon reopening on October 17, 2013, the Commission suspended all Commission filing deadlines that occurred during the shutdown or that will occur on or before October 21, other than NORS filing deadlines, until further notice. This Public Notice supersedes the October 1 and October 17 Public Notices. In addition, Bureaus and Offices may by further Public Notice set additional filing deadlines different than those specified in this Public Notice for filings in specific proceedings or classes of proceedings.

Regulatory and Enforcement Filings in General. Because parties did not have access to electronic dockets and other online Commission resources during the suspension of operations, we have determined to further extend the filing deadline for regulatory and enforcement filings, with the exception of NORS filings and certain other specified filings, so as to provide filers with access to Commission resources for the period they would have had absent the suspension of Commission operations. Filings, with the exception of NORS filings and certain other specified filings, that were due between October 1 and October 6 will be due on October 22, 2013. Filings, with the exception of NORS filings and certain other specified filings, that were due between October 7 and October 16 will be due 16 days after the original filing date, an extension equivalent to the period of the Commission's closure. Thus, for example, a filing that would have been due on October 7, will be due on October 23, an extension of 16 days. To the extent the revised due dates for filings under this Public Notice fall on a weekend or other Commission holiday, they will be due on the next business day. Finally, any regulatory and enforcement filings that would otherwise be required to be filed between October 17 and November 4 with the exception of the NORS filings and other specified filings, will be due for filing on November 4, 2013 (which is the first business day following a 16-day period after the Commission's October 17 reopening).

To the extent the due dates for filings to which reply or responsive pleadings are allowed are extended by this Public Notice, the due dates for the reply or responsive pleadings are extended by the same number of days. Thus, for example, if comments were originally due on October 30 and reply comments due ten days later, comments would now be due on November 4 and reply comments on November 14.

2014 Modification of Average Schedule Company Universal Service High-Cost Loop Support Formula. In WC Docket No. 05–337, the comment dates set forth in DA 13–1870 are revised as follows: Comments are due by November 4, 2013, and reply comments are due by November 19, 2013.

Domestic Section 214 Transfer of Control Applications. On October 1, 2013, the Commission issued a Public Notice (DA 13–2020) for domestic section 214 transfer of control applications WC Docket Nos. 13–223, 13–228, 13–235, 13–237 stating that comments addressing the applications would be due on the next business day after the Commission re-opens. This Public Notice supersedes the October 1, 2013, section 214 Public Notice. Comments are due October 22, 2013. Reply comments for domestic section 214 transfer of control applications will be due on October 29, 2013.

DISH Network Corporation Petition for Waiver and Request for Extension of Time, WT Docket No. 13–225. The date for filing reply comments set forth in DA 13–1877 is revised to October 28, 2013.

Verizon Communications, Inc.; Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act, as Amended, IB Docket No. 13–230. The comments dates set forth in DA 1948 (rel. Sept. 20, 2013) are revised as follows: Comments due by October 25, 2013, and reply comments are due by November 1, 2013.

ULS Applications/Notifications. All ULS applications and notifications filed in accordance with the Commission's rules (e.g., sections 1.913, 1.946) that were originally due on October 1, 2013, through and including November 4, 2013, are now due on November 4, 2013. We note that ULS is currently available and encourage applicants and licensees to file any applications and notifications as soon as practicable. Please see *http://www.fcc.gov/help/uls-instructions-revised-filing-deadlines* for information about filing requirements for these applications and notifications.

Vanity Call Sign Requests. During the period that the Commission was closed, ULS was not available for Amateur Radio Service licensees to file an application to modify their license grants to show a vanity call sign. Ordinarily, vanity call sign applications are processed on a day-by-day basis, with a random selection procedure used to determine the processing order for applications filed on the same day. In order to accommodate the orderly resumption of business, however, vanity call sign applications filed via ULS between October 17 and October 22 will all be processed as if they were filed on October 22, 2013. In addition, any vanity call sign applications that were filed by mail between October 1 and October 22, 2013 also will be treated as if they were filed on October 22, 2013.

Petitions for Reconsideration. The Commission cannot waive statutory filing deadlines such as those associated with petitions for reconsideration. Nonetheless, because of the disruption and uncertainty associated with the suspension of Commission activities and the relaunch of Commission filing systems, we will not consider the Commission open for filing of documents with statutory deadlines until Tuesday, October 22, 2013.

STAs. Any STAs expiring between October 1, 2013 and October 22, 2013 are extended until November 4, 2013.

For these purposes, Section 1.4(j) of the Commission's rules, 47 CFR 1.4(j), otherwise requiring filings to be made on the first business day of resumed Commission operations, is hereby waived.

Federal Communications Commission.

Joel Kaufman,

Associate General Counsel.

[FR Doc. 2013–26256 Filed 11–1–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request Re: Treatment by FDIC as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. As part of its continuing effort to reduce paperwork and respondent burden, the FDIC invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the PRA. On August 27, 2013 (78 FR 52914), the FDIC requested comment for 60 days on renewal of its information collection entitled *Treatment by FDIC as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010*, which is currently approved under OMB Control No. 3064–0177. No comments were received on the proposal. The FDIC hereby gives notice of submission to OMB of its request to renew, without change, the collection.

DATES: Comments must be submitted on or before December 4, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

Title: Treatment by the FDIC as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010.

OMB Number: 3064–0177.

Annual Frequency of Response: 10K Annual Report, Non-Reg AB Compliant—once; 10K Annual Report, Reg AB Compliant—once; 8K Disclosure Form, Non-Reg AB Compliant—twice; 8K Disclosure Form, Reg AB Compliant—twice; 10D Reports, Non-Reg AB Compliant—5; 10D Reports, Reg AB Compliant—5; 12b–25—once.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 10K Annual Report, Non-Reg AB Compliant—50; 10K Annual Report, Reg AB Compliant—50; 8K Disclosure Form, Non-Reg AB Compliant—50; 8K Disclosure Form, Reg AB Compliant—50; 10D Reports, Non-Reg AB Compliant—50; 10D Reports, Reg AB Compliant—50; 12b–25—100.

Estimated Time per Response: 10K Annual Report, Non-Reg AB Compliant—27 hours; 10K Annual Report, Reg AB Compliant—4.5 hours; 8K Disclosure Form, Non-Reg AB Compliant—2 hours; 8K Disclosure Form, Reg AB Compliant—2 hours; 10D Reports, Non-Reg AB Compliant—27 hours; 10D Reports, Reg AB Compliant—4.5 hours; 12b–25–2.5 hours.

Total Annual Burden: 12,850 hours.

General Description of Collection: To facilitate better ongoing evaluation of the quality of lending by banks and to reduce risks to the Deposit Insurance Fund from the opaque securitization structures and the poorly underwritten loans that led to the onset of the recent financial crisis, insured depository institutions must comply with certain reporting and disclosure requirements for securitizations as a prerequisite for the FDIC to grant the exercise of rights and powers listed in 12 U.S.C. 1821(e)(13)(C) with respect to such financial assets and, for any securitization for which transfers of financial assets were made after December 31, 2010, to qualify for the safe harbor provisions of Part 360 of the FDIC's Regulations.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 29th day of October 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–26285 Filed 11–1–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request Re: Real Estate Lending Standards

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. As part of its continuing effort to reduce paperwork and respondent burden, the FDIC invites the general public and other Federal agencies to take this opportunity to comment on renewal of its information collection entitled *Real Estate Lending Standards* (OMB No.

3064–0112). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before January 3, 2014.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

Title: Real Estate Lending Standards.
OMB Number: 3064–0112.
Frequency of Response: On occasion.
Affected Public: Insured financial institutions supervised by the FDIC.
Estimated Number of Respondents: 4,375.
Estimated Time per Response: 20 hours.
Total Annual Burden: 87,500 hours.
General Description of Collection: Institutions use real estate lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size, nature and scope of operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and documentation, approval and reporting requirements.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 29th day of October, 2013.

Valerie J. Best,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2013–26287 Filed 11–1–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:55 p.m. on Wednesday, October 30, 2013, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: October 30, 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–26444 Filed 10–31–13; 11:15 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 1:30 p.m. on Wednesday, October 30, 2013, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Memorandum and resolution re: Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation.

Memorandum and resolution re: Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure.

Discussion Agenda:

Memorandum and resolution re: Implementation of Liquidity Risk Standards for Certain FDIC Supervised Institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: October 25, 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–26442 Filed 10–31–13; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors met in open session at 1:30 p.m. on Wednesday, October 30, 2013, to consider the following matters:

Summary Agenda:

Memorandum and resolution re: Proposed Rule Regarding Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation.

Memorandum and resolution re: Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure.

Discussion Agenda:

Memorandum and resolution re: Notice of Proposed Rulemaking to Implement Liquidity Risk Standards for Certain FDIC Supervised Institutions.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on October 25, 2013, was practicable.

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC

Dated: October 30, 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–26443 Filed 10–31–13; 11:15 am]

BILLING CODE 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 November 29, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Independent Bancshares, Inc.*, Clarkfield, Minnesota; to acquire 100 percent of the voting shares of The Citizens State Bank of Olivia, Olivia, Minnesota.

Board of Governors of the Federal Reserve System, October 30, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–26282 Filed 11–1–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood and Tissue Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will take place Wednesday, December 4 from 8:00 a.m. to 5:00 p.m. and Thursday, December 5, 2013 from 8:00 a.m. to 4:00 p.m.

ADDRESSES: NIH Conference Room, 5635 Fishers Lane, Rockville, MD 20892.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Senior Advisor for Blood and Tissue Safety Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852; phone: (240) 453–8803; fax: (240) 453–8456; email: *ACBTSA@hhs.gov*.

SUPPLEMENTARY INFORMATION: The ACBTSA shall provide advice to the Secretary through the Assistant Secretary for Health. The Committee advises on a range of policy issues to include: (1) Definition of public health parameters around safety and availability of blood and blood products as well as tissues and tissue products, (2) broad public health, ethical, and legal issues related to transfusion and transplantation safety, and (3) the implications for safety and availability of various economic factors affecting product cost and supply. The advisory committee has met regularly since its establishment in 1997.

At the December 2013 meeting the ACBTSA will hear updates on recent activities of the Department and its agencies in support of previous Committee recommendations. Past recommendations made by the ACBTSA may be viewed at *www.hhs.gov/bloodsafety*.

This meeting will serve as a continuation of the June 2013 ACBTSA meeting, which addressed whether the current construct of the blood collection center system in the United States is designed for optimal service delivery in the era of health care reform. In

particular, this meeting seeks to evaluate the cost recovery system of blood centers, their perceived capacity for product and services innovations, and to promote risk based decision making from donor to recipient. The Committee will also hear from the World Health Organization's NOTIFY Library Project and their efforts to improve vigilance and surveillance of adverse transplant events relating to human cells, tissues, and organs. Additionally, the Committee will receive updates on recommendations from the ACBTSA Subcommittees addressing Disaster Preparedness; Tissue and Blood Safety; and Informed Consent in Transfusion and Transplantation.

The public will have the opportunity to present their views to the Committee during a public comment session scheduled for December 4, 2013. Comments will be limited to five minutes per speaker and must be pertinent to blood and tissue safety and availability. Pre-registration is required for participation in the public comment session. Any member of the public who would like to participate in this session should to contact the designated Federal official to register prior to close of business on December 2, 2013. If it is not possible to provide 30 copies of the material to be distributed, then individuals are requested to provide a minimum of one (1) copy of the document(s) to be distributed prior to the close of business on December 2, 2013. It is also requested that any member of the public who wishes to provide comments to the Committee utilizing electronic data projection to submit the necessary material to the Executive Secretary prior to the close of business on December 2, 2013.

Dated: October 28, 2013.

James J. Berger,

Senior Advisor for Blood and Tissue Safety Policy.

[FR Doc. 2013–26292 Filed 11–1–13; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation for Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office for Human Research Protections (OHRP), a program office in the Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS), is seeking nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS, through the Assistant Secretary for Health, on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary, HHS, on October 1, 2002. OHRP is seeking nominations of qualified candidates to fill three positions on the Committee membership that will be vacated during the 2014 calendar year.

A notice was published in the **Federal Register** on September 27, 2013, to solicit names of qualified applicants to be considered for appointment to the Committee. The due date for all applications was October 28, 2013. Response to this solicitation notice has been low; a sufficient number of applications has not been received to identify qualified candidates to be considered for appointment. In view of the Government shutdown, it has been determined that more time should be given for individuals to submit applications to be considered for appointment to the Committee. Therefore, this notice is being published in the **Federal Register** again to allow more time for qualified individuals to submit applications to fill the impending vacancies on SACHRP.

DATES: Nominations for membership on the Committee must be received no later than December 4, 2013.

ADDRESSES: Nominations should be mailed or delivered to Dr. Jerry Menikoff, Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Nominations will not be accepted by email or by facsimile.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, telephone: 240–453–8141. A copy of the Committee charter and list of the current members can be obtained by contacting Ms. Gorey, accessing the SACHRP Web site at *www.hhs.gov/ohrp/sachrp,* or requesting via email at *saçhrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee provides advice on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the Committee provides advice relating to the responsible conduct of research involving human subjects with particular emphasis on special populations such as neonates and children, prisoners, and the decisionally impaired; pregnant women, embryos and fetuses; individuals and populations in international studies; investigator conflicts of interest; and populations in which there are individually identifiable samples, data or information.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the OHRP and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include, but are not limited to, a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Nominations: The OHRP is requesting nominations to fill three positions for voting members of SACHRP. One position will become vacant in March, 2014; two others will become vacant in July. If you submitted a nomination in response to the solicitation request posted in the **Federal Register** on September 27, 2013, you do not need to resubmit your nomination. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to: Public health and medicine, behavioral and social sciences, health administration, and biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individuals selected for appointment to the Committee can be invited to serve a term of up to four

years. Committee members receive a stipend and reimbursement for per diem and any travel expenses incurred for attending Committee meetings and/or conducting other business in the interest of the Committee. Interested applicants may self-nominate. Nominations may be retained and considered for future vacancies.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (i.e., specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that individuals from a broad representation of geographic areas, women and men, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is necessary in order to determine if the selected candidate is involved in any activity that may pose a potential conflict with the official duties to be performed as a member of SACHRP.

Dated: October 25, 2013.

Jerry Menikoff,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 2013–26291 Filed 11–1–13; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–14–14BB]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project:

Evaluation of Rapid HIV Home-Testing among MSM Trial—New—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Innovative testing strategies are needed to reduce levels of undiagnosed Human immunodeficiency virus (HIV) infection and increase early access to treatment. Rapid home HIV tests may play an important role in efforts to reduce both HIV morbidity and mortality. Given the unrelenting HIV crisis among men who have sex with men (MSM) and the release into the market of a rapid HIV test for at-home use, it is necessary to evaluate the impact of providing rapid HIV home-test kits on repeat HIV testing, linkage to care, partner testing, serosorting, and HIV sexual risk behaviors among MSM. This information will assist the Division of HIV/AIDS Prevention (DHAP) in developing recommendations, future research and program needs concerning home-testing for MSM.

Specific Aims

This study is a randomized trial which aims to evaluate the use and effectiveness of home-test kits as a public health strategy for increasing testing among MSM. A secondary aim of the randomized trial is to evaluate the extent to which MSM (both HIV-negative and HIV-positive) distribute HIV home-test kits to their social and sexual networks.

The population for the randomized trial will be men over the age of 18 years who self-report that they have had anal sex with at least one man in the past year. We will recruit approximately 3,200 men who report their HIV status to be negative or who are unaware of their HIV status and 300 men who self-report that they are HIV-positive. Men will be recruited from the 12 cities: Atlanta, Georgia; Baltimore, Maryland; Chicago, Illinois; Dallas, Texas; District of Columbia; Houston, Texas; Los Angeles, California; Miami, Florida; New York City, New York; Philadelphia, Pennsylvania; San Francisco, California; and San Juan, Puerto Rico. We will ensure that at least 20% of participants are black and at least 15% are Hispanic. Recruitment will be conducted through banner advertisements displayed on social networking sites such as Facebook and dating and sex-seeking sites such as Manhunt and Adam4Adam.

This study also has a qualitative component that aims to examine the experiences of participants in the randomized control trial (RCT). Participants for the qualitative data collection will be drawn from the randomized control trial. Two data collection techniques will be used: focus group discussions (FGD) (both online and in-person) and individual in-depth interviews (IDIs).

CDC is requesting approval for a 3-year clearance for data collection. All participant consenting and data collection for the RCT will be completed using an online reporting system. Data will be collected using an eligibility screener, an online study registration process, a baseline survey, HIV test results reporting system, and follow-up surveys. Men will be asked to use the study Web site or download and access a secure cell phone application prior to enter results of their rapid HIV home-tests that they receive and conduct at home and to take the follow-up surveys which will collect information on HIV

testing results and behaviors and sexual activities. Focus group discussions and in-depth interviews will be used to examine experiences of participants in the RCT.

The duration of the eligibility screener is estimated to be 5 minutes; the study registration process 5 minutes; the baseline survey 15 minutes; the reporting of home-test results 5 minutes; the follow-up surveys 10 minutes; the focus group discussion 1 hour and 30 minutes; and the in-depth interviews 1 hour and 15 minutes.

There is no cost to participants other than their time.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response	Total response burden (hours)
Prospective Participant	Eligibility Screener	24,000	1	3/60	1,200
Enrolled participant	Study Registration	14,000	1	5/60	1,167
Enrolled participant	Baseline Survey for RCT	3,200	1	15/60	800
Enrolled participant	Baseline Survey for HIV-positive group.	300	1	15/60	75
Enrolled participant	Reporting of Home-test Results during study.	1,600	3	5/60	400
Enrolled participant	Follow-up Surveys for RCT	3,200	4	10/60	2,133
Enrolled participant	Follow-up Surveys for HIV positive group.	300	2	10/60	100
Enrolled participants	Reporting of Home-test Results at completion of study.	3,200	1	5/60	267
Enrolled participant	Focus group discussion	216	1	1.5	324
Enrolled participant	Individual in-depth interview guide	30	1	1.5	45
Total					6,511

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–26277 Filed 11–1–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–P–0775]

Determination That INVEGA (Paliperidone) Extended-Release Tablet, 12 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that INVEGA (paliperidone) extended-release tablet, 12 milligrams (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for paliperidone extended-release tablet, 12 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Linda Jong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6224, Silver Spring, MD 20993–0002, 301–796–3977.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

INVEGA (paliperidone) extended-release tablet, 12 mg, is the subject of NDA 21–999, held by Janssen Pharmaceuticals, Inc., and initially approved on December 19, 2006. INVEGA extended-release tablets are indicated for the treatment of schizophrenia and the treatment of schizoaffective disorder as monotherapy and as an adjunct to mood stabilizers and/or antidepressants.

Janssen Pharmaceuticals, Inc., has never marketed INVEGA (paliperidone) extended-release tablet, 12 mg. In previous instances (see, e.g., 72 FR 9763, 61 FR 25497), the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale. The other strengths of INVEGA (paliperidone) that are approved under NDA 21–999 are being marketed.

Hyman, Phelps & McNamara, P.C., submitted a citizen petition dated June 25, 2013 (Docket No. FDA–2013–P–0775), under 21 CFR 10.30, requesting that the Agency determine whether

INVEGA (paliperidone) extended-release tablet, 12 mg, was discontinued for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that INVEGA (paliperidone) extended-release tablet, 12 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that INVEGA (paliperidone) extended-release tablet, 12 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of INVEGA (paliperidone) extended-release tablet, 12 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events to determine whether INVEGA (paliperidone) extended-release tablet, 12 mg, was withdrawn for reasons of safety or effectiveness. We have reviewed the available information and determined that the product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list INVEGA (paliperidone) extended-release tablet, 12 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to INVEGA (paliperidone) extended-release tablet, 12 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: October 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–26283 Filed 11–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1204]

Draft Risk Profile on Pathogens and Filth in Spices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft risk profile entitled "FDA Draft Risk Profile: Pathogens and Filth in Spices" (draft risk profile). Our main objectives were to: Describe the nature and extent of the public health risk posed by consumption of spices in the United States by identifying the most commonly occurring microbial hazards and filth in spice; describe and evaluate current mitigation and control options designed to reduce the public health risk posed by consumption of contaminated spices in the United States; identify potential additional mitigation or control options designed to reduce the public health risk posed by the consumption of contaminated spices in the United States; and identify data gaps and research needs. The draft risk profile is intended to provide information for FDA risk managers to use in regulatory decision making related to the safety of spices in the U.S. food supply. The information may also be useful to stakeholders and interested parties such as spice producers and importers, spice and food manufacturers, retail food establishments, and consumers.

DATES: Submit either electronic or written comments on the draft risk profile by January 3, 2014.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments on the draft risk profile to Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jane Van Doren, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2927.

SUPPLEMENTARY INFORMATION:

I. Background

In response to recent outbreaks in the United States of human illness associated with consumption of certain spices, as well as other reports in the literature and within FDA suggesting that current pathogen control measures in spices may not adequately protect public health, we developed a draft risk profile on pathogens and filth in spices (Ref. 1). We initiated the draft risk profile in response to a large outbreak of *Salmonella* Rissen infections in 2008 to 2009 associated with the consumption of ground white pepper in the United States (id.). Subsequently, in 2009 to 2010, the United States had a larger outbreak of *Salmonella* Montevideo infections associated with consumption of products containing black and red pepper (id.). The objectives of the draft risk profile are to: (1) Describe the nature and extent of the public health risk posed by consumption of spices in the United States by identifying the most commonly occurring microbial hazards and filth in spice; (2) describe and evaluate current mitigation and control options designed to reduce the public health risk posed by consumption of contaminated spices in the United States; (3) identify potential additional mitigation and control options; and (4) identify data gaps and research needs.

Specific risk management questions that are addressed include:

- What is known about the frequency and levels of pathogen and/or filth contamination of spices throughout the food supply chain (e.g., on the farm, at primary processing/manufacturing, at intermediary processing (where spices are used as ingredients in multi-component products), at distribution (including importation), at retail sale/use, and at the consumer's home)?
- What is known about the differences in production and contamination of imported and domestic spices?
- What is known about the effectiveness and practicality of currently available and potential future mitigations and control options to prevent human illnesses associated with contaminated spices (e.g., practices and/or technologies to reduce or prevent contamination, surveillance, inspection, import strategies, or guidance)?
- What are the highest priority research needs related to prevention or reduction of contamination of spices with pathogens or filth?

The draft risk profile has undergone an independent external peer review, and our response to the peer review is available electronically on the FDA Web site (Ref. 2).

For the purpose of the draft risk profile, we consider "spice" to mean any dried aromatic vegetable substances in the whole, broken, or ground form,

except for those substances which have been traditionally regarded as foods, whose significant function in food is seasoning rather than nutritional, and from which no portion of any volatile oil or other flavoring principle has been removed. We also consider dehydrated onion and garlic and other dehydrated vegetables used as seasoning to be spices.

The specific microbial hazards and filth in spices that we consider in the draft risk profile include those pathogen and filth adulterants detected in spices, implicated in outbreaks, reported as the reason for recalls, and reported in submissions to the Reportable Food Registry (RFR) (Ref. 3). The draft risk profile focuses on *Salmonella*, among the pathogens detected in spices, because it is the only spice-associated pathogen linked with human illness, food recalls, and RFR reports in the United States.

We invite comments that can help improve: (1) The data and information used; (2) the analytical analyses employed; and (3) the clarity and the transparency of the draft risk profile.

II. Comments

Interested persons may submit either electronic comments regarding the draft risk profile to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments 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*.

III. Electronic Access

Persons with access to the Internet may obtain the draft risk profile at either (*http://www.fda.gov/downloads/Food/FoodScienceResearch/RiskSafetyAssessment/UCM367337.pdf*) or *http://www.regulations.gov*.

IV. 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*. (We have verified the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. U.S. Food and Drug Administration (2013). "FDA Draft Risk Profile: Pathogens and Filth in Spices." Accessible at *http://www.fda.gov/downloads/Food/FoodScienceResearch/RiskSafetyAssessment/UCM367337.pdf*.
2. U.S. Food and Drug Administration (2013). "FDA Draft Risk Profile: Pathogens and Filth in Spices: Peer Review Report: External Peer Review Comments and FDA Responses." Accessible at *http://www.fda.gov/downloads/Food/FoodScienceResearch/RiskSafetyAssessment/UCM367338.pdf*.
3. U.S. Food and Drug Administration (2013). Reportable Food Registry Annual Report. Accessible at *http://www.fda.gov/Food/ComplianceEnforcement/RFR/default.htm*.

Dated: October 28, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–26119 Filed 10–30–13; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Allergenic Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 11, 2013, from 9 a.m. to approximately 3:30 p.m. and on December 12, 2013, from 8:30 a.m. to approximately 2:45 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading "Resources for You," click on "Public Meetings at the FDA White Oak Campus." Please note that visitors to the White Oak Campus must enter through Building 1.

For those unable to attend in person, the meeting will also be Webcast. The link for the Webcast is available at: *https://collaboration.fda.gov/apac.*

Contact Person: Donald W. Jehn or Joanne Lipkind, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On December 11, 2013, the committee will meet in open session to discuss and make recommendations on the safety and efficacy of Oralair; a sweet vernal, orchard, perennial rye, Timothy, and Kentucky bluegrass mixed pollens allergen extract tablet for sublingual use, manufactured by Stallergenes. On December 12, 2013, the committee will meet in open session to discuss and make recommendations on the safety and efficacy of Grastek, a Timothy grass pollen allergen extract tablet for sublingual use, manufactured by Merck.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 4, 2013. Oral presentations from the public will be scheduled between approximately 12 p.m. and 12:30 p.m. on December 11, 2013, and between approximately 11:10 a.m. and 11:40 a.m. on December 12, 2013. Those individuals interested in making formal oral presentations should

notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 26, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 27, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Joanne Lipkind at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 29, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–26330 Filed 11–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that "[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**." Set forth below is a list of petitions received by HRSA on September 1, 2013, through September 30, 2013. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: October 29, 2013.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. John J. Rainone; Cranston, Rhode Island; Court of Federal Claims No: 13–0632V
2. Kimberly Carter on behalf of Josselyn Kish; Henderson, Nevada; Court of Federal Claims No: 13–0633V
3. Eric Scott Boyd and Naomi Nicole Boyd on behalf of Janae Leann Boyd; Phoenix, Arizona; Court of Federal Claims No: 13–0634V
4. Pete Nathaniel Mulliken; Millwood, New York; Court of Federal Claims No: 13–0635V
5. Laura Ann Jacques; Richfield, Minnesota; Court of Federal Claims No: 13–0638V
6. Sherry and Steven Kachmarik; Wauseon, Ohio; Court of Federal Claims No: 13–0639V
7. Jeffrey A. Reid; Quincy, Illinois; Court of Federal Claims No: 13–0640V
8. Etta Newman; Whitesville, West Virginia; Court of Federal Claims No: 13–0641V
9. Barry S, Dezern, North Wilkesboro, North Carolina, Court of Federal Claims No: 13–0643V
10. Lisa Sabel, Fond duLac, Wisconsin, Court of Federal Claims No: 13–0646V
11. Bobbie A. Windhorst, Louisville, Kentucky, Court of Federal Claims No: 13–0647V
12. Lori Baca, Conçord, California, Court of Federal Claims No: 13–0648V
13. Dawayne Rowell, Clackamas, Oregon, Court of Federal Claims No: 13–0649V
14. Josephine Franco, Buford, Georgia, Court of Federal Claims No: 13–0650V
15. Cortney Leibfried on behalf of Lauren Pozoic, Harrisburg, Pennsylvania, Court of Federal Claims No: 13–0652V
16. Hector Trejo, San Diego, California, Court of Federal Claims No: 13–0653V
17. Bethany Blaga, Valparaiso, Indiana, Court of Federal Claims No: 13–0654V
18. Barbara Collins, Morristown, Tennessee, Court of Federal Claims No: 13–0656V
19. Susan Moody, Port Isabel, Texas, Court of Federal Claims No: 13–0657V
20. Tammy Durre, Bloomington, Illinois, Court of Federal Claims No: 13–0659V
21. Thomas Weil, Highland Park, Illinois, Court of Federal Claims No: 13–0660V
22. Lisa Vernon, Montrose, California, Court of Federal Claims No: 13–0665V
23. April Huffman on behalf of Bradlee Cochran, Jasper, Georgia, Court of Federal Claims No: 13–0666V
24. Matthew Kaplan, Montrose, California, Court of Federal Claims No: 13–0667V
25. Gerald Leonardi, III, Philadelphia, Pennsylvania, Court of Federal Claims No: 13–0668V
26. Desiree Roberts, Marshall, North Carolina, Court of Federal Claims No: 13–0669V,
27. Wallace Arlen Crotchett, Pearl, Mississippi, Court of Federal Claims No: 13–0673V
28. Kaleigh N. Burgert, Columbus, Ohio, Court of Federal Claims No: 13–0674V
29. Bo Depena and Natalie Depena on behalf of Rhone Depena, San Antonio, Texas, Court of Federal Claims No: 13–0675V
30. Terri Ahern, West Chester, Pennsylvania, Court of Federal Claims No: 13–0676V
31. Donna Smith and Brian Smith on behalf of Matthew W. Smith, Marlton, New Jersey, Court of Federal Claims No: 13–0677V
32. John Patrick Louviere and Stacy Mayeaux-Louviere on behalf of Ava Grace Louviere, Alexandria, Louisiana, Court of Federal Claims No: 13–0678V
32. Gary S. Roth, Neenah, Wisconsin, Court of Federal Claims No: 13–0679V
34. Kathleen Rosa, Sebastopol, Texas, Court of Federal Claims No: 13–0685V
35. Lisa Gladstone, Glen Rock, New Jersey, Court of Federal Claims No: 13–0680V
36. Michele LeMaire, Bridgeport, Connecticut, Court of Federal Claims No: 13–0681V
37. Christine Pyne, Somers Point, New Jersey, Court of Federal Claims No: 13–0682V
38. Barbara Farley, Dallas, Texas, Court of Federal Claims No: 13–0683V
39. David Becker on behalf of D.B., Piermont, New York, Court of Federal Claims No: 13–0687V
40. Gregory P. Brown, Middleburgh Heights, Ohio, Court of Federal Claims No: 13–0690V
41. Americo E. Gambo on behalf of Frances Chambers Gambo, Deceased, Baltimore, Maryland, Court of Federal Claims No: 13–0691V
42. Summer Shell, Rutherford College, North Carolina, Court of Federal Claims No: 13–0692V
43. Waheed Ahmed and Nermeen Hassn on behalf of Nada Ahmed, Glen Rock, New Jersey, Court of Federal Claims No: 13–0694V
44. Zelma Taylor, Jackson, Mississippi, Court of Federal Claims No: 13–0700V
45. Matthew Forrest Kierzek, Baraboo, Wisconsin, Court of Federal Claims No: 13–0701V
46. Rodrigo Brenes, U.S. Embassy, Baghdad, Court of Federal Claims No: 13–0703V
47. David Allen, Washington, District of Columbia, Court of Federal Claims No: 13–0704V
48. Salvatore Carroccia, Buffalo, New York, Court of Federal Claims No: 13–0705V
49. Kodi Rae Stevens, Hollywood, Florida, Court of Federal Claims No: 13–0707V
50. Kristine R. Bell, Cedar Rapids, Iowa, Court of Federal Claims No: 13–0709V
51. Raymond Somosot and Wanwilai Somosot on behalf of R.D.S., Las Vegas, Nevada, Court of Federal Claims No: 13–0710V
52. Johnna Bailey, Whitehall, Ohio, Court of Federal Claims No: 13–0711V
53. Shane D. Leak, Twin Falls, Idaho, Court of Federal Claims No: 13–0712V
54. William Joseph, Levittown, New York, Court of Federal Claims No: 13–0713V
55. David Farnsworth, Washington, District of Columbia, Court of Federal Claims No: 13–0714V
56. William Searcy, DDS, Lima, Ohio, Court of Federal Claims No: 13–0715V
57. Karina Torres on behalf of Adem Bilali, Bloomfield, New Jersey, Court of Federal Claims No: 13–0716V
58. Todd Chynoweth, Almont, Michigan, Court of Federal Claims No: 13–0721V
59. LaCole Willis, Phoenix, Arizona, Court of Federal Claims No: 13–0722V
60. Jason Blumenstock, Fort Gordon, Georgia, Court of Federal Claims No: 13–0723V
61. Deepak Jesrani, Los Angeles, California, Court of Federal Claims No: 13–0724V
62. Annette Packey, Fostoria, Ohio, Court of Federal Claims No: 13–0725V
63. Eugene Spadaccini, Carneys Point, New Jersey, Court of Federal Claims No: 13–0726V
64. Janine Kadile, Boston, Massachusetts, Court of Federal Claims No: 13–0728V
65. Sylvia Heckman, Boston, Massachusetts, Court of Federal Claims No: 13–0729V

66. Cathi Holden, Boston, Massachusetts, Court of Federal Claims No: 13–0730V
67. Michael Dolloff, Boston, Massachusetts, Court of Federal Claims No: 13–0731V
68. Jodi Manis, Boston, Massachusetts, Court of Federal Claims No: 13–0732V
69. Heather Crose, Boston, Massachusetts, Court of Federal Claims No: 13–0733V
70. Jennifer Robi, Pasadena, California, Court of Federal Claims No: 13–0734V
71. Chuck and Rhonda Smithson on behalf of Savannah Smithson, Phoenix, Arizona, Court of Federal Claims No: 13–0735V
72. Bena Tomlinson, Boston, Massachusetts, Court of Federal Claims No: 13–0736V
73. Christine Shea, Boston, Massachusetts, Court of Federal Claims No: 13–0737V
74. Rhonda Nixon, Boston, Massachusetts, Court of Federal Claims No: 13–0738V
75. Shavara Perkins, Boston, Massachusetts, Court of Federal Claims No: 13–0739V
76. Ivan Sipos, Boston, Massachusetts, Court of Federal Claims No: 13–0740V
77. Tina Prater, Martinee, Georgia, Court of Federal Claims No: 13–0741V
78. John Aiani, Loganville, Georgia, Court of Federal Claims No: 13–0742V
79. Holly Grant, Glenview, Illinois, Court of Federal Claims No: 13–0743V
80. Jackie Allen Williams, Anaconda, Montana, Court of Federal Claims No: 13–0744V
81. Giovanni Seminerio on behalf of Vincenzo Seminerio, Stroudsburg, Pennsylvania, Court of Federal Claims No: 13–0745V
82. Cathreen Corwon, Strongsville, Ohio, Court of Federal Claims No: 13–0746V
83. Gregory Hood, Barre, Vermont, Court of Federal Claims No: 13–0748V
84. Lillie Dvorak, Malvern Arkansas, Court of Federal Claims No: 13–0749V
85. Riki Hurst on behalf of Kailee Mae Krause, Linwood, New Jersey, Court of Federal Claims No: 13–0750V
86. Vernon Gearhart, Tulsa, Oklahoma, Court of Federal Claims No: 13–0751V
87. Martha Munoz on behalf of Leonardo Munoz, Bowie, Maryland, Court of Federal Claims No: 13–0752V
88. Linda Vanslyke, Vienna, Virginia, Court of Federal Claims No: 13–0754V
89. Matthew LaRocco, Washington, District of Columbia, Court of Federal Claims No: 13–0755V
90. Kimberly Wides, Columbia Falls, Montana, Court of Federal Claims No: 13–0756V
91. Brenda Darlene Richardson, Richmond, Virginia, Court of Federal Claims No: 13–0757V

[FR Doc. 2013–26335 Filed 11–1–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Aging Systems and Geriatrics Study Section, October 07, 2013, 08:00 a.m. to October 08, 2013, 05:00 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015, which was published in the **Federal Register** on September 10, 2013, 78 FR 55269.

The meeting will be held at the Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814 on December 9, 2013, starting at 07:00 a.m. and ending at 06:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26202 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Medical Imaging Study Section, October 07, 2013, 09:30 a.m. to October 07, 2013, 05:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which, was published in the **Federal Register** on September 24, 2013, 78 FR 185 Pg. 58547.

The meeting will be held at the Hilton Alexandria Mark Center Hotel, 5000 Seminary Rd., Alexandria, VA 22311. The meeting will start on November 4, 2013 at 7:00 a.m. and end November 4, 2013 at 5:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26148 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Lung Cellular, Molecular, and Immunobiology Study Section, October 7, 2013, 08:00 a.m. to October 8, 2013, 05:00 p.m., Avenue Hotel Chicago, 150 E. Huron Street, Chicago, IL 60611, which was published in the **Federal Register** on September 10, 2013, 78 FR 55269.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on November 12, 2013 at 09:00 a.m. and end on November 14, 2013 at 06:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26174 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Macromolecular Structure and Function D Study Section, October 10, 2013, 08:00 a.m. to October 10, 2013, 05:00 p.m., Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005, which was published in the **Federal Register** on September 11, 2013, 78 FR 55753.

The meeting will be held on December 2, 2013 at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting time remains the same. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26313 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Institute on Aging Special Emphasis Panel; Drug Development for Alzheimer's Disease.

Date: November 26, 2013.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26137 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological, Aging and Musculoskeletal Epidemiology Study Section, October 23, 2013, 08:30 a.m. to October 23, 2013, 06:30 p.m., Washington Plaza DC, 1475 Massachusetts Avenue and 14th Street, Washington, DC 20005, which was published in the **Federal Register** on October 01, 2013, 78 FR 190 Pgs. 60294–60296.

The meeting will start on December 18, 2013 at 8:30 a.m. and end December 18, 2013 at 5:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26136 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 10, 2013, 05:00 p.m. to October 10, 2013, 06:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 18, 2013, 78 FR 57400.

The meeting will be held on December 19, 2013 from 05:00 p.m. to 06:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26205 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 08, 2013, 01:00 p.m. to October 08, 2013, 02:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on October 01, 2013, 78 FR 190 Pgs. 60294–60296.

The meeting will start on December 2, 2013 at 1:00 p.m. and end December 2, 2013 at 2:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26233 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel ZRG1 DIRH–X (04), October 01, 2013, 04:00 p.m. to October 01, 2013, 05:00 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015, which was published in the **Federal Register** on September 03, 2013, 78 FR 170 Pgs. 54259–54261.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on December 9, 2013 at 12:00 p.m. and end December 9, 2013 at 1:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26157 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; AA–2 Deferred Grant Application Review.

Date: November 14, 2013.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane (Teleconference), Rockville, MD 20852.

Contact Person: Katrina L Foster, Ph.D. Scientific Review Officer, National Inst on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, 301–443–4032 *katrina@mail.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS).

Dated: October 28, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26238 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 1, 2013, 09:00 a.m. to October 2, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 03, 2013, 78 FR 170 Pgs. 54259–54261.

The meeting will start on December 19, 2013 at 9:00 a.m. and end December 20 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26151 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 30, 2013, 01:00 p.m. to October 30, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on October 03, 2013, 78 FR 192 Pgs. 61376–61377.

The meeting will start on January 13, 2014 at 9:30 a.m. and end on January 13, 2014 at 1:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26213 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 17, 2013, 12:00 p.m. to October 17, 2013, 02:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 20, 2013, 78 FR 57867.

The meeting will be held on November 2, 2013 from 09:00 a.m. to 11:00 a.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26201 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 22, 2013, 12:00 p.m. to October 22, 2013, 02:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on October 01, 2013, 78 FR 60294–60296.

The meeting will be held on November 8, 2013 from 11:00 a.m. to 4:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26222 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Gene and Drug Delivery Systems Study Section, October 16, 2013, 08:00 a.m. to October 17, 2013, 05:00 p.m., Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102, which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57168–57169.

The meeting will be held at the Hyatt Regency Hotel, 7400 Wisconsin Ave., Bethesda, MD 20814.

The meeting will start on December 11, 2013 at 7:00 p.m. and end December 12, 2013 at 5:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26234 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurobiology of Learning and Memory Study Section, October 08, 2013, 08:00 a.m. to October 08, 2013, 06:00 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015, which was published in the **Federal Register** on September 10, 2013, 78 FR 175 Pgs. 55268–55270.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on November 21, 2013 at 8:00 a.m. and end on November 22, 2013 at 6:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26219 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurotoxicology and Alcohol Study Section, October 07, 2013, 08:00 a.m. to October 07, 2013, 06:00 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015, which was published in the **Federal Register** on September 10, 2013, 78 FR 55269.

The meeting will be held on November 14, 2013 at the Hyatt Regency Mission Bay, 1441 Quivira Road, San Diego, CA 92109. The meeting time remains the same. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26311 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Research and Field Studies of Infectious Diseases Study Section, October 07, 2013, 08:30 a.m. to October 08, 2013, 06:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57169–57170.

The meeting will start on December 18, 2013 at 8:00 a.m. and end December 18, 2013 at 6:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26250 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 24, 2013, 02:00 p.m. to October 24, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 01, 2013, 78 FR 60298.

The meeting will be held on November 19, 2013 from 12:00 p.m. to 3:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26146 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Biological Aging Review Committee, October 03, 2013, 08:00 a.m. to October 04, 2013, 05:00 p.m., Doubletree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on August 20, 2013, 51195 FR 161.

Meeting will be held on November 15, 2013 from 11:30 a.m. until 6:30 p.m. at the National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26138 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neural Oxidative Metabolism and Death Study Section, October 24, 2013, 08:00 a.m. to October 25, 2013, 12:00 p.m., Hotel Monaco, 2 North Charles Street, Baltimore, MD, 21201 which was published in the **Federal Register** on October 1, 2013, 78 FR 190 Pgs. 60297–60299.

The meeting will be held at the St. Gregory Hotel & Suites, 2033 M Street NW., Washington, DC 20036. The meeting will start on December 4, 2013 at 6:00 p.m. and end December 5, 2013 at 8:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26180 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biobehavioral Mechanisms of Emotion, Stress and Health Study Section, October 15, 2013, 08:00 a.m. to October 16, 2013, 05:00 p.m., Baltimore Marriott Inner Harbor at Camden Yards, 110 S. Eutaw Street, Baltimore, MD 21201, which was published in the **Federal Register** on September 16, 2013, 78 FR 56905.

The meeting will be held on December 5, 2013 to December 6, 2013 at the Royal Sonesta, 550 Light Street, Baltimore, MD 21202. The meeting time remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26169 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 9, 2013, 10:00 a.m. to October 9, 2013, 12:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on October 1, 2013, 78 FR 60294–60296.

The meeting will be held on November 20, 2013 from 3:00 p.m. to 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26175 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Innate Immunity and Inflammation Study Section, October 03, 2013, 08:00 a.m. to October 04, 2013, 05:00 p.m., Marriott Residence Inn National Harbor, 192 Waterfront Street, National Harbor, MD 20745, which was published in the **Federal Register** on September 09, 2013, 78 FR 174 Pgs. 55086–55087.

The meeting will start on November 14, 2013 at 7:00 a.m. and end November 15, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26235 Filed 11–1–13; 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: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 21, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Ploce: Hotel Contessa, 306 W. Market Street,, San Antonio, TX 78205.

Contoct Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montolve@csr.nih.gov.*

Nome of Committee: Center for Scientific Review Special Emphasis Panel, Accelerator Mass Spectrometry Facility.

Date: December 2–3, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Livermore Residence Inn, 1000 Airway Blvd., Livermore, CA 94551.

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Dental, Oral, and Craniofacial Sciences.

Date: December 2–3, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contoct Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumorra@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: October 29, 2013.

Michelle Trout,

Progrom Anolyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26232 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Community Influences on Health Behavior Study Section, October 21, 2013, 08:00 a.m. to October 22, 2013, 06:00 p.m., The St. Regis Washington DC, 923 16th Street NW., Washington, DC 20006 which was published in the **Federal Register** on September 26, 2013, 78 FR 59361.

The meeting will be held at the Embassy Suites DC Convention Center Hotel, 900 10th Street NW., Washington, DC 20001. The meeting will start on November 18, 2013 at 08:00 a.m. and end on November 19, 2013 at 05:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26147 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Modeling and Analysis of Biological Systems Study Section, October 10, 2013, 08:00 a.m. to October 11, 2013, 04:00 p.m., The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854, which was published in the **Federal Register** on September 11, 2013, 78 FR 176 Pgs. 55752–55753.

The meeting will start on December 3, 2013 at 8:00 a.m. and end December 3 2013 at 6:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26155 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Epidemiology of Cancer Study Section, October 17, 2013, 08:30 a.m. to October 18, 2013, 05:00 p.m., Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037, which was published in the **Federal Register** on September 23, 2013, 78 FR 58324.

The meeting will start on January 6, 2014 and end on January 7, 2014. The meeting time and location remain the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26191 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 29, 2013, 08:00 a.m. to October 30, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda MD, 20892 which was published in the **Federal Register** on October 3, 2013, 78 FR 192 Pgs. 61376–61377.

The meeting will start on December 2, 2013 at 8:00 a.m. and end December 3, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26186 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biodata Management and Analysis Study Section, October 02, 2013, 08:00 a.m. to October 3, 2013, 04:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 3, 2013, 78 FR 170 Pgs. 54259–54261.

The meeting will start on December 3, 2013 at 8:00 a.m. and end December 4 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26149 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Atherosclerosis and Inflammation of the Cardiovascular System Study Section, October 1, 2013, 08:00 a.m. to October 2, 2013, 06:00 PM, Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 10, 2013, 78 FR 55268–55269.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on November 25, 2013 at 09:00 a.m. and end on November 26, 2013 at 04:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26220 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 30, 2013, 10:00 a.m. to October 30, 2013, 08:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on October 03, 2013, 78 FR 61376–61377.

The meeting will be held on January 8, 2014 from 9:00 a.m. to 7:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26173 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Immunity and Host Defense Study Section, October 24, 2013, 08:30 a.m. to October 25, 2013, 05:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on October 01, 2013, 78 FR 60298.

The meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle, Washington, DC 20005. The meeting will start on November 6, 2013 at 08:30 a.m. and end on November 7, 2013 at 05:00 p.m. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26314 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 03, 2013, 01:00 p.m. to October 03, 2013, 04:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 05, 2013, 78 FR 172 Pgs. 54665–54666.

The meeting will start on December 10, 2013 at 1:00 p.m. and end December 10, 2013 at 4:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26156 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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: National Cancer Institute Special Emphasis; Panel Person-Centered Outcomes Research Resource.

Date: December 3, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W530, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W530, Bethesda, MD 20892, 240–276–6442, *ss537t@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26140 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 15, 2013, 08:00 a.m. to October 16, 2013, 02:00 p.m., St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036 which was published in the **Federal Register** on September 25, 2013, 78 FR 59040.

The meeting will be held at the Fairmont, 2401 M Street NW., Washington, DC 20037. The meeting will start on November 7, 2013 at 09:00 a.m. and end on November 8, 2013 at 05:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26189 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Diabetes, Endocrinology and Metabolic Diseases B Subcommittee, October 16, 2013, 05:30 p.m. to October 18, 2013, 02:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 16, 2013, 78 FR 56906.

The meeting will be held January 12, 2014, 05:30 p.m. to January 14, 2014, 02:00 p.m., Marriott Renaissance Arlington Capital View Hotel, 2800 South Potomac Avenue, Arlington, VA 22202; Open from 05:30 p.m. until 06:00 p.m. on January 12, 2014. The meeting will be closed from January 12, 2014, 06:00 p.m. to January 14, 2014, 02:00 p.m.

Dated: October 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26305 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 01, 2013, 08:00 a.m. to October 02, 2013, 05:00 p.m., Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20812, which was published in the **Federal Register** on August 16, 2013, 78FR50065.

Due to the absence of either an FY 2014 appropriation or Continuing Resolution for the Department of Health and Human Services, the meeting is rescheduled for November 12–13, 2013. The meeting times and location remain the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26144 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Mentored Career Development, Institutional Research Training & Pathways to Independence Applications.

Date: November 25, 2013.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Arthritis and Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892.

Contact Person: Charles H Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892 (301) 496–9568, *washabac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 29, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26182 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Cures Acceleration Network Review Board.

The meeting will be open to the public, viewing virtually by WebEx.

Individuals can view and access the meeting by the link below. *https://ncatsevents.webex.com/ncatsevents/onstage/g.php?t=a&d=661895283.*

1. Go to "Event Status" on the left hand side of page, then click (Register) to complete required registration prior to joining this event.

2. "Join Event Now" on the right hand side of the page will automatically populate with your First Name, Last Name, and Email Address. Click "Join Now."

Event number: 661 895 283.

Call-in toll-free number (US/Canada): 1–855–244–8681.

Call-in toll number (US/Canada): 1–650–479–3207.

Access code: 661 895 283.

Name of Committee: Cures Acceleration Network Review Board.

Date: December 12, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: The CAN Review Board will meet virtually to discuss how NCATS might optimally exercise its flexible research authority by using transactions other than grants, cooperative agreements and contracts.

Place: National Institutes of Health, One Democracy Plaza; 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Danilo A Tagle, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 992, Bethesda, MD 20892, 301–594–8064, *Danilo.Tagle@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26310 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular and Cellular Endocrinology Study Section, October 08, 2013, 08:00 a.m. to October 08, 2013, 06:30 p.m., Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD, 20814, which was published in the **Federal Register** on September 12, 2013, 78 FR 177 Pg. 56239.

The meeting will be held at the Palomar Hotel, 2121 P Street NW., Washington, DC 20037. The meeting will start on December 9, 2013 at 7:00 a.m. and end December 9, 2013 at 6:30 p.m. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26309 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular Mechanisms in Aging and Development Study Section, October 03, 2013, 08:00 a.m. to October 04, 2013, 06:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 09, 2013, 78 FR 55086–55087.

The meeting will start on December 12, 2013 at 08:00 a.m. and end on December 13, 2013 at 05:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26230 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2013, 10:00 a.m. to October 16, 2013, 11:00 a.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 26, 2013, 78 FR 187 Pg. 59362.

The meeting will start on December 2, 2013 at 3:00 p.m. and end on December 2, 2013 at 4:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26215 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; K99/R00 Grant Application Review Meeting.

Date: November 19, 2013.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John F. Connaughton, Ph.D., Chief, Training and Mentored Research Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26236 Filed 11–1–13; 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, Gastrointestinal, Kidney and Toxicology/Pharmacology R15.

Date: November 4–5, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20895, (Virtual Meeting).

Contact Person: Mushtaq A Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cellular and Molecular Neuroscience.

Date: November 4, 2013.

Time: 1:30 p.m. to 3:30 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: Toby Behar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Topics in Virology.

Date: November 19, 2013.

Time: 1:00 p.m. to 3:00 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: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26315 Filed 11–1–13; 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 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: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics and Drug Discovery.

Date: November 4, 2013.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

(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: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26227 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical, Treatment and Health Services Research Review Subcommittee, October 15, 2013, 08:00 a.m. to October 15, 2013, 05:00 p.m., National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, which was published in the **Federal Register** on July 16, 2013, 78 FR 42530.

The meeting notice is amended to change the date of the meeting from October 15, 2013 to November 12, 2013, due to the Government Shutdown. The time and location remain the same. The meeting is closed to the public.

Dated: October 28, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26237 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Skeletal Biology Development and Disease Study Section, October 16, 2013, 08:00 a.m. to October 17, 2013, 05:30 p.m., Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314, which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57168–57169.

The meeting will be held at the Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA 22314. The meeting will start on December 10, 2013 at 8:00 a.m. and end December 11, 2013 at 1:30 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26179 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Xenobiotic and Nutrient Disposition and Action Study Section, October 2, 2013, 08:00 a.m. to October 2, 2013, 08:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 3, 2013, 78 FR 170 Pgs. 54259–54261.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on November 7, 2013 at 9:00 a.m. and end November 7, 2013 at 6:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26183 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurogenesis and Cell Fate Study Section, October 09, 2013, 08:00 a.m. to October 09, 2013, 06:00 p.m., Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202, which was published in the **Federal Register** on September 17, 2013, 78 FR 57169.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on November 18, 2013 at 10:00 a.m. and end on November 19, 2013 at 12:30 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26193 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 17, 2013, 08:00 a.m. to October 18, 2013, 05:00 p.m., The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036, which was published in the **Federal Register** on September 20, 2013, 78 FR 183 Pgs. 57866–57867.

The meeting will start on December 9, 2013 at 8:00 a.m. and end December 9, 2013 at 7:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26150 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Auditory System Study Section, October 16, 2013, 08:00 a.m. to October 17, 2013, 05:00 p.m., Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005, which was published in the **Federal Register** on September 17, 2013, 78 FR 57169.

The meeting will be held on November 14, 2013 to November 15, 2013 at the Hyatt Regency Mission Bay, 1441 Quivira Road, San Diego CA 92109. The meeting time remains the same. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26312 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biochemistry and Biophysics of Membranes Study Section, October 07, 2013, 08:00 a.m. to October 08, 2013, 05:00 p.m., Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314, which was published in the **Federal Register** on September 10, 2013, 78 FR 175 Pgs. 55266–55267.

The meeting will start on December 9, 2013 at 8:00 a.m. and end December 10, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26251 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2013, 09:00 a.m. to October 17, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 23, 2013, 78 FR 588324.

The meeting will start on December 4, 2013 and end on December 5, 2013. The meeting time and location remain the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26188 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 21, 2013, 01:00 p.m. to November 21, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on October 29, 2013, 78 FR 64514.

The meeting will be held on December 5, 2013. The meeting time and location remain the same. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26307 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 3, 2013, 12:00 p.m. to October 3, 2013, 05:00 p.m., Doubletree Hotel, Washington DC, 1515 Rhode Island Avenue NW., Washington, DC 20005, which was published in the **Federal Register** on September 05, 2013, 78 FR 54666.

The meeting will be held on November 21, 2013 from 02:00 p.m. to 05:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26170 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 16, 2013, 08:00 a.m. to October 17, 2013, 05:00 p.m., Bethesda North Marriott, Rockville, MD which was published in the **Federal Register** on August 16, 2013, 78 FR 50065.

Due to the absence of either an FY 2014 appropriation or Continuing Resolution for the Dept. of Health and Human Services, the meeting is rescheduled for November 20–21, 2013 from 8:00 a.m. to 5:00 p.m. and the meeting location has changed to Hilton Rockville, 1750 Rockville Pike, Rockville, MD 20852. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26141 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 24, 2013, 01:30 p.m. to October 24, 2013, 02:30 p.m., Hotel Monaco, 2 North Charles Street, Baltimore, MD

20724 which was published in the **Federal Register** on October 03, 2013, 78 FR 192 Pgs. 61376–61377.

The meeting will be held at the St. Gregory Hotel & Suites, 2033 M Street NW., Washington, DC 20036. The meeting will start on December 5, 2013 at 1:00 p.m. and end December 5, 2013 at 2:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26177 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cenfer for Scientific Review Special Emphasis Panel, October 4, 2013, 10:00 a.m. to October 4, 2013, 01:00 p.m., Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC, 20037 which was published in the **Federal Register** on September 10, 2013, 78 FR 175 Pgs. 55266–55267.

The meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005. The meeting will start on November 22, 2013 at 10:00 a.m. and end November 22, 2013 at 1:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26249 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Conference Grant Review.

Date: November 14–15, 2013.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

(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: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26247 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular, Molecular and Integrative Reproduction Study Section, October 09, 2013, 08:00 a.m. to October 09, 2013, 05:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57169–57170.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on December 11, 2013 at 11:00 a.m. and end on December 12, 2013 at 6:30 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26218 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular Oncogenesis Study Section, October 17, 2013, 08:00 a.m. to October 18, 2013, 06:00 p.m., Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA which was published in the **Federal Register** on September 23, 2013, 78 FR 184 Pgs. 58324–58325.

The meeting will be held at the Embassy Suites, 1900 Diagonal Rd., Alexandria, VA 22314. The meeting will start on January 8, 2014 at 8:00 a.m. and end January 8, 2014 at 7:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26159 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Electrical Signaling, Ion Transport, and Arrhythmias Study Section, October 4, 2013, 08:00 a.m. to October 4, 2013, 06:00 p.m., Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115, which was published in the **Federal Register** on September 09, 2013, 78 FR 55087.

The meeting will be held on December 6, 2013, 8:00 a.m. to 6:00 p.m. at the Double Tree by Hilton, Bethesda, 8120 Wisconsin Avenue, Bethesda MD, 20814. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26209 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Microbiology and Infectious Diseases B Subcommittee, October 15, 2013, 08:00 a.m. to October 15, 2013, 05:00 p.m., Hilton Garden Inn, 7301 Waverly St., Montgomery Room, Bethesda, MD 20814, which was published in the **Federal Register** on September 23, 2013, 78 FR 58322.

The October MID–B meeting has been moved from October 15, 2013 to November 21, 2013. This meeting is now a teleconference. The time remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26304 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Molecular Imaging and Probe Development, October 03, 2013, 10:00 a.m. to October 04, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 10, 2013, 78 FR 55269.

The meeting will be held on December 11, 2013 from 12:00 p.m. to 05:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26200 Filed 11–1–13; 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: Traumatic Brain Injury, Dementia, Neurodegeneration and Early Developmental Complications.

Date: November 15, 2013.

Time: 2:00 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: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: November 22, 2013.

Time: 8:00 a.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: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular and Sleep Epidemiology.

Date: November 25, 2013.

Time: 2:00 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: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular Biology Academic Research Enhancement Awards (AREA).

Dote: November 26, 2013.

Time: 2:00 p.m. to 4:30 p.m.

Agendo: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@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: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26187 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neuroscience and Ophthalmic Imaging Technologies Study Section, October 02, 2013, 08:00 a.m. to October 03, 2013, 12:00 p.m., Doubletree Hotel Washington DC, 1515 Rhode Island Avenue NW., Washington, DC 20005, which was published in the **Federal Register** on September 03, 2013, 78 FR 54260.

The meeting will start on November 20, 2013 at 08:00 a.m. and end on November 21, 2013 at 02:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26223 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 18, 2013, 08:00 a.m. to October 18, 2013, 10:30 a.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 25, 2013, 78 FR 186 Pgs. 59040–59041.

The meeting will start on November 25, 2013 at 12:00 p.m. and end on November 25, 2013 at 2:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26214 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Dissemination and Implementation Research in Health Study Section, October 1, 2013, 08:00 a.m. to October 1, 2013, 05:00 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015, which was published in the **Federal Register** on September 5, 2013, 78 FR 172 Pgs. 54664–54665.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will start on December 9, 2013 at 10:00 a.m. and end December 9, 2013 at 7:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26228 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases, Special Emphasis Panel, Small Grants to Promote Diversity.

Date: November 26, 2013.

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 20892, (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases, Special Emphasis Panel, Small Grants for New Investigators to Promote Diversity.

Date: December 6, 2013.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara A. Woynarowska, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases, Special Emphasis Panel, Ancillary Studies to ISC Consortium.

Date: December 6, 2013.

Time: 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26306 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Pathogenic Eukaryotes Study Section, October 17, 2013, 08:30 a.m. to October 18, 2013, 05:00 p.m., Sheraton Gunter Hotel, 205 East Houston Street, San Antonio, TX 78205, which was published in the **Federal Register** on September 20, 2013, 78 FR 57867.

The meeting will be held at the Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815. The meeting will start on December 9, 2013 at 08:30 a.m. and end on December 10, 2013 at 05:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26203 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section, October 03, 2013, 08:00 a.m. to October 04, 2013, 11:00 a.m., Washington Hilton, 1919 Connecticut Avenue, Washington, DC 20009, which was published in the

Federal Register on September 09, 2013, 78 FR 174 Pgs. 55086–55087.

The meeting will be held at the Ritz-Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037. The meeting will start on December 12, 2013 at 8:00 a.m. and end December 12 2013 at 4:30 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26162 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical and Integrative Cardiovascular Sciences Study Section, October 03, 2013, 08:00 a.m. to October 03, 2013, 06:00 p.m., Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115 which was published in the **Federal Register** on September 09, 2013, 78 FR 55086.

The meeting will be held on December 13, 2013 from 11:00 a.m. to 6:00 p.m. at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26208 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Neuroimmunology and Brain Tumors Study Section, October 17, 2013, 08:00 a.m. to October 18, 2013, 05:00 p.m., Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037, which was published in the **Federal Register** on September 23, 2013, 78 FR 184 Pgs. 58324–58325.

The meeting will start on December 2, 2013 at 8:30 a.m. and end December 3, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26153 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2013, 08:00 a.m. to October 17, 2013, 05:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 17, 2013, 78 FR 180 Pgs. 57168–57169.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on November 11, 2013 at 9:00 a.m. and end November 12, 2013 at 5:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26181 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 01, 2013, 02:00 p.m. to October 01, 2013, 04:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 18, 2013, 78 FR 57400.

The meeting will be held on November 4, 2013 from 08:00 a.m. to 08:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26190 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Instrumentation and Systems Development Study Section, October 09, 2013, 08:00 a.m. to October 10, 2013, 04:00 p.m., Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on September 10, 2013, 78 FR 55267.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on December 9, 2013 at 02:00 p.m. and end on December 10, 2013 at 06:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26192 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, October 04, 2013, 11:00 a.m. to October 04, 2013, 2:00 p.m., Washington Hilton, 1919 Connecticut Avenue NW., Washington, DC 20009, which was published in the **Federal Register** on September 9, 2013, 78 FR 55087.

The meeting is cancelled due to the reassignment of applications.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26224 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Pregnancy and Neonatology Study Section, October 22, 2013, 07:30 a.m. to October 22, 2013, 06:00 p.m., Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814, which was published in the **Federal Register** on October 01, 2013, 78 FR 60295.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 on December 16, 2013, starting at 08:30 a.m. and ending at 06:30 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26178 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Kidney Molecular Biology and Genitourinary Organ Development, October 04, 2013, 08:00 a.m. to October 04, 2013, 05:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 11, 2013, 78 FR 55087.

The meeting will be held on November 18, 2013 at the Crowne Plaza Hotel Washington National Airport, 1480 Crystal Drive, Arlington, VA 22202. The meeting time remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26252 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 15, 2013, 09:00 a.m. to October 16, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 16, 2013, 78 FR 179 Pgs. 56904–56905.

The meeting will start on November 12, 2013 at 9:00 a.m. and end November 13, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26184 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee, October 15, 2013, 8:00 a.m. to October 16, 2013, 1:00 p.m., Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852, which was published in the **Federal Register** on September 23, 2013, 78 FR 58320–58321.

This meeting, originally scheduled for October 15–16, 2013, will be held on December 10, 2013, from 8:00 a.m. to 5:00 p.m. and December 11, 2013, from 8:00 a.m. to 1:00 p.m. at the Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817. The meeting is closed to the public.

Dated: October 29, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26172 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 03, 2013, 08:00 a.m. to October 04, 2013, 05:00 p.m., Hilton Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852, which was published in the **Federal Register** on August 16, 2013, 78 FR 50065.

Due to the absence of either an FY 2014 appropriation or Continuing Resolution for the Department of Health and Human Services, the meeting is rescheduled for November 20–21, 2013 from 8:00 a.m. to 2:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26145 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 09, 2013, 08:00 a.m. to October 10, 2013, 05:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on September 11, 2013, 78FR55750.

Due to the absence of either an FY 2014 appropriation or Continuing Resolution for the Department of Health and Human Services, the meeting is rescheduled for December 3–4, 2013. The meeting times and location remain the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26142 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular and Molecular Immunology—A Study Section, October 3, 2013, 08:00 p.m. to October 4, 2013, 05:00 p.m., Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102, which was published in the **Federal Register** on September 9, 2013, 78 FR 55087.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on December 12, 2013 at 08:00 a.m. and end on December 13, 2013 at 05:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26204 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2013, 01:00 p.m. to October 17, 2013, 05:00 p.m., St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036, which was published in the **Federal Register** on October 01, 2013, 78 FR 60296.

The meeting will be held at the Fairmont, 2401 M Street, NW., Washington, DC 20037. The meeting will start on November 14, 2013 at 09:00 a.m. and end on November 15, 2013 at 05:00 PM. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26197 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel ZRG1 ETTN–B (51), October 4, 2013, 02:00 p.m. to October 4, 2013, 05:00 p.m., Washington Hilton, 1919 Connecticut Avenue NW., Washington, DC 20009, which was published in the **Federal Register** on September 09, 2013, 78 FR 174 Pgs. 55086–55087.

The meeting will be held at the Ritz-Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037. The meeting will start on December 12, 2013 at 4:30 p.m. and end December 12, 2013 at 6:30 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26158 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Social Psychology, Personality and Interpersonal Processes Study Section, October 17, 2013, 09:00 a.m. to October 17, 2013, 06:00 p.m., Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036, which was published in the **Federal Register** on September 23, 2013, 78 FR 184 Pgs. 58324–58325.

The meeting will start on December 6, 2013 at 10:00 a.m. and end December 6, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26308 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 23, 2013, 10:00 a.m. to October 23, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on October 01, 2013, 78 FR 190 Pgs. 60294–60296.

The meeting will start on December 11, 2013 at 8:00 a.m. and end December 11, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26154 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cardiac Contractility, Hypertrophy, and Failure Study Section, October 17, 2013, 08:00 a.m. to October 17, 2013, 06:00 p.m., Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036, which was published in the **Federal Register** on September 23, 2013, 78 FR 184 Pgs. 58324–58325.

The meeting will start on December 13, 2013 at 8:00 a.m. and end December 13 2013 at 6:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26152 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical. Neuroplasticity and Neurotransmitters Study Section, October 10, 2013, 08:00 a.m. to October 11, 2013, 05:00 p.m., Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831, which was published in the **Federal Register** on September 11, 2013, 78 FR 55753.

The meeting will start on December 2, 2013, 8:00 a.m. and end on December 3, 2013, 5:00 p.m. The meeting will be held at the Melrose Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26168 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 07, 2013, 01:00 p.m. to October 07, 2013, 02:00 p.m., Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314, which was published in the **Federal Register** on September 10, 2013, 78 FR 175 Pgs. 55268–55270.

The meeting will start on December 9, 2013 at 1:00 p.m. and end December 9, 2013 at 2:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26303 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Membrane Biology and Protein Processing Study Section, October 17, 2013, 08:00 a.m. to October 18, 2013, 05:30 p.m., Hotel Palomar, 2121 P Street NW., Washington, DC, 20037 which was published in the **Federal Register** on September 23, 2013, 78 FR 58324.

The meeting will be held on December 3, 2013, starting at 08:00 a.m. and ending at 08:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26231 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Bacterial Pathogenesis Study Section, October 09, 2013, 08:00 a.m. to October 09, 2013, 05:30 p.m., Courtyard Chicago Downtown/River North, 30 East Hubbard, Chicago, IL 60611, which was published in the **Federal Register** on September 17, 2013, 78 FR 57169.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 on November 15, 2013, starting at 08:00 a.m. and ending at 06:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26198 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular and Molecular Biology of Neurodegeneration Study Section, October 10, 2013, 08:30 a.m. to October 11, 2013, 05:00 p.m., The Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203 which was published in the **Federal Register** on September 17, 2013, 78 FR 57170.

The meeting will be held on December 2, 2013 from 8:00 a.m. to 8:00 p.m. at the Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26226 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Novel Tools to Prevent Sickle Cell Disease Complications.

Date: November 5, 2013.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room

7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

(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: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26248 Filed 11–1–13; 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; PAR–13–190: Detection of Pathogen-Induced Cancer.

Date: November 11, 2013.

Time: 1:00 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: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mai.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

Name of Committee: AIDS and Related Research Integrated Review Group; NeuroAIDS and other End-Organ Diseases Study Section.

Date: November 14, 2013.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

Name of Committee: Center for Scientific Review Special Emphasis Panel;

Date: November 15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

(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: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26171 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Vaccines Against Microbial Diseases Study Section, October 24, 2013, 08:30 a.m. to October 25, 2013, 05:00 p.m., Renaissance Washington, DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037, which was published in the **Federal Register** on October 01, 2013, 78 FR 190 Pg. 60297.

The meeting will be held at the Renaissance Washington, DC Downtown Hotel, 999 Ninth Street NW., Washington, DC 20001. The meeting will start on December 12, 2013 at 8:30 a.m. and end on December 13, 2013 at 4:00 p.m. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26217 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Aging; 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 Institute on Aging Special Emphasis Panel; Optogenetics Utilization in Models of Aging and Neurodegeneration.

Date: December 9, 2013.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26139 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 25, 2013, 09:00 a.m. to October 25, 2013, 11:00 a.m., Renaissance Washington, DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037 which was published in the **Federal Register** on October 01, 2013, 78 FR 60297.

The meeting will be held on November 25, 2013 from 10:00 a.m. to 2:00 p.m. at the Embassy Suites, Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26160 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 11, 2013, 08:00 a.m. to October 11, 2013, 06:00 p.m., Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005 which was published in the **Federal Register** on September 12, 2013, 78 FR 56239.

The meeting will be held on December 13, 2013 from 11:30 a.m. to 12:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26176 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Synapses, Cytoskeleton and Trafficking Study Section, October 10, 2013, 08:00 a.m. to October 11, 2013, 12:00 p.m., Hotel Monaco Alexandria, 480 King Street, 480 King Street, Alexandria, VA, 22314 which was published in the **Federal Register** on September 11, 2013, 78 FR 55753.

The meeting will be held on November 18, 2013 from 8:00 a.m. to 7:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26225 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Macromolecular Structure and Function A Study Section, October 3, 2013, 08:00 a.m. to October 3, 2013, 05:00 p.m., George Washington University Inn, 824 New Hampshire Avenue NW., Washington, DC 20037, which was published in the **Federal Register** on September 9, 2013, 78 FR 55086.

The meeting will be held on November 22, 2013 from 10:00 a.m. to 4:00 p.m. at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26207 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Respiratory Integrative Biology and Translational Research Study Section, October 24, 2013, 08:00 a.m. to October 25, 2013, 05:00 p.m., Courtyard Chicago Downtown/River North, 30 East Hubbard, Garden Avenue, Chicago, IL 60611, which was published in the **Federal Register** on October 01, 2013, 78 FR 60296.

The meeting will start on December 10, 2013 at 9:00 a.m. and end on December 12, 2013 at 5:00 p.m. The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26206 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 01, 2013, 09:00 a.m. to October 01, 2013, 04:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 03, 2013, 78 FR 170 Pgs. 54259–54261.

The meeting will start on December 13, 2013 at 8:45 a.m. and end on December 13, 2013 at 1:30 p.m.

The meeting location remains the same. The meeting is closed to the public.

Dated: October 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26216 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance and the competence of individual investigators. Additionally for the review of grant applications and the discussions, that 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 Cancer Advisory Board; *Ad hoc* Subcommittee on Global Cancer Research.

Open: December 9, 2013, 6:00 p.m. to 7:30 p.m.

Agenda: Discussion on Global Cancer Research.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Edward Trimble, Executive Secretary, NCAB Ad hoc Subcommittee on Global Cancer Research, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W–562, Bethesda, MD 20892, (240) 276–5796, *trimblet@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board; *Ad hoc* Subcommittee on Communications.

Open: December 9, 2013, 7:45 p.m. to 9:15 p.m.

Agenda: Discussion on Communications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Lenora Johnson, Executive Secretary, NCAB *Ad hoc* Subcommittee on Communications, National Cancer Institute, National Institutes of Health, 9606 Medical Center Drive, Room 2E–454, Bethesda, MD 20892, (240) 276–6680, *johnslen@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board.

Open: December 10, 2013, 9:00 a.m. to 3:30 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 9606 Medical Center Drive, Room 7W–444, Bethesda, MD 20892, (240) 276–6340.

Name of Committee: National Cancer Advisory Board.

Closed: December 10, 2013, 3:30 p.m. to 5:00 p.m.

Agenda: Review intramural program site visit outcomes. Discussion of confidential and personnel issues. Review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 9606 Medical Center Drive, Room 7W–444, Bethesda, MD 20892, (240) 276–6340.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: NCAB: *deainfo.nci.nih.gov/advisory/ncab.htm* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: October 29, 2013.

Melanie Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26253 Filed 11–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing For Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified laboratories and IITF is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs," as amended in the revisions listed above, requires strict standards that laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct

drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant Laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITF in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester; NY 14624, 585–429–2264

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Fortes Laboratories, Inc., 25749 SW. Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3650 Westwind Blvd., Santa Rosa, CA 95403, 707–570–4434

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories

wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2013–26276 Filed 11–1–13; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0028]

Agency Information Collection Activities: Submission for Review; Information Collection Extension Request for the DHS S&T First Responders Community of Practice Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the data collection form for the DHS Science & Technology (S&T) First Responders Community of Practice (FRCoP): User Registration Page (DHS Form 10059 (9/09)). The FRCoP web based tool collects profile information from first responders and select authorized non-first responder users to facilitate networking and formation of online communities. All users are required to authenticate prior to entering the site. In addition, the tool provides members the capability to create wikis, discussion threads, blogs, documents, etc., allowing them to enter and upload content in accordance with the site's Rules of Behavior. Members are able to participate in threaded discussions and comment on other member's content. The DHS S&T FRCoP program is responsible for providing a collaborative environment for the first responder community to share information, best practices, and lessons learned. Section 313 of the Homeland Security Act of 2002 (Pub. L. 107–296) established this requirement. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until December 4, 2013.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2013–0028, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: Kathy.Higgins@hq.dhs.gov.* Please include docket number DHS–2013–0028 in the subject line of the message.
- *Fax:* (202) 254–6171. (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: Chief Information Officer—Rick Stevens, 1120 Vermont Ave, Mail Stop 0202, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: DHS FRCoP Contact Kathy Higgins (202) 254–2293 (Not a toll free number).

SUPPLEMENTARY INFORMATION: DHS S&T currently has approval to collect information utilizing the User Registration Form until September 30, 2012 with OMB approval number 1640–0016. The User Registration Form will be available on the First Responders Community of Practice Web site found at [*https://communities.firstresponder.gov/*]. The user will complete the form online and submit it through the Web site.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Paper Reduction Act.

DHS is particularly interested in comments that:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Renewal of Information Collection.

(2) *Title of the Form/Collection:* First Responders Community of Practice: User Registration Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS Science & Technology Directorate, R-Tech (RTD), DHS Form 10059 (09/09).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individual first responders who wish to participate in the First Responders Community of Practice.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 2000.

b. *An estimate of the time for an average respondent to respond:* 0.5 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 1000 burden hours.

Dated: September 27, 2013.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2013–26259 Filed 11–1–13; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security

interests deemed relevant in these consultations, that paragraphs (i)(VIII), (iv)(IV), (iv)(V), and (iv)(VI) of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), shall not apply with respect to an, for solicitation of funds or other things of value for; solicitation of any individual for membership; the provision of material support to; who received military-type training from or on behalf of the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK), provided that the alien satisfies the relevant agency authority that the alien:

(a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) has undergone and passed all relevant background and security checks;

(c) has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each instance of military-type training, solicitation, and material support, and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

(e) poses no danger to the safety and security of the United States; and

(f) warrants an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: October 17, 2013.

Rand Beers,

Acting Secretary of Homeland Security.

[FR Doc. 2013–26263 Filed 11–1–13; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that paragraphs (i)(VIII), (iv)(IV), (iv)(V), and (iv)(VI) of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), shall not apply with respect to an alien who:

(a) On or after January 1, 1980, solicited funds or other things of value for; solicited any individual for membership in; provided material support to; or received military-type training from or on behalf of the Eritrean Liberation Front (ELF); or

(b) prior to January 1, 1980, engaged in the conduct described above with respect to the ELF and was previously granted asylum or admitted as a refugee under the INA on or before the date of this Exercise of Authority, or is the beneficiary of an I–730 Refugee/Asylee Relative Petition filed at any time by such an asylee or admitted refugee, provided that the alien satisfies the relevant agency authority that the alien:

(a) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) has undergone and passed all relevant background and security checks;

(c) has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each instance of solicitation, material support, and military-type training, and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

(e) poses no danger to the safety and security of the United States; and

(f) warrants an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C.

1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: October 17, 2013.

Rand Beers,

Acting Secretary of Homeland Security.

[FR Doc. 2013–26262 Filed 11–1–13; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Critical Infrastructure Partnership Advisory Council (CIPAC); Correction.

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of an open Federal Advisory Committee Meeting; Corrections.

SUMMARY: The National Protection and Programs Directorate published a document in the **Federal Register** of September 19, 2013, concerning the Critical Infrastructure Partnership Advisory Council (CIPAC) Plenary Meeting on November 5, 2013. The document contained incorrect dates in two locations described below.

FOR FURTHER INFORMATION CONTACT: Renee Murphy, Critical Infrastructure Partnership Advisory Council Alternate Designated Federal Officer, telephone (703) 235–3999.

Correction

In the **Federal Register** of September 19, 2013, in FR Vol. 78, No. 182, on page 57644, in the second column, correct the **ADDRESSES** caption to read:

Written comments are welcome at any time prior to or following the meeting. Written comments may be sent to Renee Murphy, Department of Homeland Security, National Protection and Programs Directorate, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598–0607. For consideration in the CIPAC deliberations, written comments must be received by Renee Murphy by no later than 12:00PM on November 4, 2013, identified by **Federal Register** Docket Number DHS–2013–0050 and may be submitted by one of the following methods:

Correction

In the **Federal Register** of September 19, 2013, in FR Vol. 78, No. 182, on page 57644, in the third column, correct the **SUPPLEMENTARY INFORMATION** caption to read:

CIPAC represents a partnership between the Federal Government and critical infrastructure owners and operators, and provides a forum in which they can engage in a broad spectrum of activities to support and coordinate critical infrastructure security and resilience. The November 5, 2013, meeting will include topic-specific discussions focused on partnership efforts to enhance critical infrastructure resilience. Topics, such as Critical Infrastructure Security and Resilience and Cybersecurity, will be discussed.

Dated: October 28, 2013.

Larry May,

Designated Federal Officer for the CIPAC.

[FR Doc. 2013–26246 Filed 11–1–13; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4145–DR; Docket ID FEMA–2013–0001]

Colorado; Amendment No. 8 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 Colorado (FEMA–4145–DR), dated September 14, 2013, and related determinations.

DATES: *Effective Date:* October 21, 2013.

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 Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 14, 2013.

Fremont County for Individual Assistance.

Morgan County for Individual Assistance (already designated for Public Assistance).

Arapahoe County for Public Assistance (already designated for Individual Assistance).

Crowley, Denver, Fremont, Gilpin, Lake, Lincoln, Sedgwick Counties 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. 2013–26243 Filed 11–1–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U. S. Customs and Border Protection

Agency Information Collection Activities: Application for Exportation of Articles Under Special Bond

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0004.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Application for Exportation of Articles under Special Bond (CBP Form 3495). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on August 15, 2013 (Volume 78, Page 47761), allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before December 4, 2013 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

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

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Exportation of Articles under Special Bond.

OMB Number: 1651–0004.

Form Number: Form 3495.

Abstract: CBP Form 3495, *Application for Exportation of Articles Under Special Bond,* is an application for exportation of articles entered under temporary bond pursuant to 19 U.S.C. 1202, Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States, and 19 CFR 10.38. CBP Form 3495 is used by importers to notify CBP that the importer intends to export goods that were subject to a duty exemption based on a temporary stay in this country. It also serves as a permit to export in order to satisfy the importer's obligation to export the same goods and thereby get a duty exemption. This form is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_3495.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension without change.

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 30.

Estimated Total Annual Responses: 15,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 2,000.

Dated: October 30, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–26297 Filed 11–1–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release (Formerly Known as Simplified Entry)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to both rename and modify the National Customs Automation Program (NCAP) test concerning the Simplified Entry functionality in the Automated Commercial Environment (ACE). Originally, the test was known as the Simplified Entry Test because the test simplified the entry process by reducing the number of data elements required to obtain release for cargo transported by air. The test will now be known as the ACE Cargo Release Test as one of the modifications of the test announced in this notice is to provide more capabilities to test participants allowing CBP to deliver enhanced functionality. The test is also modified by expanding its coverage and by removing the Customs-Trade Partnership Against Terrorism (C–TPAT) status requirement for importer self-filers and customs brokers and by adding new data elements. This notice invites more participants to join the test.

DATES: The ACE Cargo Release test modifications set forth in this document are effective November 4, 2013. The test will run until approximately November 1, 2015.

ADDRESSES: Comments or questions concerning this notice and indication of interest in participation in ACE Cargo Release should be submitted, via email, to Susan Maskell at *susan.c.maskell@cbp.dhs.gov.* In the subject line of your email, please indicate "*Comment on ACE Cargo Release*". The body of the email should include information regarding the identity of the ports where filings are likely to occur.

FOR FURTHER INFORMATION CONTACT: For policy related questions, contact Stephen Hilsen, Director, Business Transformation, ACE Business Office, Office of International Trade, at *stephen.r.hilsen@cbp.dhs.gov.* For technical questions, contact Susan Maskell, Client Representative Branch, ACE Business Office, Office of International Trade, at *susan.c.maskell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

In General

U.S. Customs and Border Protection's (CBP's) National Customs Automation Program (NCAP) test concerning Automated Commercial Environment (ACE) Simplified Entry (SE test) functionality is authorized under § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures.

On November 9, 2011, CBP published in the **Federal Register** a notice announcing an NCAP test concerning ACE Simplified Entry. *See* 76 FR 69755. The SE test established new entry capability to simplify the entry process for cargo transported by air by reducing the number of data elements required to obtain release. This data fulfills merchandise entry requirements that allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. On August 14, 2012, CBP published in the **Federal Register** a notice modifying test participant selection criteria for the SE test. *See* 77 FR 48527.

In the notice published in the **Federal Register** on July 23, 2013 (78 FR 44142), the Document Image System (DIS) NCAP test was expanded and modifications were made to the SE test to allow for certain data elements to be transmitted via the Document Image System (DIS). The July 23, 2013 notice also expanded the pool of eligible

participants for the DIS test to include software providers merely transmitting electronically data received for transmission to CBP.

This ACE Cargo Release test will run until approximately November 1, 2015, and is open to Type 01 and Type 11 consumption entries filed in the air transportation mode only. Expansion to other modes will be announced via a separate **Federal Register** notice.

Modification To Test Participant Selection Criteria

In the notice published in the **Federal Register** on November 9, 2011 (76 FR 69755), announcing phase one of the SE pilot, CBP stated that participation in the test was limited to nine (9) participants comprised of importers holding a Tier 2 or higher Customs-Trade Partnership Against Terrorism (C–TPAT) status (applicable to both importer self-filers and importers for whom an eligible customs broker files a SE) and customs brokers who are C–TPAT certified.

In the notice published in the **Federal Register** on August 14, 2012 (77 FR 48527), phase two of the SE test expanded the eligible participant pool to reflect that the C–TPAT status of an importer for whom a customs broker files a SE is no longer an eligibility criterion. However, this did not change the fact that importer self-filers must still hold a Tier 2 or higher C–TPAT status. In addition, the August 14, 2012 notice opened the SE test to all eligible applicants for a 14 day period.

This notice announces modifications to the SE test's participation criteria to reflect that the C–TPAT status of an importer self-filer and a customs broker is no longer an eligibility criterion.

In addition, ACE Cargo Release is now open to all eligible applicants for an indefinite period. CBP will endeavor to accept all new eligible applicants on a first come first served basis; however, if the volume of eligible applicants exceeds CBP's administrative capabilities, CBP will reserve the right to select eligible participants in order to achieve a diverse pool in accordance with the selection standards set forth in 76 FR 69755.

New Filing Capabilities

This notice announces new capabilities for ACE Cargo Release filing to allow for automated corrections and cancellations, split shipments, entry on cargo which has been moved by in-bond from the first U.S. port of unlading, and entry for a quantity less than full manifested bill quantity if no in-bond is involved. These new capabilities include functionality specific to the filing and processing of formal consumption entries and informal entries. The capabilities serve to assist the importer in completion of entry as required by the provisions of 19 U.S.C. 1484(a)(1)(B).

Modification to Data Elements To Be Filed

In the original **Federal Register** notice announcing SE on November 9, 2011, CBP stated for the SE test that in lieu of filing CBP Form 3461 data, the importer or broker acting on behalf of the importer was allowed to submit 12 required data elements and three (3) optional data elements (known as the Simplified Entry Data Set or Simplified Entry Data) with CBP. The Simplified Entry Data Set may be filed at any time prior to the arrival of the cargo in the United States port of arrival with the intent to unlade. To enable enhanced functionality in ACE Cargo Release, this notice introduces three (3) new data elements in certain situations. They are as follows:

—Port of Entry (if an in-bond number is provided in the entry submission, the planned port of entry must also be provided).
—In-Bond (if applicable).
—Bill Quantity (if bill of lading quantity is specified in the entry, it becomes the entered and released quantity for that bill. If the bill quantity is not specified, full bill quantity will be entered and released for that bill).

Functionality

Upon receipt of the Simplified Entry Data, CBP will process the submission and will subsequently transmit its cargo release decision to the filer. Releases will be made at the house bill level. The merchandise will then be considered to be entered upon its arrival in the port with the intent to unlade, as provided by current 19 CFR 141.68(e).

Interested parties should consult the Trade Transformation page on cbp.gov for the current listing of applicable SE ports. Entries using the SE transaction data set will only be processed in participating SE ports. In addition, Cargo Release as a result of the SE transaction set will only be issued in a participating SE Port. Any changes and/or additions to the ports that are part of the SE test will be posted to this page. *See http://www.cbp.gov/xp/cgov/trade/trade_transformation/simplified_entry/.*

All other procedures and criteria applicable to participation in Simplified Entry, as set forth in previous **Federal Register** notices are incorporated into the ACE Cargo Release test and remain in effect unless explicitly changed by this or subsequent notices published in the **Federal Register.**

Paperwork Reduction Act

The collection of information contained in this ACE Cargo Release test have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB number 1651–0024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: October 30, 2013.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2013–26296 Filed 11–1–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–91]

30-Day Notice of Proposed Information Collection: HUD-Owned Real Estate—Sales Contract and Addendums

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: On October 25, 2013 at 78 FR 64145, HUD inadvertently published a 30 day notice of proposed information collection entitled HUD-Owned Real Estate-Sales Contract and Addendums (2502–0306). HUD will republish the notice in the **Federal Register** at a later date. This notice withdraws the notice published on October 25, 2013.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

Dated: October 29, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–26327 Filed 11–1–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–39]

60-Day Notice of Proposed Information Collection: Multifamily Project Monthly Accounting Reports

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 3, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Harry Messner, Office of Asset Management, Policy and Participation Standards Division, Department of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Harry.Messner@hud.gov* or telephone 202–402–2626. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Mr. Messner.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Multifamily Project Monthly Accounting Reports.

OMB Approval Number: 2502–0108.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–93479, HUD–93480, and HUD–9348.

Description of the need for the information and proposed use: This information is necessary for HUD to monitor compliance with contractual agreements and to analyze cash flow trends as well as occupancy and rent collection levels.

Respondents (i.e. affected public): Business and Other for profit.

Estimated Number of Respondents: 13,646.

Estimated Number of Responses: 491,256.

Frequency of Response: Monthly.

Average Hours per Response: 3.5 hours.

Total Estimated Burdens: 573,132.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 28, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2013–26324 Filed 11–1–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5690–N–15]

60-Day Notice of Proposed Information Collection: Requirements for Designating Housing Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 3, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Requirements for Designating Housing Projects.

OMB Approval Number: 2577–0192.
Type of Request: Revision of a currently approved collection.
Form Number: None.
Description of the need for the information and proposed use: The information collection burden associated with designated housing is required by statute. Section 10 of the Housing Opportunity and Extension Act of 1996 modified Section 7 of the U.S. Housing Act of 1937 to require Public Housing Agencies (PHAs) to submit to HUD a plan for designation before they designate projects for only elderly families, disabled families, or elderly families and disabled families. In this plan, PHAs must document why the designation is needed, information on the proposed designation and the total PHA inventory, and what additional housing resources will be available to the non-designated group.
Respondents (i.e. affected public): State, or Local Government.
Estimated Number of Respondents: 25.
Estimated Number of Responses: 1.
Frequency of Response: Annually.
Average Hours per Response: 15 hours.
Total Estimated Burdens: 375 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:
(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 28, 2013.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2013–26167 Filed 11–1–13; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–97]

30-Day Notice of Proposed Information Collection: Section 3 Business Registry Pilot Program Participant and Recipients Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 4, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 22, 2013.

A. Overview of Information Collection

Title of Information Collection: Section 3 Business Registry Pilot Program Participant and Recipients Surveys.
OMB Approval Number: 2529–0053.
Type of Request: Extension without of a currently approved collection.
Form Number: HUD–968, HUD–969.
Description of the need for the information and proposed use: This information collection contains two surveys that will provide insights into the effectiveness of the Section 3 Business Registry and assess potential outcomes. This information may be useful to HUD for developing policies regarding the Section 3 Business Registry. This information collection will be limited to businesses that have self-certified their Section 3 eligibility to HUD and recipients of HUD funding (i.e., Public Housing Authorities and local government agencies). The surveys will be sent electronically to all certified businesses in the Section 3 Business Registry database and HUD funding recipients in an effort to produce the greatest amount of responses. Random sampling will not be used to identify potential respondents. Respondents will have a minimum of 60 days to respond to the surveys. Responding to these surveys is voluntary.
Respondents (i.e. affected public): Businesses that are either owned by, or substantially employ, low- or very low-income persons; low-income persons; developers; members of the general public; public housing agencies; and State and local governments.
Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: At this time, there are approximately 800 businesses in the five pilot locations that have self-certified their eligibility with HUD and 150 HUD-funding recipients in the five pilot areas may complete the Section 3 surveys. It is estimated that each survey will take approximately 30 minutes to complete for a total of 475 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:
(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: October 29, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–26326 Filed 11–1–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No FR–5728–N–01]

Small Multifamily Building Risk Share Initiative: Request for Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces HUD's intent to implement an initiative under the Risk Sharing Program, authorized by section 542(b) of the Housing and Community Development Act of 1992, directed to facilitating the financing of small multifamily properties. Through this Notice, HUD solicits comment on the described initiative. Following receipt of comments and revisions, if any, as a result of those comments, HUD will solicit applications from high capacity Community Development Finance Institutions (CDFIs) and other mission-motivated financial institutions to participate in HUD's Risk Sharing Program.

DATES: *Comment Due Date:* January 3, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of this document.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lynn Wehrli, Office of Multifamily Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6156, Washington, DC 20410; telephone number (202) 402–5210 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this Notice is to invite certain mission-oriented lenders (Applicants) to comment on the section 542(b) Risk Share Program initiative described in this Notice, and to participate in the proposed initiative as Qualified Participating Entities (QPEs) to increase the flow of credit to small multifamily properties and to demonstrate the effectiveness of providing Federal credit enhancement for refinancing and rehabilitation of small multifamily housing. Under this initiative, Applicants qualified as QPEs and relying on a 50 percent Risk Share arrangement with HUD, will be able to underwrite, originate, and service loans that (1) are on properties of 5–49 units, or (2) do not exceed the amount of $3,000,000.

A. Proposed Statutory Changes

In the President's Fiscal Year 2014 Budget request to the United States Congress, statutory changes to section 542(b) of the Housing and Community Development Act of 1992 (Section 542(b)) were requested that would, through loans originated by lenders that have demonstrated experience in affordable housing lending, remove affordability restrictions currently required under Section 542(b) in order to reduce the burden on owners who access this capital in order to provide affordable housing in their communities. The language would also authorize Ginnie Mae to securitize loans on small buildings made under Section 542(b). This change would significantly enhance the impact and utility of this initiative. If granted this authority by the Congress, HUD would invite Applicants that engage in Risk Sharing under the authority of this Notice to modify their agreements to take advantage of such new authority. In addition, HUD would implement a broader Small Building Risk Share Initiative through publication of regulations and/or guidance.

B. Program Description

Qualified CDFIs and other mission-driven lenders approved to participate in the initiative would be authorized to originate, underwrite, and service loans for HUD multifamily mortgage insurance for project refinancing, rehabilitation, substantial rehabilitation, or equity take outs, but exclude new construction. The cornerstone of the Risk Share Program is that the lender shares the insurance risk with FHA, and since lenders will cover 50 percent of the risk of loss under the Small Buildings initiative, it provides participants significantly more flexibility with respect to underwriting terms, parameters, and ongoing compliance than is found in other FHA insurance programs, such as the Multifamily Accelerated Program (MAP).

Upon presentation of appropriate certifications, HUD will endorse such loans for full mortgage insurance. Applicants will be responsible for the full range of loan management, servicing, and property disposition activities.

Through a Risk Sharing Agreement, QPEs may contract to assume 50 percent of the risk on each loan they underwrite. In turn, HUD will commit to pay 100 percent of the outstanding principal mortgage balance upon default of the loans and filing of a claim. The loss, if any, will be determined at a later date, and HUD and the Applicant will share such loss in accordance with the amount of risk assumed by each under the risk sharing agreement.

This document contains information on application requirements, the application process, the timeframe for decisions on applications, and additional program features. The pricing of FHA insurance for the Small Buildings Risk Share initiative remains to be determined, but will be provided in the Final Notice.

II. Background

A preliminary analysis of 2012 Rental Housing Finance Survey (RHFS) data (forthcoming) indicates there are approximately 587,000 small (5–49 units) multifamily rental properties in the United States, constituting more than one-third of occupied rental units across the nation (2011 American Community Survey). Small multifamily properties tend to be older, located in low-income neighborhoods, and to have lower median rents and higher shares of affordable units than larger multifamily rental properties. The RHFS also suggests that 58 percent of the landlords for this stock are individuals, households and estates compared to 8 percent of larger properties. The RHFS also suggests that 85 percent of large multifamily properties are mortgaged, while just 62 percent of small multifamily properties are mortgaged.

Worst case housing needs continue to grow at record rates. The number of renter households with worst case needs increased to 8.48 million in 2011, up from a previous high of 7.10 million in 2009. The high rate of growth in worst case needs observed in 2009 continues unabated. The number of worst case needs has grown by 2.57 million households since 2007—a striking 43.5 percent increase. The national scarcity of affordable units available for the renters who need them most continued to worsen. The number of affordable and available rental units decreased from 81 to 65 units per 100 very low-income renters and from 44 to 36 units per 100 extremely low-income renters between 2003 and 2011.

Long-term fixed rate mortgages made through this initiative will be especially valuable for smaller properties because such properties tend to command modest rents and owners are often unable to raise rents to cover upward interest rate adjustments without causing vacancies. Additionally, the mom and pop ownership of this inventory is facing even more constraints in accessing financing in recent years due to increasingly high credit standards and diminished lending in this area, following a significant reduction in community and regional banks in the wake of the 2008 recession.

HUD has chosen to limit participation to mission-driven nonprofit and public lenders, or consortia of for-profit private lenders which form a joint venture or similar formal arrangement with, and under the control of a mission-driven nonprofit or public lender, for the purpose of loan origination and servicing of affordable housing under this Risk Share Program initiative. In part, this reflects HUD's desire to balance Congressional intent for Section 542(b) to achieve a public purpose of financing affordable housing. CDFIs are private institutions that provide financial services dedicated to economic development and community revitalization in underserved markets. Frequently, CDFIs serve communities that are underserved by conventional financial institutions and may offer products and services that are not available from conventional financial institutions. Although CDFIs are generally small in asset size, studies have demonstrated that CDFIs can have meaningful positive effects on the low-and-moderate income communities that they serve.

The initiative being implemented by this Notice can serve to encourage eligible CDFIs to move into this lending market. One common problem facing non-depository CDFIs is that they do not have access to long-term funding, which may limit their ability to provide housing finance to their communities. Nonprofit or quasi-public loan funds and consortia can qualify as participating entities by demonstrating that they meet minimum criteria similar to those established in the 2010 Capital Magnets Fund Program including their designation as a non-profit or not-for-profit entity or public or quasi-public benefit corporation under the laws of the organization's State of formation, and their exemption from Federal income taxation pursuant to the Internal Revenue Code of 1986. Additionally they must demonstrate that at least 33 percent of their resources (i.e., budget or staffing) are dedicated to the Development and/or management of Affordable Housing.

III. Authority

Section 542(b) of the Housing and Community Development Act of 1992, as amended by Section 307 of the Multifamily Housing Property Disposition Reform Act of 1994, authorizes HUD to enter into risk sharing agreements with Qualified Participating Entities (QPEs). QPE is broadly defined in Section 542(b) to allow HUD to enter into agreements with a range of lenders.

As noted earlier, HUD is seeking comment on the proposed Initiative for a period of 60 days, prior to implementation. After the close of the public comment period, and following full consideration of comments submitted, HUD will issue another notice (the Final Notice) that will advise of the implementation of the Initiative and any changes made to the Initiative in response to public comment or further consideration of HUD of how the Initiative should be structured or implemented.

IV. Application Requirements

Applications submitted for participation in the Risk Share Program should address the following three components for qualification: Mission, Financial Capacity, and Application Narrative, as further described below. In addition they must include the required exhibits listed in Part D of this section.

A. Mission

An organization must demonstrate its suitability for the initiative by providing evidence of meeting any one of the following three organizational type descriptions in parts A.1. through A.3. below, and making the certification in part A.4. below.

1. Be currently certified as a CDFI by the CDFI Fund [1]; or

2. Meet minimum criteria similar to those established in the 2010 Capital Magnets Fund Initiative promulgated by the US Treasury; specifically to be a Nonprofit, Public, or Quasi-Public loan

[1] In order to be certified as a CDFI, an institution must satisfy several statutory and regulatory requirements, including that it have a primary mission of promoting community development, that it provides development services in conjunction with equity investments or loans, and that it serves certain targeted areas or populations. The CDFI certification requirements are more fully elaborated in the statute and the CDFI program regulations. See 12 U.S.C. 4702(5) and 12 CFR 1805.201. The CDFI Fund does not regulate the CDFIs that it certifies, nor does it evaluate their safety and soundness, either during the certification process or the awards application process. Thus, certification by the CDFI Fund does not represent a determination that a CDFI is in sound financial condition, although it does represent a determination by the CDFI fund that the entity satisfies the statutory requirements of being a CDFI.

fund having as one of its principal purposes the development or management of affordable housing. The organization must be able to demonstrate that:

a. It has been designated as a non-profit or not-for-profit entity or public or quasi-public benefit corporation under the laws of the organization's State of formation;

b. It is exempt from Federal income taxation pursuant to the Internal Revenue Code of 1986;

c. Its incorporating documents, mission statements or other board-approved documents provide evidence that the organization is involved in the development or management of Affordable Housing; and

d. At least 33 percent of its resources (i.e., budget or staffing) are dedicated to the development and/or management of affordable housing. The Applicant entity must meet the eligibility requirements on its own behalf. While it may, for example, look to the activities of subsidiary entities that it controls, it may not rely upon the track record of any other affiliated entities, including its parent company; or

3. Be a joint venture or similar formal arrangement between two or more for-profit private lenders and either a CDFI or Nonprofit, Public, or Quasi-Public entity that meets the criteria in paragraphs 1 or 2 above. The consortium's activities must be limited to loan origination and servicing of affordable housing under this Risk Share Program, and be controlled by the non-profit or public purpose partner entity. The consortium's organizational documents, financial structure, oversight, and business plan, detailing management of identities of interest and internal conflict resolution, must be approved by HUD prior to participation in the initiative; and

4. Certify that:

a. The Department of Justice has not brought a civil rights suit against the applicant, and no such suit is pending;

b. There has not been an adjudication of civil rights violation in a civil action brought against the applicant by a private individual, unless it is operating in compliance with a court order, or in compliance with a HUD-approved compliance agreement designed to correct the areas of noncompliance; and

c. There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has not issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating in compliance with a consent order or compliance other agreement with HUD designed to correct the areas of compliance.

B. Financial Capacity

1. *Overall Financial Capacity.* Applicants must be able to effectively cover their share of the transaction risk in the event of a claim. They must also be able to provide HUD with confidence that they have a successful track record of loan underwriting and loan performance, because the 542(b) program delegates underwriting and monitoring activities to the QPE.

All lenders under this initiative must be approved as FHA lenders. An FHA Lender Approval Application Form 92001–A can be downloaded from HUD's Web site at: *http://portal.hud.gov/hudportal/documents/huddoc?id=92001-a.pdf.* To become an FHA lender, applicants must have a minimum adjusted net worth of $1,000,000 and submit audited financials to verify compliance. The officer who will be in charge of the FHA operation must have at least 3 years of experience in FHA mortgage operations and cannot have concurrent outside or self-employment in the mortgage or real estate industry or related field. Additional requirements can be found on HUD's Web site: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/lender/lendappr.*

2. *Minimum Financial Capacity Standards.* In addition, all lenders under this initiative must meet certain minimum financial capacity standards similar to those promulgated by the Federal Housing Finance Agency (FHFA) in 2010 as conditions for CDFIs to become members of the Federal Home Loan Banking System, specifically net asset ratio, earnings, loan loss reserves, and liquidity. Applicants must demonstrate that they have each of the following:

a. A 20 percent net asset ratio. (Any Applicant not meeting the 20 percent requirement can provide HUD with additional information demonstrating why, in the context of the business conducted by that entity, its net asset ratio is consistent with the concept of operating in a sound financial condition. This may include a discussion of temporarily and permanently restricted capital and its impact on financial condition.)

b. Average annual income in excess of average annual expenses for the past three calendar years.

c. A minimum 30 percent ratio of loan loss reserves to loans and leases 90 days or more delinquent, including loans sold with full recourse. (Any Applicant not meeting the 30 percent requirement can provide HUD with additional information demonstrating why, in the context of the business conducted by that entity, its level of loan loss reserves is consistent with the concept of operating in a sound financial condition).

d. An operating liquidity ratio of at least 1.0 for the four most recent quarters and for one or both of the two preceding years, where the numerator of the ratio includes unrestricted cash and cash equivalents and the denominator of the ratio is the current liabilities for the period in question.

3. *Demonstration of Financial Capacity.* Applicants can demonstrate their financial capacity according to the requirements above by providing:

a. A complete FHA Lender Application, and

b. A Certification that there have been no enforcement actions, no criminal, civil, or administrative proceedings, and no liabilities, lawsuits, or judgments that would materially hinder financial feasibility.

4. *Certification of Capacity:*

a. For CDFIs that are members of Federal Home Loan Banks, a letter from the Federal Home Loan Bank confirming membership.

b. For all other applicants, a description of the amount and sources of funds the Applicant has available to support multifamily housing programs. If funds are earmarked for specific projects or programs, or otherwise have a contingent liability, indicate amounts and purposes of those liabilities. Indicate how much of the funds are unrestricted, how those funds are governed (e.g., approval of the board of directors or state or local government) and the eligible uses of these funds. Identify any funding sources available to supplement existing projects that are not achieving break-even status. Indicate the overall percentage of total unrestricted funds to total debt and the percentage of liquid unrestricted funds to total mortgages outstanding. Describe the collateral the Applicant will use if it does not have the authority to pledge its full faith and credit to back debentures issued against claims. Describe the circumstances or conditions under which other governmental entities or public bodies have access to the Applicant's funds. Describe the mechanism for disposing/resolving audit findings. Identify any periodic reports required for the board of directors and/or other organizational oversight body.

C. Application Narrative

The application must include:

1. *Narrative.* Narrative of no more than 15 pages addressing the items described below. Applicants should be careful to craft responses so that they clearly address the issues and the minimum financial capacity standards set forth above (pages 10–11). Responses should summarize the detailed information that may be found in the applicant's operating, administrative and quality control manuals.

a. *Organizational History.* Describe the history and organizational background of the Applicant. Indicate how long it has been in existence, its mission, when it began to finance multifamily loans, and an overall description of its multifamily lending activities.

b. *Multifamily Portfolio Information.* Indicate how many multifamily loans on small properties have been financed within the past 10 years (dates specified), by year. Include the number and type of projects (family, assisted living, cooperative, etc.) and units in each, type of loan (first mortgage, second, gap loan, credit support, new construction, rehabilitation, refinancing with or without repairs, etc.) and original mortgage amounts, outstanding principal balances, status (current, in default, foreclosed, in workout) and location (urban/suburban/rural).

Describe the types of residents served in your projects (family, elderly, etc.). Indicate the median income within the Applicant's operating jurisdiction, the percent of units occupied by households with incomes below 80 percent and 50 percent of that median, and the average size of families served in projects not targeted to the elderly.

c. *Other Portfolio Information.* Provide a summary of the organization's portfolio of properties other than the multifamily properties described above, that have been financed within the past 10 years (dates specified), by year. Include the number and types of projects, type of loan (first mortgage, second, gap loan, credit support, new construction, rehabilitation, refinancing with or without repairs, etc.) and original mortgage amounts, outstanding principal balances, status (current, in default, foreclosed, in workout) and location (urban/suburban/rural).

d. *Contingent Liabilities.* Provide a list disclosing all contingent liabilities in the organization's book of business.

e. *Staff Capacity.* Identify the skills (general background and years of experience in that skill and with the Applicant) of personnel currently employed by the Applicant who will have key responsibilities under the pilot initiative. [Do not attach resumes.] Include in-house loan processing, loan management and technical staff (e.g., architects, engineers, substantial rehabilitation inspectors, cost analysts, mortgage credit analysts, appraisers, market analysts, loan management, servicing and property disposition personnel), technical review personnel, the person(s) responsible for making overall underwriting decisions (the chief underwriter) and the person responsible for overall loan management, servicing and disposition, including workouts.

Indicate how long this staff capacity has existed in the Applicant's organization and the amount of attrition and turnover during the past two years, especially any turnover in key management positions.

If any of the above mentioned in-house activity or other loan processing or management functions are performed by contract personnel, provide the Applicant's qualification requirements for such personnel, procedures followed by the Applicant for monitoring performance of, and for reviewing and evaluating work products of, contract personnel, and the experience of the Applicant personnel responsible for the monitoring, review and evaluation of contract services.

Describe the counsel on staff or retained by the Applicant who is experienced in real estate transactions, bankruptcy, litigation and foreclosure to conduct mortgage loan closings, assist in the preparation of endorsement packages, and provide legal services in dealing with underwriting and servicing matters requiring legal advice or action.

f. *Technical Capacity.*

i. *Architect, Engineering and Cost.* Describe the A&E and Cost services the Applicant provides in the development of plans and specifications and the role it plays in reviewing the final plans and specifications submitted for their projects. Describe the depth of review and the approach to resolving concerns with respect to the documents.

Describe any substantial rehabilitation/repair inspection procedures and requirements for project completion and guarantee/warrantee/latent defect inspections. For loans involving substantial rehabilitation advances, describe the process and criteria for releasing advances.

If any architectural, engineering or cost functions are contracted out, describe the qualification and experience requirements for contractors in each skill. Describe the controls in place to ensure quality work performance and products whether performed by in-house staff or contractors.

ii. *Valuation.* Describe the qualifications of the Applicant's appraisers and their experience in preparing appraisals for multifamily housing, and specifically affordable multifamily housing. Provide the qualifications of the individual responsible for reviewing those appraisals and his/her authority to make changes in the appraisal documents and/or conclusions.

When any appraisal functions are contracted out, describe the qualification and experience requirements for contract appraisers and the Applicant's controls in place to assure quality work performance and products.

Describe the controls in place to ensure that all appraisers, in-house or contract, meet program certification and licensing requirements and that all appraisals will be completed pursuant to the Uniform Standards of Professional Appraisal Practice.

iii. *Market Analysis.* Applicants must demonstrate that the market will support each project undertaken under the Small Buildings Risk Sharing initiative. Describe the Applicant's practice for ensuring that a market exists for the proposed project. State whether the Applicant conducts its own market analyses or relies upon studies submitted by the developer/sponsor. Describe who (position) reviews the studies, whether prepared by the Applicant's staff or outside professionals, and the qualifications of individuals used. State whether market findings of the principal analyst can be modified or overridden and by whom. Please note whether or not the Applicant's practice deviates from that recommended by the National Council of Housing Market Analysts.

iv. *Mortgage Credit.* Describe the background, qualification and experience in banking, accounting, financing or commercial lending of the individual responsible for the financial analysis portion of loan processing. Describe how the work of the credit/financial analysis will be integrated with that of the overall underwriting analysis and whether, and/or under what conditions, the analyst's recommendations or findings may be modified. State whether Applicant conducts its own mortgage credit analyses or uses contractors and the Applicant's controls to ensure quality performance. Describe whether or not the conclusions can be modified or overridden and by whom.

v. *Environmental.* All projects insured under the 542(b) Risk Sharing Programs must comply with the environmental requirements of 24 CFR Part 50, and it

is anticipated that QPEs will use consultants to compile environmental information and prepare environmental analysis for submission to HUD. Describe the qualifications of the environmental consultants responsible for supplying environmental information and analysis to HUD. Any specializations in subjects such as Historic Preservations should be noted. Environmental consultants should have experience in preparing Environmental Reports in accordance with Chapter 9 of FHA's MAP Guide. The Phase I Environmental Site Assessment (ESA) must be prepared by an Environmental Professional as described in ASTM E 1527–05 (or most recent edition.) Describe the controls in place to ensure quality work performance and products.

g. *Operating Procedures.* Provide a flow chart indicating how project-related decisions are made within the Applicant's organization. Include the following elements and a brief description of the Applicant's operating procedures for each of the following: Loan origination, processing, market analysis, underwriting, loan approval, closing, cost certification, substantial rehabilitation administration, loan management, and loan servicing and property disposition functions. Indicate who (position) is responsible for what functions and when those functions are performed. Describe the Applicant's internal controls to assure compliance with Applicant procedures.

i. *Cost Certification.* Describe the Applicant's cost certification process and its controls to ensure the absence of fraud and misrepresentation. Describe how the Applicant will ensure that costs are legitimate and that all project improvements are in place prior to accepting the certification. Indicate how the cost certification process addresses mortgage excesses and if there are mandatory mortgage prepayments.

ii. *Loan Approval.* If a loan committee or similar body approves loans (including the board of directors), state whether the Committee can override the recommendations of the primary underwriter. If so, describe under what circumstances and what documentation is required to support the override.

Describe the composition of the Committee. If there is a minimum loan amount or other circumstances under which loans are not referred to Committee, describe the circumstances and describe that approval process. If loans are normally not referred to a Committee, indicate who has the approval authority and his/her position/role/function within the Applicant. If loans are subject to review and/or approval by an entity outside of the Applicant, describe such circumstance and the review/approval process.

iii. *Loan Servicing.* Describe the Applicant's overall loan servicing system including its ability to track loans individually, delinquent loan servicing system, procedures to physically inspect and evaluate mortgaged properties, and procedures to control and monitor borrower bankruptcy proceedings, claims filing procedures, and foreclosures. Describe how the Applicant will enforce the regulatory agreement. Describe the degree to which portfolio oversight is computerized and periodic reports are provided to management, including the board of directors. Describe the background and experience of the individuals responsible for loan servicing. If contract personnel are used, describe the in-house monitoring procedures used to assure quality performance by the contractors. Describe the Applicant's requirements for project audits and reviews, qualifications for auditors and procedures for resolving management review and financial audit deficiency findings.

iv. *Loan Monitoring and Workout Procedures.* Describe in detail the Applicant's loan monitoring protocol including staffing, frequency of reporting, report review, borrower contact and follow up and any other related activity. State the number of workout plans the Applicant has developed over the last 5 years. Describe several (at least 5) cases for which the Applicant developed and implemented workout plans for defaulted projects during the last 5 years, the circumstances that led to the workout, the elements of the workout agreement and how well that project is performing against the workout plan. If an Applicant has had no experience with workouts, describe how a workout plan would be developed and identify any tools or strategies the agency would propose to use to establish the elements of a workout agreement.

v. *Investment Policies.* Describe how investment decisions are made within the Applicant's organization and the level at which they are made. Describe the procedures in place to generate and monitor financial reports, changes in fund balances, and changes in financial position. Describe procedures in place for the prompt notification to HUD of negative changes in the Applicant's financial position.

D. Exhibits

The following are required:

1. A copy of the Applicant's administrative manual, if available, covering its investment policies and overall business and financial practices.

2. A certification from the Applicant that it will at all times comply with the financial requirements for this initiative and, where applicable, maintain required reserves in a dedicated account in liquid funds (i.e. cash, cash equivalents, or readily marketable securities) in a financial institution acceptable to HUD.

3. Copies of audited financial statements for the Applicant's last 3 fiscal years. Provide a written disclosure of any material changes in financial positions that have occurred since the latest financial statement. Sample debenture form issued by the Applicant. HUD reserves the right to request additional information from the Applicant in order to verify that it has satisfied these requirements. Applicant will promptly supplement the application with any relevant information that comes to Applicant's attention prior to HUD's decision on whether to approve or deny the application.

V. Decision on Applications

For applications received within 120 days of the effective date of the Final Notice, HUD will prioritize the review and subsequent negotiations with CDFIs that are eligible for and have been approved to become members of a Federal Home Loan Bank. HUD shall act on an application within approximately 30 days of the date HUD deems the application to be complete, either by denying the request based on the criteria provided in this Notice, or by approving the Applicant as eligible to initiate negotiations with HUD to enter into a Risk Share Agreement.

VI. Program Details

A. How the Initiative Works

Qualified QPEs are authorized to underwrite and process loans. HUD will provide full mortgage insurance on affordable multifamily housing projects processed by such QPEs under this initiative. By entering into Risk Sharing Agreements with HUD, QPEs contract to reimburse HUD for 50 percent of any loss from defaults that occur while HUD insurance is in force.

B. Commitment Authority Availability

Commitment Authority availability is provided by the Congress on an annual basis for all multifamily and health care insured loans, including those in the Risk Sharing Program. In rare circumstances it may become necessary for HUD to notify Risk Share partners that HUD is approaching its

congressionally determined subsidy volume cap and provide instructions for reservation and obligation of subsequent Commitment Authority.

C. Execution of Master Risk Sharing Agreement (RSA)

Execution by the Applicant of a Risk Sharing Agreement is a prerequisite to participation in this initiative, because it governs the rights and obligations of HUD and the QPE. The letter from HUD to the Applicant approving its participation in the Risk Sharing Program will transmit the Master RSA for execution by an authorized representative of the Applicant (i.e., one who is so designated in the application). The original signed RSA and an electronic copy must be returned to HUD Headquarters, Office of Insured Multifamily Housing Development. Headquarters will transmit a copy of the executed Master RSA to the applicable designated office of the QPE.

D. Program Requirements under the Proposed Small Buildings Risk Sharing Initiative

1. *Affordable Housing Requirements.* All projects insured under the Risk-Sharing Program, including this initiative, must qualify as affordable housing.

a. Affordable housing must meet the standards of the Risk Sharing Program, (as is generally consistent with the requirements of the Section 42 Low Income Housing Tax Credit program). Specifically, projects financed with Risk Share loans must be:

i. Projects in which 20 percent or more of the units are rent-restricted and initially occupied by families whose income is 50 percent or less of the area median income, with adjustments for household size; or

ii. Projects in which 40 percent or more of the units are rent-restricted and initially occupied by families whose income is 60 percent or less of the area median income with adjustments for household size.

b. These affordability requirements will be satisfied primarily through an affordability restriction placed on title. Rent-restricted units will be required to bear rents that are consistent with the above requirements and must be occupied by households whose income at the time of occupancy makes them eligible for such units. No ongoing income recertification of a given renter household will be required after initial income eligibility has been established.

2. *Eligible Projects.*

a. *Project Size.* Projects must consist of 5–49 rental dwelling units (including cooperative dwelling units) on one site. The site may consist of two or more noncontiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management. These units may be detached, semi-detached, row houses, or multifamily structures.

b. *Loan Size.* Loans with principal amounts of $3,000,000 or less are eligible for projects of any size.

c. *Substantial Rehabilitation.* Substantial Rehabilitation is any combination of the following work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and results in material improvement of the project's economic life, livability, marketability, and profitability:

i. Replacement, alteration and/or modernization of building spaces, long-lived building or mechanical system components and/or project facilities.

ii. Substantial rehabilitation may include but not consist solely of any combination of minor repairs, replacement of short-lived building or mechanical system components, cosmetic work, and/or new project additions.

d. *Existing Projects.* Financing of existing properties without substantial rehabilitation is permitted.

i. If the property is a QPE-financed loan to be refinanced, and such refinancing will result in the preservation of affordable housing, refinancing is permissible when (1) project occupancy is not less than 93 percent, including consideration of rent in arrears, based on the average occupancy in the project over the most recent 12 months, and (2) the mortgage does not exceed an amount supportable by (a) the lower of the unit rents being collected under the rental assistance agreement, or (b) the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested.

e. *Single Room Occupancy (SRO).* SRO projects are eligible for insurance in the Risk Sharing initiative. Units in SRO projects must be subject to 30-day or longer leases, but rent payments may be made on a weekly basis in SRO projects.

f. *Board and Care/Assisted Living Facilities.* Board and Care/Assisted Living Facilities that provide continuous protective oversight and assistance with the activities of daily living for frail elderly or other persons needing such assistance may be insured. These facilities typically provide room and board as well as oversight and assistance and contain a central kitchen and dining area, although meals may be catered off site.

g. *Elderly Projects.* Projects specifically designed for the use and occupancy by elderly families are eligible. An elderly family means any household in which the head or spouse is 62 years of age or older, and also any single person who is 62 years of age or older.

3. *Ineligible Projects.*

a. *Transient Housing or Hotels:* Rental for transient or hotel purposes. For purposes of this initiative, rental for transient or hotel purposes means:

i. Rental for any period less than 30 days, or

ii. Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and valet service.

b. *Projects in Military Impact Areas:* If the HUD local Office determines that a project is located in a military impact area, the project shall not be insured under this program.

c. *Retirement Service Centers:* Projects designed for the elderly with extensive services and luxury accommodations and that provide for central kitchens and dining rooms with food service or mandatory services are not permitted in the Risk-Sharing Program.

d. *Nursing Homes or Intermediate Care Facilities:* Nursing homes and intermediate care facilities licensed and regulated by State or local government and providing nursing and medical care are prohibited.

4. *Local Land Use Requirements.* Projects insured under this initiative must meet applicable zoning and other State/local government requirements.

5. *Prohibition on GNMA Securitization.* Issuance of Government National Mortgage Association (GNMA) mortgage-backed securities is currently prohibited for projects insured under the Risk Sharing Program.

6. *Appraisal Standards.* Certified General Appraisers licensed in the State in which the property is located must complete all appraisal functions. All appraisal functions must also be completed in accordance with the Uniform Standards of Professional Appraisal Practices.

7. *Environmental Review.* All projects insured under the 542(b) Risk-Sharing Programs must comply with the environmental requirements of 24 CFR Part 50. HUD will conduct the environmental reviews in accordance with Chapter 9 of the MAP Guide. QPEs must assume all responsibilities of the Lender under Chapter 9 of the MAP Guide, which include making various

submissions related to contamination and the environmental laws and authorities listed at 24 CFR 50.4. The QPE, and the owner and its contractors must not commit or expend funds for or undertake any activities that would have an adverse environmental impact, limit the choice of reasonable alternatives, or prejudice the ultimate decision on the proposal until HUD has issued a Firm Approval Letter for the project. The Firm Approval Letter will include any special conditions, procedures and requirements resulting from the Environmental Review. Finally, the QPE must advise HUD of any proposed change in the scope of the project or any change in environmental conditions and shall ask HUD to conduct a supplemental environmental review for such change.

8. *Labor Standards.* Davis Bacon prevailing wage requirements are not applicable to the 542(b) Risk Sharing program.

9. *Byrd Amendment (Lobbying).* The Byrd Amendment requires disclosure by mortgagors of lobbying activities for programs involving loan guarantees by the Federal government. Form LLL must be submitted with the closing docket required in paragraph 6–2 so that HUD can compile the material under the annual report required by the Byrd amendment.

10. *Reinsurance.* A QPE may obtain reinsurance for the portion of the risk of loss assumed by the QPE subject to the following requirements:

a. Neither HUD's nor the QPE's position shall be subordinated to the rights of the reinsurer;

b. The reinsurance may not be used to reduce any reserve or fund balance requirements that are required to be maintained under this initiative; and

c. Such reinsurance does not incur an obligation to the Federal Government.

11. *Nondiscrimination and Equal Opportunity in Housing and Employment.* The mortgagor must certify to the QPE that, so long as the mortgage is insured under the Risk Sharing Program, it will:

a. Not use tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes housing for older persons as defined in Section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2);

b. Not discriminate against any family because of the sex of the head of household and;

c. Comply with the Fair Housing Act, as implemented by 24 CFR Part 100; Titles II and III of the Americans with Disabilities Act of 1990, as implemented by 28 CFR Part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR Part 135; the Equal Credit Opportunity Act, as implemented by 12 CFR Part 202; Executive Order 11063, as amended, and implemented by 24 CFR Part 107; Executive Order 11246, as implemented by 41 CFR Part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, a mortgagor that receives Federal financial assistance must also certify to the QPE that, so long as the mortgage is insured under this part, it will comply with Title VI of the Civil Rights Act of 1964, as implemented by 24 CFR Part 1; the Age Discrimination Act of 1975, as implemented by 24 CFR Part 146; and Section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR Part 8.

Such certification does not preclude HUD, the QPE, or a HUD-delegated agent from monitoring or reviewing the project's compliance with nondiscrimination or equal opportunity requirements including, but not limited to, preparing or updating an Affirmative Fair Housing Marketing Plan or maintaining records of housing applicant or resident race, national origin, or disability status

VII. Firm Approval Letter Processing

A. General

The QPE will submit as part of its request for issuance of a firm approval letter, a request for the HUD-retained reviews and other findings to the Multifamily Hub or Program Center with jurisdiction for the location of the project, to include:

1. The QPE's HUD mortgagee number,

2. A Phase I Environmental Site Assessment, Environmental Report, and other documentation required by Chapter 9 of the FHA MAP Guide. (A Firm Approval Letter may not be conditional on subsequent environmental review), and

3. Sufficient information about the project for the HUD Office to conduct the previous participation, intergovernmental and other HUD-retained reviews.

Successful completion of the HUD retained reviews results in issuance by HUD of a Firm Approval Letter.

B. Processing

1. *Initial Processing*

a. *QPE's Mortgagee Number.* The FHA mortgagee number is the identifier for the QPE in the Federal Housing Administration Subsidiary Ledger (FHASL) system, and in the Development Application Processing (DAP) System. The Multifamily Hub or Program Center should use the mortgagee identification number on all correspondence.

b. *New Application Processing.* The Multifamily Hub or Program Center is responsible for entering basic project data in the DAP system to create a new application and FHA project number when the request for Firm Approval Letter is received. (See Chapter 3, Entering and Tracking FHA and Risk Sharing Applications, of the DAP User Guide for HUD Staff). The QPE will provide detailed information related to the project's location, number of units, and other identifying materials necessary.

c. *Project Number.* The project number is based on the location and program identifier (Section of Act Code) and contains the following identifying information:

i. *Office Prefix.* 3-digit prefix identifies the specific geographic location of the project.

ii. *Number Series.* Projects insured under Section 542(b) will have project numbers beginning at the number 98001 and proceeding to 98999.

iii. *Program identifier.* Use either YQE for existing projects, or YQR for new substantial rehabilitation as the Section of Act code.

2. *Environmental Review.* All projects insured under the 542(b) Risk-Sharing Programs must comply with the environmental requirements of 24 CFR Part 50. QPEs must make various submissions with the request for issuance of a Firm Approval Letter related to contamination and the environmental laws and authorities listed at 25 CFR 50.4, in accordance with the Lender requirements of Chapter 9 of the MAP Guide. HUD will conduct the environmental reviews in accordance with Chapter 9 of the MAP Guide. The QPE and the owner and its contractors must not commit or expend funds for or undertake any activities that would have an adverse environmental impact, limit the choice of reasonable alternatives, or prejudice the ultimate decision on the proposal until HUD has issued a Firm Approval Letter for the project. A Firm Approval Letter cannot be conditioned on subsequent environmental review and approval of the property. The Firm Approval Letter shall include any special conditions, procedures, and requirements resulting from the Environmental Review.

3. *Intergovernmental Review.* The QPE is responsible for sending the form SF–424 to the appropriate State Single Point of Contact (SPOC) if the State has selected the mortgage insurance

programs for review under the intergovernmental State Review Procedure (SRP) and the project proposes insured advances. Substantial rehabilitation projects with insured advances are covered only if there is (1) A change in land use, (2) an increase in project density, or (3) a change from rental housing to cooperative housing. The Catalog of Federal Domestic Programs number for the Risk-Sharing Program is 14.189. **Note:** Many States do not review insured projects under these procedures. If the State has not elected the mortgage insurance programs for review, the QPE should submit a statement to that effect. If comments are received from the SPOC, the following applies:

a. When the SRP results in favorable comments or a recommendation for approval:

i. The Office may issue the Firm Approval Letter if all other HUD-retained review requirements are met.

ii. The Office must apply the "non-accommodation" procedures if, for other reasons, the Office will not issue the Firm Approval Letter (e.g., adverse environmental review).

b. When the SRP results in negative comments or a recommendation for disapproval:

i. If the Office agrees with the SRP, it will tell the QPE what changes are necessary before the Firm Approval Letter may be issued, or that no Firm Approval Letter may be issued.

ii. If the Office disagrees, paragraph 3 below applies and the Office will advise the QPE that the Firm Approval will be held until the 15-day "Non-accommodation" period ends.

c. "Non-accommodation" of SRP comments. The Office must notify the State and provide a 15-day period before the Office may approve and issue a Firm Approval Letter, or disapprove a project if:

i: The Office does not accept an SRP recommendation, or

ii. The QPE notifies HUD that it elects not to approve the project.

HUD will notify the QPE at the same time, stating when the 15-day period ends and that a Firm Approval Letter may be issued or the project rejected after the 15-day period ends. **Note:** All notifications between the QPE and the Multifamily Hub or Program Center must be in writing.

4. *Issuance of Firm Approval Letter.*

a. *Firm Approval Letter.* Upon positive completion of the HUD-retained reviews, the Multifamily Hub or Program Center will issue a Firm Approval Letter.

i. *Contents.* The Firm Approval Letter will, among other things, identify the risk levels to be assumed by the QPE as 50 percent, and by HUD as 50 percent.

ii. *Endorsement upon Completion of Closing Docket.* The Firm Approval Letter also states that, absent fraud or material misrepresentation by the QPE, provided the QPE is in good standing at the time of the requested endorsement, and subject to reduction of the mortgage amount, if required, HUD will endorse the project mortgage upon receipt of the complete closing docket;

iii. *Possible Conditions for Approval.* Finally, the Firm Approval Letter may contain conditions for approval. The QPE and mortgagor must evidence their acceptance of the Firm Approval Letter and any conditions by signing and returning the Firm Approval Letter to the Multifamily Hub or Program Center.

iv. *Expiration.* The Firm Approval Letter will expire after 60 days if the project has not reached initial endorsement for insured advances projects, final endorsement for existing projects, or start of substantial rehabilitation for insurance upon completion projects.

5. *Extension of Firm Approval Letter.* The Hub or Program Center may extend a Firm Approval Letter upon written request of the QPE with supporting documentation.

i. *Transmittal of Addendum to Risk Sharing Agreement (RSA).* The Multifamily Hub or Program Center will prepare and transmit with the Firm Approval Letter, an addendum to the RSA reflecting the insurance risk share to be borne by the QPE and HUD, in the amount of 50 percent each.

ii. *Required Documentation.* In cases where the subsidy layering review is not delegated to the Housing Credit Agency and HUD review is required, the Firm Approval Letter will require the QPE to submit the required documentation for that review before the QPE approves the loan under its own procedures if that documentation was not submitted with the request for HUD-retained reviews.

iii. *Copy to QPE.* The Multifamily Hub or Program Center shall send a copy of the Firm Approval Letter to the QPE.

6. *Rejection of Project.* The Multifamily Hub or Program Center must notify the QPE in writing if the project is not approvable due to location in a military impact area or for an adverse environmental condition requiring rejection that cannot be mitigated.

VIII. Program Processing

A. QPE Processing, Underwriting, and Substantial Rehabilitation

The QPE may use its own underwriting standards and loan terms and conditions, as disclosed and submitted with its application, to underwrite and approve loans without further underwriting by HUD.

1. *QPE Responsibilities.* The QPE is responsible for the performance of all functions except the HUD-retained functions specified in this notice. After acceptance of an application for a loan to be insured under this initiative, the QPE must, among other things:

a. Determine that a market for the project exists, taking into consideration any comments from the Hub/PC relative to the potential adverse impact the project will have on proposed or existing Federally insured and assisted projects in the area;

b. Establish the maximum insurable mortgage and review plans and specifications for compliance with QPE standards;

c. Determine the acceptability of the proposed mortgagor and management agent;

d. Ensure the project is in compliance with all applicable nondiscrimination and equal opportunity laws (see program requirement 11 under Section VI of this notice);

e. Make any other determinations necessary to ensure acceptability of the proposed project;

f. Carry out all responsibilities of the Lender in connection with HUD's environmental review in accordance with Chapter 9 of the Multifamily Accelerated Processing (MAP) Guide; and

g. Ensure that any required subsidy layering review is completed by the applicable Housing Agency or HUD prior to loan approval.

2. *Substantial Rehabilitation Period.* The QPE is responsible for inspections during substantial rehabilitation, processing and approving advances of mortgage proceeds during substantial rehabilitation, review and approval of cost certification, and closing of the loan.

3. *Inspections during Substantial Rehabilitation.* The QPE must inspect projects at such times during substantial rehabilitation as the QPE determines. The inspections must be conducted to ensure compliance with the contract documents.

4. *Lead-Based Paint.* Risk-Sharing projects must comply with the lead-based paint requirements in 24 CFR Part 35, specifically subparts A, B, G, and R (Lead Disclosure Rule and Lead Safe Housing Rule), as applicable, as well as 40 CFR Part 745 Lead: Renovation, Repair, and Painting Program. QPEs are responsible for monitoring and for ensuring that lead-based paint requirements are followed.

5. *Insurance of Advances.* Periodic advances are permitted in the Risk-Sharing Program. In periodic advances cases, progress payments approved by the QPE and both an Initial and Final endorsement on the mortgage are required.

a. Advances may only be used for projects involving substantial rehabilitation.

b. In approving advances, the QPE must ensure that the loan is kept in balance, and advances are approved only if warranted by substantial rehabilitation progress evidenced through QPE inspection, as well as in accord with plans, specifications, work write-ups and other contract documents. QPEs must also make certain that other mortgageable items are supported with proper bills and/or receipts before funds can be approved and advanced for insurance.

6. *Insurance upon Completion.* In insurance upon completion cases, only the permanent loan is insured and a single endorsement is required after satisfactory completion of substantial rehabilitation or repairs. Existing projects without the need for substantial rehabilitation are only insured upon completion.

a. *Substantial rehabilitation.* The QPE approval of insurance upon completion project must prescribe a designated period during which the mortgagor must start substantial rehabilitation. If substantial rehabilitation is started as required, the approval will be valid for the period estimated by the QPE for substantial rehabilitation and loan closing, including any extension approved by the QPE.

b. *Existing projects without substantial rehabilitation.* Existing projects with or without repairs are insured upon initial closing. QPEs may permit noncritical repairs to be completed after endorsement upon establishment of escrows acceptable to the QPE. Noncritical repairs are those repairs that do not:

i. endanger the safety and well-being of tenants, visitors and passersby,

ii. adversely affect ingress and egress, or

iii. prevent the project from reaching sustaining occupancy.

7. *Cost Certification.* To ensure that the final amount of insurance is supported by certified costs. The mortgagor and general contractor, if there is an identity of interest with the mortgagor must execute a certificate of actual costs, in a form acceptable to the QPE, when all physical improvements are completed to the satisfaction of the QPE.

a. *Auditing.* The cost certification provided by the mortgagor must be audited by an independent public accountant in accordance with requirements established by HUD.

b. *HUD Review.* Except for the first trial cases (described at IX.10 below), HUD will not review cost certifications prior to Final Endorsement. Cost certification documents will be looked at as part of HUD's periodic, programmatic monitoring of the QPE's Risk Sharing activities.

8. *Other Requirements:* The mortgagor must furnish:

a. Assurance of completion in accordance with any requirements of the QPE as to form and amount, and

b. Latent defects escrow or other form of assurance as required by the QPE to ensure that latent defects can be remedied within the time period required by the QPE.

9. *Recordkeeping.* The mortgagor and the substantial rehabilitation contractor, if there is an identity of interest with the mortgagor, must keep and maintain records of all costs of any substantial rehabilitation or other cost items not representing work under the general contract and to make available such records for review by the QPE or HUD, if requested.

10. *Project Information.* QPEs are responsible for providing information about Risk Sharing projects to HUD for statistical, programmatic, and monitoring purposes. The project information is submitted with the closing docket at initial closing for insurance of advances cases, and/or final closing for insurance upon completion cases. When a substantial rehabilitation project will be insured upon completion (i.e. no initial endorsement), project information must be submitted to the Multifamily Hub or Program Center when substantial rehabilitation begins. The cover letter should specify the substantial rehabilitation start date.

IX. Closing and Loan Endorsement

A. *QPE Closing and HUD Endorsement of Loan.* Before disbursement of loan advances in periodic advances cases, and in all cases after completion of repairs or substantial rehabilitation (or completion of processing for existing projects requiring no repairs), the QPE must hold a closing and submit a closing docket with required documentation to the Multifamily Hub or Program Center (Hub/PC) with jurisdiction for the project's location. The submission will include, among other things, the mortgage note which the Hub/PC Director will endorse for insurance. Prior to closing, the QPE must ensure that the following property and mortgage requirements have been met:

1. *Property Requirements—Real Estate.* The mortgage must be on real estate held:

a. In fee simple;

b. Under a renewable lease of not less than 99 years; or

c. Under a lease executed by a governmental agency, or other lessor approved by the QPE, that has a term at least 10 years beyond the end of the mortgage term.

2. *Title.*

a. *Eligibility of Title.* Marketable title to the mortgaged property must be vested in the mortgagor on the date the mortgage is filed for record.

b. *Title Evidence.* The QPE must receive a title insurance policy (or other acceptable title evidence in the jurisdiction if title policies are not typical) that ensures that marketable title is vested in the mortgagor, that a survey acceptable to the QPE has been performed, and that no existing impediments to title concern, or exist on, the property.

3. *Mortgage Provisions.*

a. *Form.* The mortgage and note must be executed on a form approved by the QPE for use in the jurisdiction in which the property is located. The note must provide that the mortgage is insured under Section 542(b) of the Housing and Community Development Act of 1992. The note must also specify the risk of loss assumed by the QPE and by HUD, at 50 percent and 50 percent each.

b. *Mortgagor.* The mortgage must be executed by a mortgagor determined eligible by the QPE.

c. *First Lien.* The mortgage must be a single first lien on property that has first priority for payment and that conforms to property standards prescribed by the QPE.

d. *Single Asset Mortgagor.* The mortgage must require that the mortgagor is a single asset, sole purpose mortgagor.

e. *Amortization.* The mortgage must provide for complete amortization (i.e., regularly amortizing) over the term of the mortgage. Commencement of amortization must be the month following HUD's endorsement of the loan. Amortization may not commence prior to HUD loan endorsement.

f. *Use Restrictions.* The mortgage must contain a covenant prohibiting the use of the property for any purpose other than the purpose intended on the day the mortgage was executed.

g. *Hazard Insurance.* The mortgage must contain:

i. A covenant acceptable to the QPE that binds the mortgagor to keep the

property insured by one or more standard policies for fire or other hazards which are stipulated by the QPE;

ii. A standard mortgagee clause making loss payable to the QPE must be included in the mortgage;

iii. The QPE is responsible for ensuring that insurance is maintained in force and in the amount required by this paragraph and by the mortgage;

iv. The QPE must ensure that the insurance coverage is in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment. If the mortgagor does not obtain the required insurance, the QPE must do so and assess the mortgagor for such costs; and

v. These insurance requirements apply as long as the QPE retains an interest in the project and final claim settlement has not been completed or the contract of insurance has not been otherwise terminated.

vi. If the property is located in a Special Flood Hazard Area identified by the Federal Emergency Management Agency and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 (NFIA), the QPE must ensure that the property is covered by flood insurance during the term of the mortgage in an amount equal to or greater than the least of the following: (1) the development or project cost less estimated land cost; (2) the maximum limit of coverage made available for the type of property under the NFIA; or (3) the outstanding principal balance of the mortgage.

h. *Modification of Terms.* The mortgage must contain a covenant requiring that, in the event the QPE and owner agree to a modification of the terms of the mortgage (e.g., to reflect a reduction of the interest rate if reductions are realized in the underlying bond rates for the project), any subsidized rents would be reduced in accordance with HUD guidelines in effect at the time.

i. *Regulatory Agreement.* The mortgage must contain a provision incorporating the Regulatory Agreement by reference.

4. *Mortgage Lien and Other Obligations.*

a. *Liens:* At the initial and final closing of the loan, the mortgagor and the QPE must certify, and the QPE must determine, that the property covered by the mortgage is free from all liens other than the insured mortgage, except that the property may be subject to an inferior lien(s) as approved by the QPE, as long as the insured mortgage has first priority for payment.

b. *Contractual Obligations:* At the final closing of the loan, the mortgagor and the QPE must certify, and the QPE must determine, that all contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the QPE and determined by the QPE to be of a lesser priority for payment than the obligation of the insured mortgage.

5. *Execution of Regulatory Agreement.* The QPE and the mortgagor must execute and record a Regulatory Agreement in a form acceptable to HUD, a standard form of which will be developed. The Regulatory Agreement must include an addendum requiring the mortgagor to comply with the requirements of the Risk-Sharing Program for as long as the Commissioner insures the mortgage.

6. *Submission of Closing Docket.* The QPE must submit the closing docket, representations and certifications, to the Hub/PC, transmitted by letter signed by an authorized official identified in the Risk-Sharing Agreement. An original and one electronic copy must be submitted. The closing docket, each page numbered in the upper right corner with the HUD project number, must contain specific project information, and accompanied by a check for the first year's Mortgage Insurance Premium.

a. *Project Information.* Project information concerning the mortgage amount, location, number and type of units, income and expenses, rents, rents as a percentage of area median income, project occupancy percentage, value/replacement cost, interest rate, type of financing, tax credit use (if applicable), and similar statistical information will be provided.

b. *Initial Closing for Insured Advances.* If an initial closing docket is required, it should be submitted by the QPE and must include the information and certifications requested in this notice. The Hub/PC will review the initial closing docket in a manner similar to its review of the final closing docket.

c. *Final Closing:* After substantial rehabilitation completion of the project or completion of critical repairs (noncritical repairs may be made after final endorsement with establishment of appropriate escrows acceptable to the QPE) and execution of a certificate of actual cost (for both insurance of advances and insurance upon completion), the QPE will submit a closing docket to the Multifamily Hub or Program Center for final endorsement. The final closing docket must include the information and certifications required by this notice along with the QPE's updated project information if submitted for initial endorsement.

7. *Local HUD Office Review of Closing Dockets.* The Hub/PC has primary responsibility for review of closing dockets and ensuring that projects are endorsed for insurance. The Hub/PC has 5 working days to complete this process except for the sample of projects that the Office chooses for pre-endorsement monitoring, which has a 10-day deadline. However, every effort should be made to endorse projects as quickly as possible.

8. *Certifications.* Multifamily Housing staff will review all closing dockets for completeness, including the QPE's certifications that:

a. Written approval was obtained for all HUD-retained reviews; and

b. All nondiscrimination, equal opportunity, and equal employment opportunity requirements were followed;

c. The QPE reviewed and approved the mortgagor's Affirmative Fair Housing Marketing plan;

d. Processing, underwriting (including a determination that a market exists for the project), cost certification (at final closing only) and closing were all performed according to the QPE's standards and requirements;

e. For insurance of advances cases, advances were made proportionate to substantial rehabilitation progress;

f. The property is free of all liens other than the first mortgage except for inferior liens approved by the QPE; and

g. All contractual obligations are paid.

9. *Other Information.* The Hub/PC will review each closing docket for among other things, the presence of the QPE's project information, amortization schedule; a copy of the Risk-Sharing Agreement with any prior amendments or addendums; certified copies of the mortgage (deed of trust), mortgage (deed of trust) note (with the risk of loss to be assumed by the QPE and HUD specified on the face sheet); a copy of the QPE-approved cost certification; a copy of the Regulatory Agreement between the QPE and the mortgagor; and a hazard insurance policy (and flood insurance policy where required) with a clause making the loss payable to the QPE; (for final endorsement of insured advances), a copy of the QPE-approved schedule of insured advances equal to the Risk Sharing mortgage documenting the date and amount of each of disbursement during the substantial rehabilitation

period. The Hub/PC will also determine that certifications and other documents committing the QPE were signed by QPE officials identified in the Risk-Sharing Agreement.

10. *Local HUD Office Monitoring Functions.* The Hub/PC will perform pre-endorsement monitoring by reviewing a limited sample of the first three insured advances cases and cost certifications. The Office has a total of 10 working days to review the submission and endorse the mortgage for insurance for these sample cases. In the case of these initial submissions HUD has the authority to make an appropriate adjustment to the amount of mortgage insurance up to and including final endorsement. However, it is anticipated that adjustments would be made only in very rare cases (as they are rare for HUD-processed projects). The review is to ensure that the QPE has used its own procedures for insured advances and cost certification. Except where Headquarters has required a particular QPE to use HUD's procedures for advances and/or cost certification, QPEs do not have to comply with HUD's handbooks and instructions.

a. *Insurance of Advances.* Check to see whether advances were consistent with substantial rehabilitation progress, whether the loan remained in balance by comparing actual disbursements against a project completion schedule, and whether disbursements were supported by bills and/or receipts.

b. *Cost Certification.* Review the QPE's cost certification to ensure that the amount to be insured is supported by costs actually incurred and approved by the QPE.

11. *HUD Endorsement.* After review of the closing docket and other materials, the Multifamily Hub or Program Center must do the following:

a. *Endorsement:* Unless the loan is one of the first three initial cases submitted for HUD review before endorsement, the Hub/PC Director will endorse the credit instrument within 5 workdays after accepting the closing docket. The original endorsed credit instrument must be returned by certified mail, return receipt requested.

b. *Mortgage Insurance Premium (MIP):* The Hub/PC must issue an Official Receipt for the initial year's MIP from the QPE (mortgagee). The MIP for the Risk-Sharing Program is different than HUD's other mortgage insurance programs.

c. *"Closing Memorandum."* The Hub/PC staff is responsible for preparing the HUD–290 in DAP based on project data consistent with the closing docket. The Hub/PC Director, Operations Officer, or a person officially delegated to act for the Director signs the HUD–290.

i. Include original with the original closing docket to be transmitted to Headquarters.

ii. Include a copy with the conformed closing docket to be transmitted to the Hub/PC for the monitoring phase.

d. *Contents of HUD–290 Closing Submissions:* Within 5 workdays of endorsement, the Hub/PC must submit copies of the following documents to the HUD Headquarters Office of Multifamily Insurance Operations:

i. "Closing Memorandum" form HUD–290 signed by Director or designee;

ii. "Official Receipt" form HUD–27038 for the first mortgage insurance premium;

iii. Schedule of Collections form HUD–3416 documenting the deposit of the first mortgage insurance premium;

iv. Mortgage note or deed of trust including endorsement panel signed by officials of the QPE and HUD;

v. Amortization schedule consistent with the terms described on the mortgage note or deed of trust;

vi. Copy of the Risk Sharing Agreement with any prior amendments, and Addendum to the Risk Sharing Agreement for the subject project; and

vii. For final endorsement of insured advances only, a copy of the QPE-approved schedule of insured advances.

12. *Transmittal of Washington Closing Docket.* The Risk Sharing original closing docket is processed in the same manner as the Washington Docket is for projects insured under the National Housing Act except that the contents of the docket, including amortization schedule, must comply with the requirements of the Section 542(b) Risk Sharing Program. The closing docket must be delivered within 30 workdays of endorsement to Headquarters, Office of Housing, Chief, Records Management Branch (HOAMP), B–264, including:

a. The cover memorandum and original HUD–290; and

b. The closing docket prepared by QPE, with each page numbered.

13. *Recordation.* At the time of Initial Endorsement, in the case of insurance of advances, or at the time of Final Endorsement in the case of insurance upon completion, the QPE shall make certain that the mortgage, the Regulatory Agreement, and the Uniform Commercial Code financing statements are properly recorded, and filed in all required locations.

X. Program Monitoring

Periodic program monitoring will be performed at two levels: (1) The Multifamily Hub or Program Center (Hub/PC) with jurisdiction for the QPE, and (2) HUD Headquarters. HUD will conduct compliance monitoring in accordance with the QPE's own approved procedures for origination, underwriting, processing, servicing, management and disposition procedures, as well as compliance with HUD regulations and guidelines. Annual certifications will be required to verify that the necessary staffing, procedures, and measures of financial capacity addressed in the QPE's application for participation in the initiative remain in effect. Other HUD offices may monitor QPEs and projects in accordance with their delegated authority including compliance with nondiscrimination, equal opportunity, labor, and environmental protection requirements. Monitoring will be performed on a remote and on-site basis primarily consisting of post-endorsement compliance reviews. The HUB/PC with jurisdiction for the QPE will have primary responsibility to conduct periodic on-site monitoring to determine overall compliance with program requirements.

HUD Headquarters' primary responsibility will be overall program evaluation and the review of documentation pertaining to continued compliance of the QPE with program eligibility requirements, including monitoring of the dedicated account, where applicable, and other financial requirements. As appropriate, HUD Headquarters, including the Lender Qualification and Monitoring Division, the Multifamily Office of Asset Management, and the Multifamily Claims Branch may also be involved in conducting reviews of specific QPEs to determine compliance with applicable requirements.

XI. Project Management and Servicing

General

The QPE is responsible for providing loan servicing and project management in conformance with the Risk-Sharing Agreement and the terms of the required Regulatory Agreement.

1. *QPE Responsibilities.* As it relates to project management and loan servicing, the responsibility of the QPE shall include, but not be limited to:

a. *Execution and Enforcement of Regulatory Agreement.* Execution and enforcement of a Regulatory Agreement between the mortgagor and the QPE that is recorded upon the closing of the Risk Sharing Loan and which:

i. Includes a description of the property;

ii. Is binding upon the mortgagor and any of its successors and assigns and

upon the QPE and any of its successors for the duration of the insured mortgage. The QPE may not assign the Regulatory Agreement;

iii. Requires the project owner to make all payments due under the mortgage and, where necessary, establish escrows and reserves for future capital needs;

iv. Requires the project owner to maintain the project as affordable housing;

v. Requires the project owner to maintain the project in good physical and financial condition;

vi. Requires the project owner to maintain complete project books and financial records, and provide the QPE with annual audited financial statements after the end of each fiscal year;

vii. Requires the project owner to comply with the Fair Housing Act, Titles II and III of the Americans with Disabilities Act of 1990; section 3 of the Housing and Urban Development Act of 1968, the Equal Credit Opportunity Act, Executive Orders 11063 as amended by Executive Order 12259, Executive Order 12246, other applicable federal laws and regulations issued pursuant to these authorities, and applicable state and local fair housing and equal opportunity laws; and, if the mortgagor receives federal financial assistance, requires the project owner to comply with Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, and HUD's regulations issued pursuant to these laws;

viii. Requires the project owner to operate as a single asset mortgagor entity; and

ix. Requires the project owner to make project books and financial records available for HUD's Inspector General and FHA Commissioner and his/her duly authorized agents, and/or Government Accountability Office (GAO) for review with appropriate notification.

b. *Physical Inspections.* Performing annual physical inspections of the project and providing a copy of the inspection reports upon request to the local Hub/Program Center. If the project receives a less than satisfactory rating and/or if the project is not in safe and sanitary condition, the QPE must provide a summary to HUD of actions required, with target dates to correct unresolved findings.

c. Analyzing project annual audited financial statements and providing HUD with a summary of any unresolved or negative findings, including a summary of corrective actions planned, with target dates. Providing HUD with an annual audited financial statement of the QPE in accordance with the requirements of 24 CFR § 85.26 Non-Federal audit and OMB Circular A–133 "Audits of States, Local Governments, and Non-Profit Organizations".

2. *Record Retention:* Records pertaining to the mortgage loan origination and servicing of the loan must be maintained for as long as the mortgage insurance remains in force. Records pertaining to a mortgage default and claim must be retained from the date of default through final settlement of the claim and for a period of no less than 3 years after final settlement.

XII. Mortgage Insurance Premiums and Financial Systems

QPEs are responsible for processing Risk Sharing project applications and approving them for HUD mortgage insurance. The Hub/PCs record project information in the Development Application Processing (DAP) system and provide HUD Headquarters with data needed to establish the insured case in the FHA Subsidiary Ledger (FHASL) System. The Multifamily Insurance Operations Branch (MFIOB) is responsible for tracking the portfolio of HUD insured projects and managing the collection of Mortgage Insurance Premiums (MIP). The MFIOB will bill QPEs for all premiums and applicable late fees and interest charges due subsequent to the MIP payment made at Initial Endorsement.

1. *Establishing the Insurance in Force Record.*

a. *Projects with Insured Advances*

i. *General*—Projects endorsed with insured advances provide for HUD mortgage insurance coverage of funds disbursed during the substantial rehabilitation period.

ii. *Initial Endorsement*—The Initial Endorsement of the mortgage note is performed by the Hub/PC and normally occurs prior to the start of substantial rehabilitation. Projects become part of the HUD- insured portfolio at this time.

(1) *QPE Responsibilities Prior to Initial Endorsement Include:*

(a) Collecting the Initial MIP—Prior to submitting projects to the Hub/PC for Initial Endorsement, the QPE will collect an MIP payment equal to the prescribed percentage of the insured amount as required by the Percentage Share of Risk. The QPE will instruct the mortgagor to make the MIP check payable to the U.S. Department of Housing and Urban Development;

(b) Preparing the Closing Docket—The QPE will prepare a closing docket in accordance with instructions contained in this notice. The closing docket will include the mortgage note, amortization schedule, and risk-sharing agreement; and

(c) Submitting the Endorsement Request to the Hub/PC—The QPE will mail the MIP along with the Closing Docket to the Hub/PC for endorsement of the mortgage note. These must be mailed within 15 days of closing.

(2) *Multifamily Hub/Program Center Initial Endorsement Responsibilities Include:*

(a) Preparing the Official Receipt—The Hub/PC will deposit the MIP on the day received and prepare and distribute the Official Receipt, form HUD–27038 documenting the MIP payment and form HUD–3416 "Schedule of Multifamily Project Collections" documenting the deposit of the MIP payment;

(b) Updating the DAP System—The Hub/PC will update the project data in the DAP system within 2 days of Initial Endorsement and prepare the form HUD–290 "Multifamily Closing Memorandum" to create the FHASL insurance in force file;

(c) Reporting to the Multifamily Insurance Operations Branch (MFIOB)—Within 5 days of receipt of the Closing Docket from the QPE, the Hub/PC must forward documents required to establish the insurance record to the MFIOB. One copy each of the form HUD–290 "Multifamily Closing Memorandum", amortization schedule, mortgage note, copy of the Risk-Sharing Agreement, form HUD–27038 "Official Receipt" and form HUD–3416 "Schedule of Multifamily Project Collections"; and

(d) Copies of these documents will also be incorporated in the official Docket that the Hub/PC must submit to Headquarters. The Hub/PC will submit the Official Receipt for the initial premium payment to the Office of Finance and Accounting (OFA).

(3) *MFIOB Action.* The MFIOB will process information received from the Hub/PC to establish the project in the FHASL System. The creation of a newly insured project in FHASL also requires certain information from the official receipt issued by the Hub/PC for receipt of the initial insurance premium. The FHASL record will be used to generate the annual MIP billings.

iii. *Final Endorsement*—Projects with insured advances will be finally endorsed by the Hub/PC after completion of substantial rehabilitation. The terms of the mortgage note may be modified at this time as a result of substantial rehabilitation and cost certification.

(1) *QPE Responsibilities Prior to Final Endorsement:*

(a) Preparing the Closing Docket—The QPE will prepare closing docket and submit project information in

accordance with instructions contained in this notice. The docket will include the mortgage note, amortization schedule, Risk-Sharing Agreement and any modifications to the original note, copy of the QPE-approved schedule of insured advances equal to the risk-sharing mortgage; and

(b) Submitting the Endorsement Request to the Local HUD Office—The QPE will mail the Closing Docket to the Hub/PC for Final Endorsement of the note.

(2) *Multifamily Hub/Program Center Final Endorsement Responsibilities:*

(a) Preparing the Closing Memorandum—The Hub/PC will update the DAP System and prepare the form HUD–290 within 2 days of endorsement. The form HUD–290 will reflect any changes to the mortgage terms that existed at the time of the Initial Endorsement; and

(b) Reporting to MFIOB—Within 5 days of receipt of the Closing Docket from the QPE, the Hub/PC must forward one copy each of the Final Endorsement HUD–290, Mortgage Note, Amortization Schedule, Schedule of Insured Advances equal to the final mortgage, Risk-Sharing Agreement and Modification Agreement, if applicable

(3) MFIOB Actions. The MFIOB will process closing docket information received from the Hub/PC to process the final endorsement in FHASL.

b. *Projects Insured Upon Completion*

i. *General*—Projects endorsed with insurance upon completion are processed for insurance after completion of substantial rehabilitation, or purchase, or refinance with or without repairs for existing projects. Initial and Final endorsement of these cases occurs simultaneously.

ii. *Initial/Final Endorsement*—Insured upon completion projects become HUD-insured at the initial/final endorsement.

iii. *QPE Responsibilities Prior to Initial/Final Endorsement:*

(1) Collecting the Initial MIP—Prior to submitting projects to the Hub/PC for Initial/Final endorsement, the QPE will collect an MIP payment equal to the "Prescribed Percentage for Calculating QPE's Annual MIP" times the loan amount. The QPE will instruct the mortgagor to make the MIP check payable to the U.S. Department of Housing and Urban Development;

(2) Preparing the Closing Docket—The QPE will prepare a Closing Docket in accordance with instructions contained in this notice. The docket will include the mortgage note, amortization schedule and Risk-Sharing Agreement; and

(3) Submitting the Endorsement Request to the Hub/PC—Within 15 days of closing, the QPE will submit the MIP along with the Closing Docket to the Hub/PC for endorsement of the mortgage note.

iv. *Multifamily Hub/Program Center Initial/Final Endorsement Responsibilities:*

(1) *Preparing the Official Receipt*—The Hub/PC will deposit the MIP on the day received and prepare and distribute the Official Receipt and Schedule of Collections documenting the MIP payment in accordance with Handbook 4110.1, REV–1;

(2) *Preparing the Closing Memorandum*—The Hub/PC will update project data in the DAP System within 2 days of the Initial or Final Endorsement and prepare the form HUD–290;

(3) *Reporting to MFIOB*—Within 5 days of receipt of the Closing Docket from the QPE, the Hub/PC must forward documents required to establish the insurance record to the MFIOB;

(4) *Copies of Documents*—Submitting one copy each of the form HUD–290, mortgage note, amortization schedule, the Risk-Sharing Agreement, Official Receipt, and Schedule of Collections to MFIOB; and

(5) *Official Docket*—Copies of these documents will also be incorporated in the official Docket that the Hub/PC must submit to Headquarters. The Hub/PC will submit the Official Receipt for the initial premium payment to the Office of Finance and Accounting (OFA) in accordance with instructions contained in Handbook 4110.1 Rev.

v. *Processing Closing Docket Information.* The MFIOB will process the closing docket information received from the Multifamily Hub/Program Center to establish the project in the FHASL System.

2. *Annual Premium Billing and Record Change:* Official records on HUD-insured multifamily projects are maintained by the MFIOB in the FHASL System at HUD Headquarters. This organization also is responsible for billing and collecting annual mortgage insurance premiums. MIP is billed and collected in advance and under certain circumstances, in connection with termination of FHA mortgage insurance or prepayments, refunds of unearned premiums will be made to the QPE for the mortgagor's account. All modifications to the mortgage that take place after final endorsement, as well as mortgage servicer changes, will be recorded in the FHASL system.

a. *Annual Premiums:* QPEs will be billed for all annual premiums due after the initial premium. All premium payments will be made through pay.gov in accordance with Mortgagee Letter 2012–16.

i. *Interim Premiums Pre-Amortization*—Premiums calculated on the total insured amount will be due on the first day of the month of each anniversary of the initial endorsement that occurs prior to the date of first payment to principal. These interim premiums are only relevant for projects with insured advances where the first payment to principal date is more than 12 months after initial endorsement. The due date for interim premiums will be the first day of the month in which the anniversary of the initial endorsement occurs.

ii. *Annual Premiums Post-Amortization*—The annual MIP payments, beginning with the first payment to principal, will be calculated in accordance with the amortization schedule prepared by the QPE and supplied to HUD and the MIP Percentage taken from the Closing Memorandum prepared by the Hub/PC. The first regular annual premium will be due on the first day of the month in which the first payment to principal occurs. This first billing (as well as subsequent annual premiums) will be calculated by multiplying the "Prescribed Percentage for Calculating QPE's Annual MIP" by the average outstanding principal balance during the upcoming 12 months following first payment. This payment will reflect an adjustment to deduct any portion of the last interim premium paid that covers a period after first payment.

Example:
Mortgage Amount = $2,000,000
MIP Percentage = .45
% Commitment Type = Insured Advances
Initial Endorsement—1/2/2012
Initial premium for period 1/1/2012–12/31/2012 ($2,000,000 × 0.45%) = $9,000
Date of First Payment to Principal 7/1/2012
Post amortization MIP due 7/1/2012 covering period 7/1/2012–6/30/2013
MIP due equals average outstanding balance from amortization schedule ($1,950,000) × 0.45% = $8,775
Less amount of initial MIP for 7/1/2012–12/31/2012 = −$4,500
Total Due 7/1/2012 = $4,225

Thereafter, until maturity or termination in this notice, MIP payments will be due on the first day of the month of each anniversary of the first payment to principal. The billings will be mailed to the servicing mortgagee of record approximately 45 days before the due date.

b. *Billing Statement and Reconciliation.* A sample billing statement is shown as in HUD Handbook 4590.1; Appendix 16. This form is to be returned along with the payment.

3. *Method of Payment:* Annual mortgage insurance premium payments must be made through pay.gov.

4. *Late Fees and Interest Changes:* All payments must be received no later than 15 days after the due date. Payments received after this will incur additional charges.

a. *Late Fees*—All premiums received by HUD more than 15 days after the due date will be assessed a 4 percent late charge.

b. *Daily Interest Charges*—Premiums that remain unpaid more than 30 days after the due date will accrue daily interest from the due date until paid at the rate prescribed by the Treasury Fiscal Requirements Manual.

HUD will bill for interest and late fees each month until the charges are paid.

5. *Post Final Endorsement Modifications*

a. The Applicant will provide the Hub/PC with a copy of the Modification Agreement along with a copy of the revised Amortization Schedule;

b. Updating the DAP System—The Hub/PC will update the DAP System within 2 days of receipt of notification of the modification agreement;

c. The Hub/PC will forward copies of the modification agreement and amortization schedule, and revised form HUD–290 to MFIOB;

d. The MFIOB will update FHASL to reflect the modified mortgage terms. Future premium billings will be calculated on the new terms; and

e. The Applicant will be responsible for notifying HUD of any change in the project Servicing Mortgagee. Up-to-date mortgagee information is needed in order for HUD to properly direct premium billings and other project related correspondence. Mortgage changes will be accomplished by completing and forwarding form HUD-92080, "Mortgage Record Change" to: U.S. Department of Housing and Urban Development, Multifamily Insurance Operations Branch, PO Box 44124, Washington, DC 20026–4124.

6. *Termination of Insurance:* The Applicant must remit annual Mortgage Insurance Premiums until the mortgage reaches maturity or is terminated through one of the following actions:

a. The mortgage is paid in full;

b. A deed to the HFA is filed for record;

c. An application for initial claim payment is received by the Commissioner; or

d. The contract of insurance is otherwise terminated.

7. *Cessation of Obligation to Pay MIP.* The obligation to pay MIP will cease upon receipt by HUD of either of the following:

a. A completed "Insurance Termination Request for Multifamily Mortgage" form HUD–9807. Requests for voluntary termination must be accompanied by the original credit instrument. When the termination is approved, the insurance endorsement will be cancelled and the credit instrument returned to the QPE. The instructions on form HUD–9807 are to be followed;

b. The obligation to pay MIP will cease in the event a deed is filed for recordation, or an application for initial claim payment is received by the Commissioner; or

c. If the Contract of Insurance is terminated by payment in full or is terminated by the QPE on a form prescribed by the Commissioner, after the date of first payment to principal, the Commissioner shall refund any unearned MIP paid for the period after the effective date of the termination of insurance. The unearned portion of MIP will be refunded to the QPE for credit to the mortgagor's account.

XIII. Evaluation of the Initiative

One of the principal purposes of the initiative is to determine whether, by providing Federal credit enhancement for refinancing and rehabilitation of small multifamily housing, the initiative is successful in increasing the flow of credit to small multifamily properties. HUD will, therefore, undertake an evaluation of the initiative to determine the success of the initiative.

XIV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0500. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington DC 20410–0500. Due to security measures at this HUD Headquarters Building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at 202–708–3055 (not a toll free number).

XV. Solicitation of Comment on Notice and President's 2014 Budget

HUD welcomes comment on all aspects of the proposed initiative. In addition, comments are solicited on the President's Fiscal Year 2014 Budget Request legislative proposal to expand the Risk Share Program to more broadly support Small Building Finance under Section 542 (b) by allowing Risk Share lenders to apply to become Ginnie Mae issuers. Please note, however, that the proposed changes in the 2014 Budget Request proposal are not presumed to have been enacted, nor are they necessary for purposes of the implementation of this Small Buildings Risk Sharing proposal.

Dated: October 29, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–26328 Filed 11–1–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2013–N146; BAC–4311–K9]

Sunkhaze Meadows National Wildlife Refuge and Carlton Pond Waterfowl Production Area, Penobscot, Kennebec, and Waldo Counties, ME; Final Comprehensive Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for Sunkhaze Meadows National Wildlife Refuge (NWR) and Carlton Pond Waterfowl Production Area (WPA), located in Penobscot, Kennebec, and Waldo Counties, Maine. The CCP describes how we will manage the refuge and WPA for the next 15 years.

ADDRESSES: You may view or obtain copies of the CCP by any of the

following methods. You may request hard copies or a CD–ROM of the documents.

Agency Web site: Download a copy of the document at *http://www.fws.gov/northeast/planning/Sunkhaze%20Meadows/ccphome.html.*

Email: Send requests to *northeastplanning@fws.gov.* Please include "Sunkhaze Meadows NWR and Carlton Pond WPA Final CCP" in the subject line of the message.

U.S. Mail: Lia McLaughlin, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

Fax: Attn: Lia McLaughlin, 413–253–8468.

In-Person Drop-off, Viewing, or Pickup: Call 207–594–0600 to make an appointment (necessary for view/pickup only) during regular business hours at Maine Coastal Islands NWR, 9 Water Street, Rockland, ME 04841. For more information on locations for viewing or obtaining documents, see "Public Availability of Documents" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Beth Goettel, Refuge Manager, 207–594–0600 (phone), or Lia McLaughlin, Planning Team Leader, 413–253–8575 (phone); *northeastplanning@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Sunkhaze Meadows NWR and Carlton Pond WPA. We started this process through a notice in the **Federal Register** (76 FR 14984; March 18, 2011). We released the draft CCP and EA to the public on April 23, 2013, announcing and requesting comments in a notice of availability in the **Federal Register** (78 FR 23949).

Currently, Sunkhaze Meadows NWR is comprised of three units: the Sunkhaze Meadows Unit, the Benton Unit, and the Sandy Stream Unit. The Sunkhaze Meadows Unit is the largest of the three, at 11,485 acres, located in the town of Milford, Penobscot County. The Benton Unit is a 334-acre former dairy farm in the town of Benton in Kennebec County. The Sandy Stream Unit is a 58-acre parcel in the town of Unity in Waldo County. Sunkhaze Meadows NWR was established in 1988 to preserve the Sunkhaze Meadows peat bog (now the Sunkhaze Meadows Unit) and to ensure public access to this unique environment. Sunkhaze Meadows NWR includes more than 3,450 acres of freshwater wetland-peatland that provides breeding and migrating habitat for waterfowl and other wetland species.

Carlton Pond WPA is 1,068 acres, including about 784 acres of managed emergent marsh and open water habitats. It is located in the town of Troy in Waldo County. The area was acquired by the Service in 1966 to protect the waterfowl and other wildlife associated with this area in central Maine. Carlton Pond WPA has historically provided good nesting habitat for waterfowl and other birds. It is also one of the few areas in Maine that provides nesting habitat for the black tern, which is State-listed as endangered. Many other bird species that use Carlton Pond WPA have been listed by the Partners in Flight organization as species that are declining.

Sunkhaze NWR and Carlton Pond WPA offer an abundance of wildlife observation and photography opportunities and environmental education and interpretation programs. Visitors to the refuge and WPA also participate in outdoor recreation activities such as hiking, hunting, and fishing.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP Alternatives, Including the Selected Alternative

During the public scoping process, we, the Maine Department of Inland Fisheries and Wildlife, the Penobscot Indian Nation, the town of Milford, other partners, and the public raised several issues. To address these issues, we developed and evaluated three alternatives in the draft CCP and EA. Here we present a brief summary of each of the alternatives; a full description of each alternative is in the draft CCP and EA. All alternatives include measures to control invasive species, monitor and abate diseases affecting wildlife and plant health, and protect cultural resources. Because portions of Sunkhaze Stream and its tributaries have been found eligible for listing under the Wild and Scenic Rivers Act, all of the alternatives also include completing a Wild and Scenic River Study. In addition, there are several actions that are common to both alternatives B and C. These include establishing climate change monitoring, expanding partnerships, and expanding cultural resource protection and interpretation.

Alternative A (Current Management)

Alternative A (current management) satisfies the National Environmental Policy Act (40 CFR 1506.6(b)) requirement of a "No Action" alternative, which we define as "continuing current management." It describes our existing management priorities and activities, and serves as a baseline for comparing and contrasting alternatives B and C. It would maintain our present levels of approved refuge and WPA staffing and the biological and visitor programs now in place. We would continue to focus on preserving the freshwater wetland-peatland complex on the Sunkhaze Meadows Unit, which provides habitat for breeding waterfowl. We would also continue to maintain the open water and emergent marsh habitat at Carlton Pond WPA, the grassland habitat at the Benton Unit, and the shrubland and riparian habitat at the Sandy Stream Unit. Public use activities, such as wildlife observation, photography, hiking, snowmobiling, and hunting, would continue to be allowed. We would continue to rely on volunteers to lead environmental education and interpretation programs.

Alternative B (Service-Preferred Alternative)

This alternative combines the actions we believe would most effectively achieve refuge and WPA purposes, vision, and goals; the NWRS mission; and respond to issues raised during public scoping. Under alternative B, we would focus on the preservation of the wetland-peatland complex and mature forest within the Sunkhaze Meadow Unit. In contrast to alternative A, this alternative includes more inventory and monitoring, as well as research and active management (if warranted) to

benefit rare habitats on the refuge. We would continue shrubland habitat management at the Sandy Stream Unit and would expand grassland management at the Benton Unit if feasible. Management of Carlton Pond WPA would remain unchanged, focusing on providing habitat for breeding black terns and waterfowl. We would work to enhance public use activities, such as providing additional parking areas and improving maintenance of some existing public trails. Our environmental education and interpretation program would be improved by providing Service-led environmental education programs, in addition to programming conducted by partners and the Friends of Sunkhaze Meadows.

Alternative C (Increased Shrubland Young Forest Habitat and Increased Public Use)

Under alternative C, we would continue to focus on the preservation of the peatland-wetland complex at the Sunkhaze Meadows Unit. However, in contrast to alternatives A and B, this alternative includes shifting management of some mature forest and grasslands to shrubland and young forest habitat within the Sunkhaze Meadow Unit and Benton Unit to benefit species that rely on these habitats. Management of the Sandy Stream Unit and Carlton Pond WPA would be similar to alternative B. Under alternative C, we would also work closely with partners to increase and enhance authorized public uses, such as expanding the trails at the Benton Unit and providing more environmental education and interpretation programming.

Comments

We solicited comments on the draft CCP and EA for Sunkhaze Meadows NWR and Carlton Pond WPA from April 23 to May 31, 2013 (78 FR 23949). During the comment period, we received 17 sets of responses including comments from public meetings, faxes, email, and letters. We evaluated all of the substantive comments we received and include a summary of those comments, and our responses to them, as appendix G in the final CCP.

Selected Alternative

We have selected alternative B for implementation, with the following modifications:

- Under objective 4.1, we agreed to maintain the Spur Trail off of the Johnson Brook Trail in the Sunkhaze Meadows Unit.
- We clarified that we will provide wood duck nesting boxes from existing supplies upon request, as long as volunteers continue to clean, maintain, and monitor use of the boxes. After the existing supply of boxes is depleted, we will phase out artificial wood duck nesting boxes as they deteriorate, or will remove the boxes if volunteers are no longer able to maintain them (see strategies under objective 2.1).
- We added a strategy under objective 6.1 that we will explore the feasibility of, and interest in, including the Benton Unit in a regional trail system upon request.
- We modified a strategy under objective 7.2 to include specific reference to working with universities, as well as other partners, to identify research and monitoring projects and needs at each refuge unit to foster partnerships.
- We modified language in the boating compatibility determination for Carlton Pond WPA to include monitoring for potential conflicts with other authorized public uses on the WPA (e.g., hunting), and will modify this and other compatibility determinations if warranted.

We have selected alternative B to implement for Sunkhaze Meadows NWR and Carlton Pond WPA, with these minor changes, for several reasons. Alternative B incorporates a combination of actions that, in our professional judgment, work best towards achieving the refuge's and WPA's purposes, vision, and goals; Service policies; and the goals of other State and regional conservation plans. We also believe that alternative B most effectively addresses key issues raised during the planning process. The basis of our decision is detailed in the FONSI (appendix H in the final CCP).

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at the following location:

- Public Libraries: The Old Town Public Library, located at 46 Middle Street, Old Town, ME 04468, and the Dorothy Webb Quimby Library, located at Unity College, 90 Quaker Hill Road, Unity, ME 04988 during regular library hours.

Dated: September 27, 2013.

Wendi Weber,

Regional Director, Northeast Region.

[FR Doc. 2013–26365 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N209]; [FF08E00000–FXES11120800000F2–123–F2]

Habitat Conservation Plan for South Sacramento County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent, request for comments, and notice of public scoping meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to gather additional information and to prepare, in coordination with the County of Sacramento, California, a joint environmental impact statement and environmental impact report (EIS/EIR) under the National Environmental Policy Act and the California Environmental Quality Act for the proposed South Sacramento Habitat Conservation Plan (HCP). The draft EIS/EIR will evaluate the impacts of several alternatives related to the proposed issuance of Endangered Species Act permits to eight permit applicants in south Sacramento County, California. The permit applicants intend to apply for either a 30-year or a 50-year permit from the Service that would authorize the incidental take resulting from implementation or approval of covered activities, including various kinds of development projects. We also announce public scoping meetings and the opening of a public comment period. We request data, comments, new information, or suggestions from other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

DATES: To ensure consideration, please send your written comments by December 19, 2013. We will hold two public scoping meetings at different locations in the plan area (see *Public Meetings* under **SUPPLEMENTARY INFORMATION** for dates, times, and locations). In addition to this notice, we will also announce the public scoping meetings in local news media and on the Internet at *http://www.fws.gov/sacramento.*

ADDRESSES: Please address written comments to Nina Bicknese, Senior Fish and Wildlife Biologist, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, Chief, Conservation Planning Division, or Eric Tattersall,

Deputy Assistant Field Supervisor, at the address shown above (see **ADDRESSES**) or at (916) 414–6600 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: We intend to gather additional information and to prepare, in coordination with the County of Sacramento, California, a joint environmental impact statement and environmental impact report (EIS/EIR) under the National Environmental Policy Act and the California Environmental Quality Act for the proposed South Sacramento Habitat Conservation Plan (HCP). This notice revises information on the proposed HCP previously published on June 10, 2008 (73 FR 32729). The draft EIS/EIR will evaluate the impacts of several alternatives related to the proposed issuance of Endangered Species Act permits to eight permit applicants (the County of Sacramento, City of Elk Grove, City of Rancho Cordova, City of Galt, the Capital Southeast Connector Joint Powers Authority, the Sacramento Regional County Sanitation District, the Sacramento County Water Agency, and a South Sacramento Habitat Conservation Plan Joint Powers Authority) for activities they would conduct or approve within a proposed 374,000-acre plan area located in south Sacramento County, California.

The permit applicants intend to apply for either a 30-year or a 50-year permit from the Service that would authorize the incidental take of 22 animal species. Incidental take would result from implementation or approval of covered activities, including private development projects, transportation facilities, surface and groundwater delivery facilities, water treatment facilities, solid waste sanitation facilities, public facilities, recreation facilities, energy utility facilities, aggregate mining activities, and future preserve land-management activities. We also announce public scoping meetings and the opening of a public comment period. We request data, comments, new information, or suggestions from other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

We publish this notice in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Act), and in compliance with the California Environmental Quality Act (CEQA). We intend to prepare a joint draft EIS/EIR to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the permit applicants, as well as impacts of the implementation of the supporting proposed habitat conservation plan (HCP).

The permit applicants propose to prepare the South Sacramento Habitat Conservation Plan as part of their application for an ITP under section 10(a)(1)(B) of the Act. The proposed HCP will include measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of potential proposed taking of federally listed species to be covered by the ITP, and the habitats upon which they depend. The covered activities and projects proposed by the HCP would disturb a maximum total of 42,243 acres within the plan area and would include the construction of residential and commercial development projects, improvements to existing transportation facilities, new transportation facilities (including the proposed Capital Southeast Connector highway), new surface water and groundwater delivery facilities, water treatment facilities, solid waste sanitation facilities, public facilities (including fire stations, police stations, hospitals, schools, community centers, cemeteries, and administration centers), indoor and outdoor recreation facilities, energy utility facilities, aggregate mining activities, and future habitat-management activities.

The plan area, the area in which all impacts would be evaluated and all conservation actions will be implemented, is approximately 374,000 acres within unincorporated south Sacramento County and within the cities of Rancho Cordova, Elk Grove, and Galt. The approximate geographical boundary of the plan area would be the area bound by U.S. Highway 50 in the north, the San Joaquin County line to the south, the Sacramento River levee and County Road J11 to the west, and the Sacramento County line with El Dorado and Amador counties to the east. The 374,000-acre plan area would include a 123,000-acre urban development area (UDA) where most ground-disturbing development, infrastructure activities, and projects would occur. The UDA corresponds to land within the County's urban services boundary (USB); and to land within the city limits of Rancho Cordova, Elk Grove, and Galt; land within Elk Grove's proposed sphere of influence; and land within Galt's adopted sphere of influence.

Almost all ground disturbance and incidental take of federally listed endangered and threatened species would occur on approximately 40,000 acres within the UDA. A limited amount of infrastructure development, such as planned road widening projects and recycled water conveyance pipelines, would disturb or remove approximately 2,443 acres of native and naturalized landcovers outside the UDA. In addition, the HCP would include an aquatic resource program that would avoid, minimize, or fully mitigate potential covered activity impacts to existing aquatic resources within the plan area, and would facilitate the U.S. Army Corps of Engineers' development of a process for permit applicant compliance with the Clean Water Act (33 U.S.C. 1251 *et seq.*). The permit applicants also propose to permanently preserve or restore approximately 8,950 acres of the UDA and preserve approximately 40,980 acres outside the UDA, following criteria that would expand the size of existing preserves and create linkages and corridors between existing preserves. In total, the HCP proposes to permanently preserve or restore 49,930 acres of native and naturalized landcovers within the plan area boundary. When combined with the existing preserve lands, the HCP would result in a large and interconnected 113,623-acre habitat reserve system within the 374,000-acre plan area.

Background Information

Section 9 of the Act and Federal regulations prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. The term "harass" is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). The term "harm" is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally

listed species, provided that the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species can be found at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the HCP will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Thus, the purpose of issuing ITPs is to allow the permit applicants, under their respective authorities, to authorize new development and infrastructure, while conserving covered species and their habitats. Implementation of a regional habitat conservation plan, rather than a species-by-species or project-by-project approach, would enhance benefits of conservation measures for covered species and would eliminate expensive and time-consuming efforts associated with processing individual ITPs for each project within the applicants' proposed plan area. The Service expects that the permit applicants will request ITP coverage for a period of 30 to 50 years.

Alternatives in the Draft Environmental Impact Statement

The proposed action alternative presented in the draft EIS/EIR will be compared to a no-action alternative. The no-action alternative represents estimated future conditions to which the proposed action's estimated conditions can be compared. Other action alternatives considered, including their potential impacts, will also be addressed in the draft EIS/ EIR and compared to a no-action condition.

No-Action Alternative

Because the proposed covered activities would provide needed regional infrastructure and economic development, these types of activities would occur within the plan area regardless of whether a 10(a)(1)(B) ITP is requested or issued. Although future activities would be similar to the covered activities proposed by the HCP, not all activities would necessitate an incidental take permit or consultation with the Service. Under the no action alternative, the permit applicants could implement a covered activity that fully avoids impacts to protected species and their habitats. Where potential impacts to federally protected species could not be avoided, the permit applicants could minimize and mitigate their impacts through individual formal or informal consultations with the Service. When applicable, the permit applicants would potentially seek individual section 10(a)(1)(B) ITPs on a project-by-project basis. Under the no-action alternative, the permit applicants may also satisfy the requirement of the Clean Water Act's sections 404 and 401, the California Fish and Game code section 1600, and the Porter-Cologne Act, and other applicable law, on a project-by-project basis. Thus, under the no-action alternative, various permit applicants would likely need to develop and file numerous separate permit applications over the 30-to-50-year project period. This activity-by-activity approach could be more time consuming and less efficient and could result in smaller and fragmented mitigation areas.

Proposed Action Alternative

The proposed action alternative is the issuance of an ITP for the take of covered species, caused by covered activities within the proposed plan area, for a period of 30 to 50 years. The proposed action HCP, developed and implemented by the permit applicants, must meet the requirements of section 10(a)(2)(A) of the Act by providing measures to minimize and mitigate the effects of the potential incidental take of covered species to the maximum extent practicable. The proposed HCP allows for a comprehensive mitigation approach for unavoidable impacts, and reduces permit processing times and efforts for the permit applicants and the Service.

Covered activities under the proposed HCP are otherwise lawful activities that applicants carry out consistent with all HCP requirements, including, but not limited to:

1. Construction of private development projects within the UDA (e.g., single- and multi-family homes, residential subdivisions, commercial or industrial projects, offices, and park infrastructure);
2. Installation and/or maintenance of utility infrastructure within the UDA (e.g., transmission or distribution lines and facilities related to electric, telecommunication, natural gas, and other types of energy utilities);
3. Installation and/or maintenance of surface and groundwater delivery facilities within the UDA;
4. Construction, maintenance, and/or improvement of water treatment facilities within the UDA;
5. Construction, maintenance, and/or improvement of solid waste sanitation facilities within the UDA;
6. Construction, use, and maintenance of public facilities (e.g., fire stations, police stations, schools, hospitals, community centers, cemeteries, and administration centers) within the UDA;
7. Construction, use, or maintenance of other public infrastructure, including indoor and outdoor recreation facilities, within the UDA;
8. Excavation, use, maintenance, and/or expansion of quarries, gravel mining, or other aggregate mining activities within the UDA;
9. Construction, maintenance, and/or improvement of new roads, bridges, and other transportation infrastructure facilities outside the UDA and within the UDA, including the proposed Southeast Connector highway;
10. Construction, maintenance, and/or improvement of recycled water conveyance pipelines and outside the UDA and within the UDA; and
11. Maintenance and land management activities on conservation lands outside the UDA and within the UDA.

We anticipate that the following 30 species of plants and animals, including seven federally listed threatened (T) or endangered (E) species, will be included as covered species in the permit applicants' proposed HCP:

Mid-valley fairy shrimp *(Branchinecta mesovallensis)*
Ricksecker's water scavenger beetle *(Hydrachara rickseckeri)*
Valley elderberry longhorn beetle *(Desmocerus californicus dimorphus)* (T)
Vernal pool fairy shrimp *(Branchinecta lynchi)* (E)
Vernal pool tadpole shrimp *(Lepidurus packardi)* (E)
California tiger salamander, central California distinct population segment (*Ambystama californiense)* (T)
Western spadefoot toad *(Scaphiopus hammondii)*
Giant garter snake *(Thamnaphis gigas)* (T)
Western pond turtle *(Actinemys marmarata marmarata* and *A. m. pallida)* (two subspecies)
American badger *(Taxidea taxus)*
Pallid bat *(Antrozous pallidus)*
Western red bat *(Lasiurus blossevillii)*
Yuma myotis bat *(Myatis yumanensis)*
White-tailed kite *(Elanus leucurus)*
Cooper's hawk *(Accipiter cooperii)*
Ferruginous hawk *(Butea regalis)*
Greater sandhill crane *(Grus canadensis tabida)*
Loggerhead shrike *(Lanius ludavicianus)*

Northern harrier *(Circus cyaneus)*
Swainson's hawk *(Buteo swainsoni)*
Tricolored blackbird *(Agelaius tricolor)*
Western burrowing owl *(Athene cunicularia hypugaea)*
Ahart's dwarf rush *(Juncus leiospermus var. ahartii)*
Boggs Lake hedge hyssop *(Gratiola heterosepala)*
Dwarf downingia *(Downingia pusilla)*
Legenere *(Legenere limosa)*
Pincushion navarretia (*Navarretia myersii*)
Sacramento Orcutt grass (*Orcuttia viscida*) (T)
Slender Orcutt grass (*Orcuttia tenuis*) (T)
Sanford's arrowhead (*Sagittaria sanfordii*)

The permit applicants seek incidental take authorization for all applicable covered species. Candidate and federally listed species that are not likely to be taken by the covered activities, and therefore not covered by the proposed ITP, may also be addressed in the proposed HCP, to explain why the permit applicants believe these species will not be taken.

Environmental Review and Next Steps

The Service will conduct an environmental review to analyze the proposed action, along with other alternatives evaluated, and the associated impacts of each. The draft EIS/EIR will be the basis for the impact evaluation for each covered species. The draft EIS/EIR is expected to provide biological descriptions of the affected species and habitats, as well as the effects of the proposed action and other alternatives on other resources, such as soils, geology, water quality, agriculture, vegetation, wetlands, wildlife, cultural resources, transportation, air quality, land use, recreation, water use, local economy, and environmental justice.

Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on the draft EIS/EIR and on the permit applications, which will include the proposed HCP. We anticipate that the draft EIS/EIR and proposed HCP will be completed and available to the public in March or April 2014.

Public Comments

We request data, comments, new information, or suggestions from other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing an EIS/EIR and in the development of a South Sacramento Habitat Conservation Plan and incidental take permit. We particularly seek comments on the following:

1. Biological information concerning the proposed covered species;
2. Relevant data concerning the proposed covered species;
3. Additional information concerning the range, distribution, population size, and population trends of the proposed covered species;
4. Current or planned activities in the subject area and their possible impacts on the proposed covered species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns that are required to be considered in project planning by the National Historic Preservation Act (16 U.S.C. 470 *et seq.*); and
6. Identification of any other environmental issues that should be considered with regard to the proposed development and the permit action.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

Comments and materials we receive on this notice will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, 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.

Public Scoping Meetings

The purpose of scoping meetings is to provide the public with a general understanding on the background of the proposed HCP and activities it would cover, alternative proposals under consideration for the draft EIS/EIR, the Service's role, and steps to be taken to develop the draft EIS/EIR for the proposed HCP. Two public scoping meetings will be held:

1. Wednesday, November 20, from 6:30 p.m. to 8:30 p.m., at the Anthony Pescetti Community Room, Galt Police Facility, 455 Industrial Drive, Galt, CA 95632.

2. Thursday November 21, from 2:00 p.m. to 4:00 p.m., at the Governor's Office of Planning and Research, Large Conference Room 202, 2nd Floor, 1400 Tenth Street, Sacramento, California, 95814.

The meeting will include a 1-hour open house prior to the formal scoping meeting. The open house will provide an opportunity to learn about the proposed action, permit area, and species covered. The open house will be followed by a presentation of the proposed action, a summary of the NEPA process, and comments from the public. The primary purpose of these meetings and public comment period is to solicit suggestions and information on the scope of issues and scope of alternatives for the Service to consider when drafting the EIS/EIR. Written comments will be accepted at the meetings. Comments can also be submitted by methods listed in the **ADDRESSES** section. Once the draft EIS/EIR and proposed HCP are complete and made available for review, there will be additional opportunity for public comment on the content of these documents during a 90-day draft EIS/EIR public comment period.

Meeting Location Accommodations

Please note that the meeting locations are accessible to wheelchair users. If you require additional accommodations, please notify us at least 1 week in advance of the meeting (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and by NEPA regulations (40 CFR 1501.7, 1506.6, and 1508.22).

Dated: October 29, 2013.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2013–26366 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2013–N156; FF07RKNA00 FXRS12610700000 134]

Notice of Hunting and Trapping Restrictions Within the Skilak Wildlife Recreation Area (Skilak Loop Management Area) of Kenai National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Department of Interior.

ACTION: Notice of permanent closure and restrictions.

SUMMARY: This notice advises the public that the Fish and Wildlife Service—

Alaska Region is permanently closing and/or restricting hunting and trapping within the Skilak Wildlife Recreation Area (Skilak Loop Management Area), a portion of the Kenai National Wildlife Refuge. This action is consistent with refuge management plans and objectives and historic State of Alaska hunting and trapping regulations (regulations in effect from 1987 to 2012, and as amended in 2007 and 2012).

DATES: The effective date of the closures and restrictions in this notice is November 10, 2013.

FOR FURTHER INFORMATION CONTACT: Andy Loranger, Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, AK 99669; Telephone (907) 262–7021; Fax (907) 262–3359; email *andy_loranger@fws.gov*.

SUPPLEMENTARY INFORMATION:

Areas Affected and Closure/Restrictions

This notice applies to the Skilak Wildlife Recreation Area (Skilak Loop Management Area), a 44,000-acre area of the Kenai National Wildlife Refuge (Refuge) which is bound by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop Road (Mile 58), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Campground, then northerly along the Lower Skilak campground road and the Skilak Loop Road to its westernmost junction with the Sterling Highway (Mile 75.1), then easterly along the Sterling Highway to the point of origin. A map of the area is available at Refuge Headquarters and is posted at informational kiosks within the area.

The Skilak Wildlife Recreation Area (Skilak Loop Management Area) is closed to hunting and trapping by this notice, except that moose may be taken by permit (issued by the Alaska Department of Fish and Game) only, and small game may be taken from October 1 through March 1 by falconry and bow and arrow only, and by standard .22 rimfire or shotgun in that portion of the area west of a line from the access road from the Sterling Highway to Kelly Lake, the Seven Lakes Trail, and the access road from Engineer Lake to Skilak Lake Road, and north of the Skilak Lake Road, during each weekend from November 1 to December 31, including the Friday following Thanksgiving, by youth hunters 16 years old or younger accompanied by a licensed hunter 18 years old or older who has successfully completed a certified hunter education course, or was born on or before January 1, 1986, if the youth has not. State of Alaska bag limit regulations apply.

Permit moose hunts are administered by the Alaska Department of Fish and Game. Through mutual agreement with the Fish and Wildlife Service, a permitted antlerless moose hunt is allowed when the results of a fall survey (conducted cooperatively between the Alaska Department of Fish and Game and the Service every other year at a minimum if snow cover is adequate) tallies at least 130 animals. A permitted spike-fork bull hunt is allowed during the following season when aerial composition surveys conducted each year before December 1 indicate the bull:cow ratio is greater than 40:100.

Reasons for Closure and Restrictions

The 1.98 million-acre Kenai National Wildlife Refuge (Refuge) was first established as the Kenai National Moose Range by Executive Order 8979 on December 16, 1941. The Range was reestablished as the Kenai National Wildlife Refuge in 1980 when the Alaska National Interest Lands Conservation Act (ANILCA), Public Law. 96–487, 94 Stat. 2371 (1980) was enacted. The Executive Order purpose was primarily to " . . . protect the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska . . ." ANILCA states the purposes of the Refuge include: "(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to moose, bear, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to ensure to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity with the refuge; (iv) to provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and (v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife oriented recreation." ANILCA also designated approximately 1.3 million acres of the Refuge as Wilderness, to which the purposes and provisions of the Wilderness Act of 1964, Public Law 88–577, apply, except as modified by ANILCA. These purposes are to secure an enduring resource of wilderness, to protect and preserve the wilderness character of areas within the National Wilderness Preservation System, and to administer this wilderness system for the use and enjoyment of the American people in a way that will leave them unimpaired for future use and enjoyment as wilderness.

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd–668ee) recognizes six wildlife-dependent recreational uses as priority public uses of the Refuge System: hunting, fishing, wildlife observation and photography, environmental education and interpretation. These uses are legitimate and appropriate public uses where compatible with the Refuge System mission and the individual refuge purposes, and are to receive enhanced consideration over other uses in planning and management. All six of the priority public uses have been determined compatible and are authorized on the Refuge.

Section 304(g) of ANILCA directs the Secretary of Interior "to prepare, and from time to time, revise, a comprehensive conservation plan for each refuge (in Alaska) . . .". In 1985, the Service released a Record of Decision for the Refuge's first Comprehensive Conservation Plan. A directive of this plan was the establishment of a special area, the "Skilak Loop Special Management Area," that would be managed to increase opportunities for wildlife viewing, environmental education and interpretation. In December 1986, the Service, working closely with the Alaska Department of Fish and Game, identified specific goals for providing wildlife viewing and interpretation opportunities, and hunting and trapping opportunities were restricted so wildlife would become more abundant, less wary and more easily observed. Regulatory proposals that prohibited trapping, allowed taking a small game by archery only, and provided a moose hunt by special permit were developed and approved by the Alaska Board of Game in 1987. These State of Alaska regulations remained in effect until 2013, with modifications to allow for a youth-only firearm small game hunt in a portion of the area in 2007, and for the use of falconry to take small game in 2012.

In 1988, to further development of wildlife viewing, environmental education and interpretation opportunities, the Service prepared a step-down plan for public use facility management and development and renamed the area the Skilak Wildlife Recreation Area. Improvements to existing and development of new visitor

facilities occurred in ensuing years as funding permitted, and included new and improved roads, scenic turn-outs, campgrounds, hiking trails, interpretive panels and information kiosks, viewing platforms and boat launches.

In 2005, the Alaska Board of Game adopted a proposal to allow firearms hunting and small game and fur animals (as practical matter in the area, fur animals would include lynx, coyote, beaver, red fox and squirrel), but subsequently put the regulation on hold pending the Service's development of an updated management plan for the area. The Service initiated a public planning process with a series of public workshops in November 2005, and evaluated management alternatives through an Environmental Assessment which was made available for public review and comment in November 2006.

The Service released a Finding of No Significant Impact, and the Kenai National Wildlife Refuge Skilak Wildlife Recreation Area Revised Final Management Plan was released in June 2007. Under this plan, the overall management direction for the Skilak Wildlife Recreation Area as a special area to be managed primarily for enhanced opportunities for wildlife viewing, environmental education and interpretation while allowing other non-conflicting wildlife-dependent recreational activities, first established under the 1985 Comprehensive Conservation Plan, was reaffirmed. Additional future facility developments and improvements in support of providing such opportunities were identified, and longstanding restrictions on hunting (including hunting of fur animals) and a trapping closure were maintained, with the exception of adding the "youth-only" small game firearms hunt in the western portion of the area. State of Alaska regulations maintaining the closures and restrictions, and opening the "youth-only" small game firearm hunt, were adopted by the Alaska Board of Game in 2007.

In March 2013 the Alaska Board of Game adopted a proposal that would allow taking of lynx, coyote, and wolf within the area under State of Alaska hunting regulations. Under this regulation, which became effective July 1, 2013, taking of these species is allowed during open seasons from November 10 to March 31.

The Service has determined that the change to State of Alaska hunting regulations in the Skilak Wildlife Recreation Area (Skilak Loop Management Area) to allow taking of lynx, coyote and wolf directly conflicts with approved refuge management plans. As was first recognized in the original 1986 plans and specific management objectives for furbearers which led to the closure of hunting and trapping of these species in the Skilak Wildlife Recreation Area, furbearers such as wolves, coyote and lynx are not as easily observed as more abundant and/or less wary wildlife species. These species occur in relatively low densities, and annual removal of individual wolves, coyote or lynx from the Skilak Wildlife Recreation Area, and/or a change in their behavior, due to hunting would reduce opportunities for the public to view, photograph or otherwise experience these species. Similarly, Refuge environmental education and interpretation programs which benefit from the enhanced opportunities provided in the area to view or otherwise experience these species would be negatively impacted.

Providing for non-consumptive educational and recreational uses, as well as for hunting and fishing, are legally mandated Refuge purposes under ANILCA. Opportunities to view or photograph wildlife, or to learn through environmental education and interpretation programs, represent a highly valued experience for many Refuge visitors. The Skilak Wildlife Recreation Area, which comprises approximately two percent of land area of the Refuge, contributes to meeting those refuge purposes. Hunting and trapping of lynx, coyote and wolves remains authorized on over 97% of the Refuge (over 1.9 million acres).

The Service has reviewed its 2007 management plan and associated Environmental Assessment for the Skilak Wildlife Recreation Area, and its 2007 Compatibility Determination for hunting on the Refuge, and has determined that the information evaluated and decisions rendered regarding management direction for the area and compatibility of hunting remain current and valid. The continuation of hunting and trapping restrictions under this Federal closure, to include a closure on the hunting and trapping of lynx, coyote and wolf, is necessary to ensure that Service objectives to provide enhanced wildlife viewing, environmental education and interpretation opportunities in the area continue to be met. Meeting Refuge public use objectives in the Skilak Wildlife Recreation Area is consistent with and directly supports meeting specific Refuge purposes under ANILCA for providing the public opportunities for environmental education and interpretation and for a variety of wildlife-dependent recreational activities including wildlife viewing and photography. Administration of non-conflicting hunting activities and use of firearms in the Skilak Wildlife Recreation Area through regulation and in a manner which supports meeting all Refuge purposes, minimizes conflicts among user groups, and ensures public safety, is necessary to ensure the compatibility of hunting as an authorized use on the Kenai National Wildlife Refuge.

Public Hearings Held and Comments Considered

Pursuant to 50 CFR 36.42, the Service held public hearings to provide notice of the proposed permanent closure and to receive public input. Hearings were held on July 31 and August 1, 2013 in Soldotna and Anchorage, Alaska respectively. In addition, written comments were accepted through August 16, 2013. A total of 26 people testified at the public hearings, 18 of them expressed support for the proposed Service action. Among this group were representatives of five organizations speaking in favor of the action: Friends of Alaska Refuges (which also said it spoke for The Wilderness Society), the Alaska Wildlife Alliance, the Sierra Club, Friends of Kenai National Wildlife Refuge and the Center for Biological Diversity. Seven speakers were opposed including a representative of the Alaska Department of Fish and Game. They basically favored the State's change to the hunting regulations opening the area up to more hunting. One person expressed general opposition to all hunting and trapping.

A total of 180 written comments were submitted via email, fax, or mail. Of these, 78 supported the closure and addressed the area's importance for non-consumptive uses by the public. Of these written comments, 29 appear to be form comments with no individual statement. The remaining 49 contained some comment personal to the writer. Included in the written comments supporting the closure and restrictions were written statements by five organizations: Kachemak Bay Conservation Society, Defenders of Wildlife, the National Parks Conservation Association, the Alaska Wildlife Alliance, and the Center for Biological Diversity. Among the remaining written comments were 93 individuals who expressed opposition to opening hunting or trapping in the area because of opposition to hunting or trapping in general, and/or to hunting and trapping on a national wildlife refuge or of predators specifically. Nine written comments expressed opposition to the Service's proposed action and

support for the State's Board of Game's change. In addition to the Alaska Department of Fish and Game, the Kenai Peninsula Chapter of the Safari Club International was among those opposing the Service action and supporting the State's change.

The Service considered all of the oral and written comments. It concludes that maintaining the closure on the take of lynx, coyote and wolf is necessary to meet the Refuge management plan objectives to provide for enhanced opportunities for wildlife viewing, environmental education, and interpretation in the Skilak Wildlife Recreation Area. This decision is in keeping with the Refuge purposes under ANILCA and furthers the public use objectives that have consistently been identified for management of the area since 1985. Designating and administering the Skilak Wildlife Recreation Area in support of these purposes, while allowing for additional non-conflicting uses in the area, is a proper management approach which recognizes the obligation to provide educational and both consumptive, and non-consumptive, wildlife-dependent recreational opportunities for the public on the Refuge.

Authority

This closure notice is pursuant to 50 CFR 36.42 for permanent closures or restrictions on Alaska National Wildlife Refuges. Authorities for this action are found within the National Wildlife Refuge Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee); the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4); and the Alaska National Interest Lands Conservation Act of 1980, Public Law 96–487, 94 Stat. 2371 (1980).

Geoffrey L. Haskett,

Regional Director, Alaska Region, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2013–26021 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT0300–16100000–LXSS005J0000]

Notice of Intent To Prepare a Livestock Grazing Monument Management Plan Amendment and Associated Environmental Impact Statement for the Grand Staircase-Escalante National Monument, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Grand Staircase-Escalante National Monument (GSENM), Kanab, Utah, intends to prepare a Livestock Grazing Monument Management Plan Amendment (Plan Amendment) with an associated Environmental Impact Statement (EIS). This notice announces the beginning of the scoping process to solicit public comments and identify issues. The Plan Amendment will make land use-level decisions associated with livestock grazing, thereby amending the GSENM Management Plan.

DATES: This notice initiates the public scoping process for the Plan Amendment and associated EIS. Public scoping meetings will be hosted in the following locations: Kanab, Escalante, and Salt Lake City, Utah. The date(s) and specific location(s) and any other public involvement activities will be announced at least 15 days in advance through local media outlets and on the GSENM Web site at: *www.ut.blm.gov/monument*. The public scoping period runs from the issuance of this notice for 60 days or until 30 days after the last public scoping meeting is held, whichever is later. Comments on issues and planning criteria may be submitted in writing during this time. In order to be considered in the Draft Plan Amendment/EIS, all comments must be received prior to the close of the scoping period. BLM Utah will provide additional opportunities for public participation upon publication of the Draft Plan Amendment/EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the GSENM Plan Amendment/EIS by any of the following methods:

- *Email: BLM_UT_GS_EIS@blm.gov;*
- *Fax:* 435–644–1250; or
- *Mail:* Bureau of Land Management, Grand Staircase-Escalante National Monument, 669 S. HWY 89–A, Kanab, UT 84741.

Documents pertinent to this planning effort may be examined at the GSENM Office, 669 S. HWY 89–A, Kanab, Utah.

FOR FURTHER INFORMATION CONTACT: Matt Betenson, Assistant Monument Manager, Planning and Support Services; telephone: 435–644–1205; address: GSENM Office, 669 S. HWY 89–A, Kanab, UT 84741; email: *BLM_UT_GS_EIS@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question with the above individual. The FIRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM GSENM intends to prepare a Plan Amendment with an associated EIS and announces the beginning of the public scoping process to request public input on issues and planning criteria. Cooperating agencies include the State of Utah; Garfield County and Kane County, Utah; the U.S. Fish and Wildlife Service; and the National Park Service (NPS) Glen Canyon National Recreation Area (GCNRA). The planning area includes all lands within the GSENM where BLM has livestock grazing management and/or administrative responsibility. This includes the BLM-Utah lands within GSENM and additional lands within portions of the Kanab Field Office (KFO) and the Arizona Strip Field Office (ASFO), as well as lands managed by NPS in GCNRA where GSENM administers grazing.

Management decisions for lands in the planning area, but outside the GSENM boundary, will be consistent with the goals and objectives of the KFO, ASFO, and the GCNRA enabling legislation and management plans, as appropriate. NPS will also be making a decision for the GCNRA lands consistent with that area's enabling legislation (Pub. L. 92–593). The planning area encompasses approximately 2.2 million acres of Federal lands in Garfield County and Kane County, Utah, and Coconino County, Arizona. Approximately 68 percent of the planning area is in Kane County, approximately 32 percent is in Garfield County, and less than 1 percent is in Coconino County. The purpose of the public scoping process is to determine relevant issues related to livestock grazing that will influence the scope of the environmental analysis, including alternatives, and to guide the planning process.

Preliminary issues related to livestock grazing that are likely to be addressed in the Plan Amendment and EIS include the following:

- Effects on GSENM proclamation-identified scientific and historic objects and values;
- Lands available for livestock grazing within the planning area;
- Effects on the resources and values for which GCNRA was established;
- Forage currently available on an area-wide basis for livestock grazing and

available for future anticipated demands;

• Guidelines and criteria for future allotment-specific adjustments, such as rotational grazing plans which affect the livestock use;

• Impacts on local custom and culture as well as the area's economy; and

• Management of existing rangeland improvement seedings.

Additional issues will likely be added through the public scoping process. Planning criteria are the standards, rules, and other factors developed by managers and interdisciplinary teams for their use in forming judgments about decision making, analysis, and data collection during planning. Planning criteria streamline and simplify the resource management planning actions. The following preliminary criteria will be considered in the Plan Amendment and EIS process:

• The Plan Amendment will be limited to making land use planning decisions specific to livestock grazing.

• Lands addressed in the Plan Amendment will be public lands managed by the BLM and the NPS.

• Grazing within the GCNRA will be administered in a portion of GCNRA in a manner that protects GCNRA values and purposes pursuant to Public Law 92–593 and in accordance with the 1916 NPS Organic Act.

• The process must utilize *The Utah Standards for Rangeland Health and Guidelines for Livestock Grazing Management.* The BLM will apply existing applicable Land Health Standards to all alternatives.

• The approved GSENM Plan Amendment will comply with FLPMA, NEPA, National Historic Preservation Act, and Council on Environmental Quality regulations at 40 CFR parts 1500–1508 and Department of the Interior regulations at 43 CFR part 46 and 43 CFR part 1600; the BLM *H–1601–1 Land Use Planning Handbook;* the 2008 BLM *H–1790–1 NEPA Handbook,* and all other applicable BLM policies and guidance.

• Land use planning decisions must be consistent with the purpose and objectives outlined in the presidential proclamation for the GSENM and the enabling legislation for GCNRA, as applicable.

• Socio-economic analysis will use an accepted input-output quantitative model such as IMPLAN or RIMSII, and/or JEDI for analysis.

• The BLM and NPS will review and use as appropriate current scientific information, research, technologies, and results of inventory, monitoring, and coordination to determine appropriate management strategies.

• The BLM and NPS will coordinate and communicate with State, local, and tribal governments to ensure that the BLM and NPS consider provisions of pertinent plans, seek to resolve inconsistencies between State, local, and Tribal plans, and provide ample opportunities for State, local, and Tribal governments to comment on the development of amendments.

• The Plan Amendment will be based on the principles of Adaptive Management.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments before the close of the public scoping period. 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 request we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each public scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan amendment, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft Plan Amendment/EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: rangeland management, botany, environmental planning and compliance, ecology, outdoor recreation and wilderness management, visual resources, archaeology, paleontology, wildlife and fisheries, hydrology, soils, sociology and economics, and public affairs.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Jenna Whitlock,

Acting State Director.

[FR Doc. 2013–25924 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF00000–L19900000–XZ0000]

Notice of Meeting, Front Range 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 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held from 9:15 a.m. to 4:15 p.m. on November 20 and 21, 2013.

ADDRESSES: Salida Ranger District Office, 5575 Cleora Road, Salida, CO 81201.

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Front Range RAC Coordinator, BLM Front Range District Office, 3028 E. Main St., Cañon City, CO 81212. Phone: (719) 269–8553. Email: *ksullivan@blm.gov.*

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 in the BLM Front Range District, which includes the Royal Gorge Field Office and the San Luis Valley Field Office. Planned topics of discussion items include: Introductions of new RAC members and BLM staff, recognition of service for outgoing RAC members, an update from field managers, and a tour of sage-grouse habitat on Poncha Pass. The public is encouraged to make oral comments to the RAC at 9:45 a.m. on November 20, or written statements may be submitted for the council's consideration.

Summary minutes for the RAC meetings will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Previous meeting minutes and agendas are available at: *www.blm.gov/co/st/en/BLM_Resources/racs/frrac/co_rac_minutes_front.html.*

Dated: October 22, 2013.

John Mehlhoff,

BLM Colorado Acting State Director.

[FR Doc. 2013–25524 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0006: MMAA104000]

Proposed Information Collection for OMB Review; Comment Request: Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf and Pipeline Rights of Way

ACTION: 60-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 556, Leasing of Sulphur or Oil and Gas in the OCS; 30 CFR 550, Subpart J, Pipelines and Pipeline Rights-of-Way; and 30 CFR 560, OCS Oil and Gas Leasing.

DATES: Submit written comments by January 3, 2014.

ADDRESSES: Please send your comments on this ICR to the BOEM Information Collection Clearance Officer, Arlene Bajusz, Bureau of Ocean Energy Management, 381 Elden Street, HM–3127, Herndon, Virginia 20170 (mail); or *arlene.bajusz@boem.gov* (email); or 703–787–1209 (fax). Please reference ICR 1010–0006 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Office of Policy, Regulations, and Analysis at (703) 787–1025 to request a copy of the ICR.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1010–0006.

Title: 30 CFR Part 556, Leasing of Sulphur or Oil and Gas in the OCS: 30 CFR Part 550, Subpart J, Pipelines and Pipeline Rights-of-Way; and 30 CFR Part 560 OCS Oil and Gas Leasing.

Forms: BOEM–0150, 0151, 0152, 2028, 2028A, 2030.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.*, and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213(c)).

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) implementing policy, the Bureau of Ocean Energy Management (BOEM) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and BOEM regulations specify the filing fee for these transfer applications.

This notice concerns the reporting and recordkeeping requirements of BOEM regulations at 30 CFR Part 556, Leasing of Sulphur or Oil and Gas in the OCS; 30 CFR Part 550, Subpart J, Pipelines and Pipeline Rights-of-Way; 30 CFR Part 560, OCS Oil and Gas Leasing; as well as the related Notices to Lessees and Operators (NTLs) that clarify and provide additional guidance on some aspects of these regulations. This ICR also concerns the use of forms to process bonds, transfer interest in leases, and file relinquishments.

- BOEM–0150, Assignment of Record Title Interest in Federal OCS Oil and Gas Lease,
- BOEM–0151, Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease,
- BOEM–0152, Relinquishment of Federal OCS Oil and Gas Lease,
- BOEM–2028, OCS Mineral Lessee's and Operator's Bond,
- BOEM–2028A, OCS Mineral Lessee's and Operator's Supplemental Plugging and Abandonment Bond,
- BOEM–2030, OCS Pipeline Right-of-Way Grant Bond.

BOEM uses the information collected to determine if applicants are qualified to hold leases in the OCS, to assign a qualification number to avoid respondent submission of information already on file; develop the semiannual List of Restricted Joint Bidders; ensure the qualification of transferees and track operators on leaseholds; document that a leasehold or geographical subdivision has been surrendered by the record title holder; and ensure that adequate funds are secured to complete existing and future bond obligations.

We will protect information from respondents considered proprietary according to section 26 of the OCS Lands Act, the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), 30 CFR 556.10(d). No items of a sensitive nature are collected. Responses are mandatory or are required to obtain a benefit.

Frequency: On occasion or annual.

Description of Respondents: Respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: We expect the annual reporting burden estimate for this collection to be 16,235 hours. The following table details the individual components and respective hour burden estimates of this ICR.

BURDEN BREAKDOWN

Citation 30 CFR part 556 and NTLs	Reporting requirement *	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
All Subparts				
Subparts A, C, E, H, L, M	None	Not applicable.		0.
Subparts G, H, I, J: 37; 53; 68; 70; 71; 72; 73.	Request approval for various operations or submit plans or applications. Burden included with other approved collections in 30 CFR Part 550 (Subpart A 1010–0114, Subpart B 1010–0151) and in BSEE 30 CFR 250 (Subpart A 1014–0022, Subpart D 1014–0018).			0.
Subparts B through F				
Subpart B: All sections	Submit general suggestions and relevant information in response to request for comments on proposed 5-year leasing program, including information from States/local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0.
	Submit suggestions and specific information in response to request for comments on proposed 5-year leasing program, including information from States/local governments.	4	64	256.
Subpart D: All sections	Submit general response to Call for Information and Nominations on areas for leasing of minerals in specified areas in accordance with an approved leasing program, including information from States/local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0.
	Submit specific response to Call for Information and Nominations on areas for leasing of minerals in specified areas in accordance with an approved leasing program, including information from States/local governments.	4	14 responses/sale × 2 sales/call × 2 calls/year = 56.	224.
Subpart F: 31	States or local governments submit comments/recommendations on size, timing or location of proposed lease sale.	4	10 responses	40.
Subtotal			130 responses	520 hours.
Subpart G				
Subpart G: 35; 46(d), (e)	Establish a Company File for pre-qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	2	104 responses	208.
41; 43; 46(g)	Submit qualification of bidders for joint bids and statement or report of production, along with supporting information/appeal.	2	100 responses	200.
44; 46	Submit bids and required information	5	2,000 bids	10,000.
47(c)	File agreement to accept joint lease on tie bids.	3½	2 agreements	7.
47(e)(1), (e)(3)	Request for reconsideration of bid rejection	Not considered IC as defined in 5 CFR 1320.3(h)(9).		0.
47(f), (i); 50	Execute lease (includes submission of evidence of authorized agent and request for dating of leases; lease stipulations).	1	852 leases	852.
Subtotal			3,058 responses	11,267 hours.

BURDEN BREAKDOWN—Continued

Citation 30 CFR part 556 and NTLs	Reporting requirement *	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
Subpart I				
Subpart I: 52(f)(2), (g)(2) ..	Submit authority for Regional Director to sell Treasury or alternate type of securities.	2	10 submissions	20.
53(a), 53(b); 54	OCS Mineral Lessee's and Operator's Bond (Form BOEM–2028).	¼	124 responses	31.
53(c), (d), (f); 54(e)	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required.	3½	165 submissions	578 (rounded).
54	OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (Form BOEM–2028A).	¼	136 responses	34.
55	Notify BOEM of any lapse in previous bond/action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1	3 notices	3.
56	Provide plan/instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	12	1 submission	12.
57	Provide third-party guarantee, indemnity agreement, financial information, related notices, reports, and annual update; notify BOEM if guarantor becomes unqualified.	19	45 submissions	855.
57(d)(3); 58	Notice of and request approval to terminate period of liability, cancel bond, or other security.	½	378 requests	189.
59(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5 responses	80.
Subtotal			867 responses	1,802 hours.
Subpart J				
Subpart J: 62; 63; 64; 65; 67.	File application and required information for assignment or transfer for approval/comment on filing fee (Forms BOEM–0150 and BOEM–0151).	2 forms @ 30 min ea = 1 hr.	1,680 applications/forms.	1,680.
		1,680 Title/Rights (Transfer) Assignments @ $198 = $332,640.		
63; 64(a)(8)	Submit non-required documents, for record purposes, which respondents want BOEM to file with the lease document. [Accepted on behalf of lessees as a service, BOEM does not require nor need the filings].	0	2,995 documents	0.
		2,995 @ $29 = $86,855.		
64(a)(7)	File required instruments creating or transferring working interests, etc., for record purposes.	1	700 filings	700.
Subtotal			5,375 responses	2,380 hours.
			$419,495 non-hour cost burdens.	

BURDEN BREAKDOWN—Continued

Citation 30 CFR part 556 and NTLs	Reporting requirement*	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
Subpart K				
Subpart K: 76; 92(a)	File written request for relinquishment (Form BOEM–152).	1	240 relinquishments	240.
77(c)	Comment on lease cancellation (BOEM expects 1 in 10 years).	1	1 comment	1.
Subtotal			241 responses	241 hours.
Subpart N				
Subpart N: 92(a)	Request a bonus or royalty credit; submit supporting documentation.	1	1 request	1.
95	Request approval to transfer bonus or credit to another party; submit supporting information.	1	1 request	1.
Subtotal			2 responses	2 hours.
30 CFR 556 Total			9,673 responses	16,212 hours.
			$419,495.	

30 CFR 550 Subpart J	Reporting requirement*	Hour burden	Average number of annual responses	Annual burden hours
550.1011(a)	Provide surety bond (Form BOEM–2030) and required information.	GOM 0.25	50 forms	12.5.
		Pacific 3.5	3 forms	10.5.
30 CFR 550, Subpart J Total.			53 responses	23 hours.

Citation 30 CFR Part 560	Reporting requirement	Hour burden	Average number of annual responses.	Annual burden hours
124(a)	Request BOEM to reconsider field assignment of a lease.	Exempt under 5 CFR 1320.4(a)(2), (c).		0.
Total Reporting		9,726 Responses.		16,235 Hours.
		$419,495 Non-Hour Cost Burdens.		

* In the future, BOEM may require electronic filing of certain submissions.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: Sections 556.63 and 556.64 require respondents to pay service fees when submitting a request for transfer of record title interest or operating rights interest ($198) and to file documents for record purposes ($29). The service fees are required to recover the Federal Government's processing costs. These fees reflect the recent adjustment for inflation that became effective February 2, 2013 (78 FR 5836, 1/28/13).

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .". Agencies must specifically solicit comments on: (a) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden on respondents.

Agencies must also estimate the non-hour cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup costs or annual operation, maintenance, and purchase of service costs. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring,

and record storage facilities. You should not include estimates for equipment or services purchased: (a) Before October 1, 1995; (b) to comply with requirements not associated with the information collection; (c) for reasons other than to provide information or keep records for the Government; or (d) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 25, 2013.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2013–26334 Filed 11–1–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0011]

Agency Information Collection Activities; Proposed Collection, Comments Requested, Revision of a Currently Approved Collection: Violent Criminal Apprehension Program

ACTION: 60-day notice.

The Department of Justice, Federal Bureau of Investigation, Critical Incident Response Group will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 3, 2014.

This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Lesa Marcolini, Program Manager, Federal Bureau of Investigation, Critical Incident Response Group, ViCAP, FBI Academy, Quantico, Virginia 22135; facsimile (703) 632–4239.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

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

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of 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:* ViCAP Case Submission Form, FD–676.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form 676; Critical Incident Response Group, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local government law enforcement agencies charged with the responsibility of investigating violent crimes.

Established by the Department of Justice in 1985, ViCAP serves as the national repository for violent crimes; specifically:

Homicides and attempted homicides that involve an abduction, are apparently random, motiveless, or sexually oriented, or are known or suspected to be part of a series.

Sexual assaults committed by a stranger, or those known or suspected to be part of a series.

Missing persons where the circumstances indicate a strong possibility of foul play and the victim is still missing.

Unidentified human remains where the manner of death is known or suspected to be homicide.

Comprehensive case information submitted to ViCAP is maintained in the ViCAP Web National Crime Database and is automatically compared to all other cases in the database to identify similarities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Of the approximately 18,000 government entities that are eligible to submit cases, it is estimated that thirty to fifty percent will actually submit cases to ViCAP. The time burden of the respondents is less than 60 minutes per form.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 5000 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: October 30, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26331 Filed 11–1–13; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Tribal Requests for Accelerated Exercise of Jurisdiction Under Section 204(a) of the Indian Civil Rights Act of 1968, as Amended

ACTION: Emergency 60-Day Notice.

The Department of Justice, Office of Tribal Justice, 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. OMB approval is requested by November 7, 2013. The proposed information collection is published to obtain comments from the public and affected agencies. Comments

are encouraged and will be accepted for "sixty days" until January 3, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need additional information, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Request for Accelerated Authority to Exercise Special Domestic Violence Criminal Jurisdiction.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number. Component: Office of Tribal Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Tribal governments. Other: None.

Abstract: The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was signed into law on March 7, 2013. Section 904 of VAWA 2013 recognizes the inherent power of "participating tribes" to exercise special domestic violence criminal jurisdiction over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. Section 904 also specifies the rights that a participating tribe must provide to defendants in special domestic violence criminal jurisdiction cases. Section 908(b)(1) provides that tribes generally cannot exercise the special jurisdiction until March 7, 2015, but Section 908(b)(2) establishes a pilot project that authorizes the Attorney General, in the exercise of his discretion, to grant a tribe's request to be designed as a "participating tribe" on an accelerated basis and to commence exercising the special jurisdiction on a date (prior to March 7, 2015) set by the Attorney General, after coordinating with the Secretary of the Interior, consulting with affected tribes, and concluding that the tribe's criminal justice system has adequate safeguards in place to protect defendants' rights, consistent with Section 204 of the Indian Civil Rights Act, as amended, 25 U.S.C. 1304. The Department of Justice has published a notice seeking comments on procedures for an Indian tribe to request designation as a "participating tribe" on an accelerated basis), and for the Attorney General to act on such requests, 78 FR 35961 (June 14, 2013). Pursuant to the notice, the Attorney General has delegated to the Associate Attorney General the authority to decide whether to grant the request of a tribe to be designated as a "participating tribe" prior to March 7, 2015. The purpose of the collection is to provide information from the requesting tribe sufficient for the Associate Attorney General to make that decision.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Fewer than 40 respondents; average of 16 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 640 annual total burden hours associated with this collection.

The Department of Justice anticipates responses from between 5 and 40 Tribes. The information collection will require Indian tribes seeking accelerated exercise of special domestic violence criminal jurisdiction to provide certain information relating to the tribe's criminal justice system and safeguards for victims' and defendants' rights.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: October 29, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26239 Filed 11–1–13; 8:45 am]

BILLING CODE 4410–A5–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0019]

Proposed Information Collection; Slope and Shaft Sinking Plans (Pertains to Surface Work Areas of Underground Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection for Slope and Shaft Sinking Plans, 30 CFR 77.1900.

DATES: All comments must be postmarked or received by midnight Eastern Standard Time on January 3, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number [MSHA–2013–0031].
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Deputy Director, Office of Standards, Regulations, and Variances, MSHA, at

McConnell.Sheila.A@dol.gov (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

Title 30 CFR 77.1900 requires underground coal mine operators to submit for approval a plan that will provide for the safety of workmen in each slope or shaft that is commenced or extended from the surface to the underground coal mine. Each slope or shaft sinking operation is unique in that each operator uses different methods and equipment and encounters different geological strata which make it impossible for a single set of regulations to ensure the safety of the miners under all circumstances. This makes an individual slope or shaft sinking plan necessary. The plan must be consistent with prudent engineering design. Plans include the name and location of the mine; name and address of the mine operator; a description of the construction work and methods to be used in construction of the slope or shaft, and whether all or part of the work will be performed by a contractor; the elevation, depth and dimensions of the slope or shaft; the location and elevation of the coalbed; the general characteristics of the strata through which the slope or shaft will be developed; the type of equipment which the operator proposes to use; the system of ventilation to be used; and safeguards for the prevention of caving during excavation.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This information collection request is available on MSHA's Web site listed in order of OMB number at *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp*. The information collection request will be available on MSHA's Web site for 60 days after the publication date of this notice, and on *http://www.regulations.gov*. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed.

The public may also examine publicly available documents at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington VA 22209–3939 by signing in at the receptionist's desk on the 21st floor.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for the Extension of the Information Collection Request Submitted for Public Comment and Recommendations; Slope and Shaft Sinking Plans, 30 CFR 77.1900.

MSHA does not intend to publish the results from this information collection and is not seeking approval to not display the expiration date for the OMB approval of this information collection.

There are no certification exceptions identified and this information collection and the collection of this information does not employ statistical methods.

Type of Review: Extension
Agency: Mine Safety and Health Administration
Title: Slope and Shaft Sinking Plans
OMB Number: 1219–0019
Affected Public: Business of other for-profit
Total Number of Respondents: 31
Frequency: On occasion
Total Number of Responses: 68
Total Burden Hours: 1,360 hours
Total Annual Respondent or Recordkeeper Cost Burden: $51

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 29th, 2013.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2013–26127 Filed 11–1–13; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TÜV SÜD America, Inc.: Request for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces TÜV SÜD America, Inc.'s application containing a request for renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before November 19, 2013.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit a copy of comments and any attachments to the OSHA Docket Office, Docket No. OSHA–2007–0043, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TDY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2007–0043). OSHA will place all submissions,

including any personal information provided, in the public docket without revision, and these submissions will be available online at *http://www.regulations.gov*.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before November 19, 2013 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: David W. Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, phone (202) 693–2110, or email at *johnson.david.w@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of an NRTL signifies that the organization meets the requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational Web site for each NRTL that details its scope of recognition. These pages are available on our Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*.

The Agency processes applications by an NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, App. II.C. In accordance with these procedures, NRTLs would submit a renewal request to OSHA, not less than nine months, or no more than one year, before the expiration date of its current recognition. A renewal request would include a request for renewal and any additional information the NRTL wishes to submit to demonstrate its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL headquarters and any key sites within the past 18 months, it will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicit comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

TÜV SÜD America, Inc. (TUVAM) initially received OSHA recognition as a NRTL on January 25, 2002 (65 FR 26637), for a five-year period ending on January 25, 2007. TUVAM submitted a timely request for renewal, dated March 7, 2006 (see Exhibit 1), and retained its recognition pending OSHA's final decision in this renewal process. The current addresses of TUVAM facilities recognized by OSHA and included as part of the renewal request are:

1. TÜV SÜD America, Inc. (TUVAM), 10 Technology Drive, Peabody, Massachusetts 01960;
2. TÜV SÜD America, Inc., 10040 Mesa Rim Road, San Diego, California 92121; and
3. TÜV SÜD America, Inc., 1775 Old Highway 8 NW., Suite 104, New Brighton, Minnesota 55112.

II. Notice of Preliminary Findings

OSHA is providing notice that TUVAM is applying for renewal of its current recognition as a NRTL. This renewal covers TUVAM's existing NRTL scope of recognition. TUVAM submitted an acceptable application for renewal of its recognition as an NRTL on March 7, 2006. OSHA evaluated TUVAM's application for renewal and preliminarily determined that TUVAM can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. Accordingly, OSHA is making a determination that it does not need to conduct an on-site review of TUVAM's facilities based on its evaluations of TUVAM's application and all other available information, including its most recent audit of TUVAM's facilities conducted on August 17, 2012 (Peabody, MA), and April 27, 2012 (San Diego, CA), in which the auditors found TUVAM to be in conformance with all applicable NRTL requirements. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comment as to whether TUVAM meets the requirements of 29 CFR 1910.7 for renewal of their recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in TUVAM's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2007–0043.

The NRTL Program staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend whether to grant TUVAM's application for renewal. The Assistant Secretary will make the final decision on granting the application and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on October 29, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–26284 Filed 11–1–13; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

Correction

Notice document 2013–25871, beginning on page 65006 in the issue of Wednesday, October 30, 2013, was inadvertently published. It should not have appeared in that issue.

[FR Doc. C1–2013–25871 Filed 10–31–13; 4:15 pm]

BILLING CODE 1505–01–D

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: November 2013

TIME AND DATES: All meetings are held at 2:00 p.m.

Monday, November 4; Tuesday, November 5; Wednesday, November 13; Thursday, November 14; Monday, November 18; Tuesday, November 19; Wednesday, November 20; Thursday, November 21; Monday, November 25; Tuesday, November 26.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition … of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION:

Dated: October 31, 2013.

William B. Cowen,

Solicitor.

[FR Doc. 2013–26408 Filed 10–31–13; 11:15 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*

SUPPLEMENTARY INFORMATION: On September 27, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 30, 2013 to:

Scott Borg

Permit No. 2014–020

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26351 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 13, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 25, 2013 to:

April Surgent,

Permit No. 2014–017.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26345 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

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 670 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 December 4, 2013. 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: Adrian Dahood, ACA Permit Officer, at the above address or *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 a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant* Lynn Reed, National Science Foundation, Arlington Virginia

Permit Application: 2014–023

Activity for Which Permit Is Requested

ASPA; The applicant wishes to enter the Historic Hut ASPAs (ASPA 158, Hut Point, ASPA 157 Cape Royds Hut and ASPA 155 Cape Evans Hut) to make audio and video recordings, make sketches, and take photographs for (Science, Technology, Engineering, and Mathematics) STEM educational purposes. The gathered materials would be used to create lesson plans about Antarctic Exploration that focus on science, technology, engineering or mathematics aspects of the historic Antarctic expeditions. The lesson plans would be appropriate for students in grades 6–12 and would be made available on-line to STEM teachers and the general public.

Location

ASPA 155 Cape Evans
ASPA 157 Backdoor Bay, Cape Royds
ASPA 158 Hut Point

Dates

November 30, 2013 to January 31, 2014.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26343 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 12, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 21, 2013 to:

Zicheng Yu

Permit No. 2014–016

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26346 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 5, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 24, 2013 to:

Ian Shaw and Thomas Kotka

Permit No. 2014–013

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26347 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*

SUPPLEMENTARY INFORMATION: On September 13, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 18, 2013 to:

Jill Mikucki

Permit No. 2014–014.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26348 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 24, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 25, 2013 to:

Allyson Comstock

Permit No. 2014–019

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26349 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the

Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 13, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 28, 2013 to:

Erin Pettit

Permit No. 2014–015

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26350 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On August 26, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 23, 2013 to:

Peter West

Permit No. 2014–009

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26344 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 4, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on October 17, 2013 to:

Michael Studinger

Permit No. 2014–011.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26352 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On August 19, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. During the review process, the applicant asked to add Dwayne Stevens as a co-permit holder. After considering all comments received, the permit was issued on October 23, 2013 to:

Dan McGrath and Dwayne Stevens

Permit No. 2014–007

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26353 Filed 11–1–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0226]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 4, "Cumulative Occupational Dose History."

2. *Current OMB approval number:* 3150–0005.

3. *How often the collection is required:* On occasion. The NRC does not collect NRC Form 4. However, NRC inspects the NRC Form 4 records at NRC-licensed facilities.

4. *Who is required or asked to report:* The NRC licensees who are required to comply with part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR).

5. *The number of annual respondents:* 4,146 (0 reporting responses plus 4,146 recordkeepers).

6. *The number of hours needed annually to complete the requirement or request:* 24,521.24 hours.

7. *Abstract:* The NRC Form 4 is used to record the summary of an occupational worker's cumulative occupational radiation dose, including prior occupational exposure and the current year's occupational radiation exposure. The NRC Form 4 is used by licensees, and inspected by the NRC, to ensure that occupational radiation doses do not exceed the regulatory limits specified in 10 CFR 20.1501.

Submit, by January 3, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0226. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0226. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 29th day of October, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–26196 Filed 11–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0240]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 212 "Qualifications Investigation Professional, Technical, and Administrative Positions."

2. *Current OMB approval number:* 3150–0033.

3. *How often the collection is required:* The forms are collected for every new hire to the U.S. Nuclear Regulatory Commission.

4. *Who is required or asked to report:* References are collected for every new hire.

5. *The number of annual respondents:* 1,000 annual respondents.

6. *The number of hours needed annually to complete the requirement or request:* 500 hours.

7. *Abstract:* Information requested on NRC Form 212, "Qualifications Investigation, Professional, Technical, and Administrative Positions" is used to determine the qualifications and suitability of external applicants for employment with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of the Chief Human Capital Officer, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Submit, by January 3, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0240. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0240. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. NRC, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 29th day of October, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–26194 Filed 11–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0238]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations."

2. *Current OMB approval number:* 3150–0007.

3. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time (on occasion). Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. *Who is required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

5. *The number of annual respondents:* 608 (529 Agreement State licensees plus 79 NRC licensees).

6. *The number of hours needed annually to complete the requirement or request:* 234,412 hours (502 reporting + 210,015.6 recordkeeping + 23,894.4 third party disclosure). The NRC licensees' total burden is 30,644.2 hours and the Agreement State licensees' total burden is 203,767.8 hours.

7. *Abstract:* Part 34 of Title 10 of the *Code of Federal Regulations* (10 CFR), establishes radiation safety requirements for the use of radioactive material in industrial radiography. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Submit, by January 3, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0238. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0238. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 29th day of October, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–26195 Filed 11–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143; NRC–2012–0091]

National Institute of Standards and Technology, Gaithersburg, Maryland

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of license renewal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing notice of the issuance of License Renewal to Material License No. SNM–362, to the National Institute of Standards and Technology (NIST), which uses licensed materials for research, development; calibration, and testing activities.

ADDRESSES: Please refer to Docket ID NRC–2012–0091 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0091. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The ADAMS Accession Numbers for documents related to this notice are ML13207A263 and ML13207AA266 (License Renewal) and ML13212A132 (Safety Evaluation Report and Final Environmental Assessment).
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Tyrone D. Naquin, Office of Nuclear

Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; telephone: 301–287–9144; email: *Tyrone.Naquin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Section 2.106 of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of License Renewal to Material License No. SNM–362, to NIST, which uses licensed materials for research, development, calibration, and testing activities. Under SNM–362, NIST develops, maintains, and disseminates national standards for ionizing radiation and radioactivity to support health care, industry, and homeland security at its Gaithersburg, Maryland location. The licensee's request for renewal of its license was previously made on June 29, 2007. In accordance with 10 CFR Part 51, an environmental assessment of this action was completed and a finding of no significant impact was published in the **Federal Register** on April 13, 2012 (77 FR 22362).

This license renewal complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the NRC's rules and regulations as set forth in 10 CFR Chapter 1. Accordingly, this license renewal was issued on September 10, 2013, and is effective immediately.

II. Further Information

The NRC has prepared a Safety Evaluation Report (SER) that documents the information that was reviewed and the NRC's conclusion. In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," details with respect to this action, including the SER and accompanying documentation included in the license renewal package, are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 29th day of October 2013.

For the U.S. Nuclear Regulatory Commission.

Tyrone D. Naquin,

Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–26380 Filed 11–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting Notice

DATES: Week of October 28, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 28, 2013

Thursday, October 31, 2013

12:55 p.m. Affirmation Session (Public Meeting) (Tentative)

a. *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), Board's Referred Ruling in LBP–13–1 (Feb. 6, 2013) (Tentative)

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

Additional Information

By a vote of 5–0 on October 30, 2013, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on October 31, 2013.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: October 30, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–26489 Filed 10–31–13; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0242; EA–13–189]

In the Matter of All Licensees Authorized To Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Possess High-Risk Radioactive Material of Concern; Order Imposing Additional Security Measures (Effective Immediately)

I

The Licensees identified in Attachment 1 [1] to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State authorizing them to manufacture or initially transfer items containing radioactive material for sale or distribution. The Commission's regulations in § 20.1801 of Title 10 of the Code of Federal Regulations (10 CFR), or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. The Commission's regulations in § 20.1802 or equivalent Agreement States regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and near Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a

[1] Attachment 1 contains sensitive information and will not be released to the public.

number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements set forth in Attachment 2[2] on certain Manufacturing and Distribution Licensees identified in Attachment 1 of this Order who currently possess, or have near term plans to possess, high-risk radioactive material of concern. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. Attachment 3 of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when a licensee's reviewing official is determining access to Safeguards Information or unescorted access to the radioactive materials. These requirements will remain in effect until the Commission determines otherwise.

The Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. Furthermore, the Commission has determined that some of the security measures contained in Attachment 2 of this Order contain Safeguards Information and will not be released to the public as per the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA–12–193 or EA–13–040, as applicable), regarding the protection of Safeguards Information. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 to the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA–12–193 or EA–13–040, as applicable), applicable to the handling and unauthorized disclosure of Safeguards Information, as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted, and have undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA–12–194 or EA–13–041, as applicable). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA–12–194 or EA–13–041, as applicable) do not need to be fingerprinted again for purposes of being considered for unescorted access.

This Order also requires that a reviewing official must consider the results of the Federal Bureau of Investigations criminal history records check in conjunction with other applicable requirements to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official may be one that has previously been approved by the NRC in accordance with the "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA–12–194 or EA–13–041, as applicable). Licensees may nominate additional reviewing officials for making unescorted access determinations in accordance with NRC Orders EA–12–194 or EA–13–041, as applicable. The nominated reviewing officials must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties.

To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, Manufacturing and Distribution Licensees identified in Attachment 1 to this Order shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant to § 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in § 2.202, 10 CFR Part 30, and 10 CFR Part 32, *it is hereby ordered, effective immediately, that all licensees identified in attachment 1 to this order shall comply with the requirements of this order as follows:*

A. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments 2 and 3 to this Order. This Order is effective immediately.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachments 2 or 3, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachments 2 or 3 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 2 or 3 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither

[2] Attachment 2 contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public. The remainder of the requirements contained in Attachment 2 that are not SAFEGUARDS INFORMATION will be released to the public.

approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA–12–194 or EA–13–041, as applicable) only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The licensee may use a reviewing official previously approved by the NRC as its reviewing official for determining access to Safeguards Information or the licensee may nominate another individual specifically for making unescorted access to radioactive material determinations, using the process described in EA–12–194 or EA–13–041, as applicable. The reviewing official must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive materials that equal or exceed the quantities in Attachment 2 to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Atomic Energy Act of 1954, as amended, fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to radioactive materials if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility or radioactive material or other property subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Orders EA–12–194 or EA–13–041, as applicable, do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with this Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment 2.

F. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments 2 and 3.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments 2 and 3.

G. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as "SAFEGUARDS INFORMATION—MODIFIED HANDLING" and mailed (no electronic transmittals i.e., no email or FAX) to the NRC.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the

participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 29th day of October 2013.

For The Nuclear Regulatory Commission.

Brian E. Holian,

Acting Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: Service List of Applicable Materials Licenses—Redacted

Attachment 2: Additional Security Measures for Manufacturing and Distribution Materials Licensees (U)—Revision 2

These Additional Security Measures (ASMs) and new requirements are established to delineate licensee responsibility in response to the current threat environment. The following security measures apply to Radioactive Material Manufacturing and Distribution Licensees who, at any given time, possess greater than or equal to the

quantities of concern of radioactive material defined in Table 1 (unless the licensee documents the basis for concluding that radioactive material possessed cannot be easily aggregated into quantities in excess of the limits defined in Table 1). As with the additional security measures previously provided to other licensees who possess risk significant radioactive sources, these increased security measures and requirements address licensees who are authorized to possess high-activity radioactive material which poses a high risk to human health if not managed safely and securely.

1. Establish a security zone (or zones). A security zone is an area, determined by the licensee that provides for both isolation of radioactive material and access control.

a. Only use and store the radioactive material within the established security zone(s); and

b. The licensee shall demonstrate for each security zone, a means to deter, detect and delay any attempt of unauthorized access to licensed material. The security zone is not required to be the same as the restricted area or controlled area, as defined in 10 CFR part 20 or equivalent agreement state regulations; and

c. Security zones can be permanent or temporary to meet transitory or intermittent business activities (such as during periods of maintenance, source delivery, source replacement, and temporary job sites.). Different isolation/access control measures may be used for periods during which the security zone is occupied versus unoccupied.

2. Control access at all times to the security zone and limit admittance to those individuals who are approved and require access to perform their duties.

3. Implement a system to monitor, detect, assess and respond to unauthorized entries into or activities in the security zone.

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

b. Provide a positive measure to detect unauthorized removal of the radioactive material from the security zone; and

c. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

4. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

5. Licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to safeguards information or unescorted access to the security zone are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the regulated material. "Access" means that an individual could exercise some physical control over the material or device containing radioactive material.

a. The trustworthiness and reliability of individuals shall be determined based on a background investigation. The background investigation shall address at least the past 3 years and, as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history check, verification of work or education references as appropriate to the length of employment, and confirmation of employment eligibility.

b. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order.

c. A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information," may continue to make trustworthiness and reliability determinations. The licensee may also nominate another individual specifically for making unescorted access determinations using the process identified in the NRC "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information."

d. Individuals for whom the licensee has not made a determination of trustworthiness and reliability, based on the appropriate background investigation above, shall be escorted within the security zone to prevent unauthorized access or actions to the licensed radioactive material. The licensee shall also ensure these individuals are clearly identifiable as needing an escort while in the security zone.

6. Before transfer of radioactive materials that exceed the quantities in Table 1, Licensees shall:

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

b. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

c. Assure that the material is shipped to an address authorized in the license and that the address is valid,

d. Verify the address for deliveries to temporary job site, and

e. Document the verification or validation process.

7. For domestic highway and rail shipments of materials in quantities greater than or equal to the quantities in Table 1, per conveyance, the licensee shall:

a. Only use carriers who:

(1) Use established package tracking systems,

(2) Implement methods to assure trustworthiness of drivers,

(3) Maintain constant control and/or surveillance during transit, and

(4) Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

b. Coordinate departure and arrival times with the recipient.

c. Immediately initiate an investigation with the carrier and intended recipient if the shipment does not arrive by close of business on the day of the previously coordinated arrival time. Not later than one hour after the time when, through the course of the investigation, it is determined the shipment has become lost or stolen, the licensee shall notify the appropriate local law enforcement agency, the NRC Operations Center at 301–816–5100, and the appropriate Agreement State regulatory agency. If after 24 hours of initiating the investigation, the radioactive material cannot be located, it shall be presumed lost and the licensee shall immediately notify the NRC Operations Center and, for Agreement State licensees, the appropriate Agreement State regulatory agency.

d. In addition to a and b above, for highway and rail shipments of material in quantities greater than or equal to 100 times the quantities in Table 1, per conveyance, the licensee shall implement the NRC Order for Additional Security Measures on the Transportation of Radioactive Material Quantities of Concern.

8. For imports and exports of material in quantities greater than the quantities in Table 1, per conveyance, the licensee shall follow the requirements in the Final Rule 10 CFR Part 110, July 1, 2005 (70 FR 37985 and 46066), Export and Import of Radioactive Materials: Security Policies.

9. The licensee shall protect pre-planning, coordinating, and reporting information required by ASM 7 related to shipments of radioactive material and the radioisotopes identified in Table 1 as sensitive information (proprietary business financial or confidential). Licensees shall restrict access to this information to those licensee and contractor personnel with a need to know. Licensees shall require all parties receiving this information to protect it similarly. Information may be

transmitted either in writing or electronically and shall be marked as "Security-Related Information—Withhold Under 10 CFR 2.390."

10. The licensee shall maintain all documentation required by these ASMs for a period of not less than three (3) years after the document is superceded or no longer effective.

TABLE A: RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above [3]	See Footnote Below [4]	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are Terabecquerels (TBq). The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, *i*, of radionuclide, *n*, $A_{(i,n)}$, to the quantity of concern for radionuclide *n*, $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc. . . . ≥1

Guidance for Aggregation of Sources

The NRC supports the use of the International Atomic Energy Association's (IAEA) source categorization methodology as defined in IAEA Safety Standards Series No. RS–G–1.9, "Categorization of Radioactive Sources," (2005) (see *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf*) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004, (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, "When are sources considered collocated for purposes of aggregation?" For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci), and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: (0.12 ÷ 0.2) + (0.18 ÷ 0.3) + (0.3 ÷ 0.6) = 0.6 + 0.6 + 0.5 = 1.7. Therefore, the sources would require additional security measures.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage—"operations" (active source usage) and "shutdown" (source storage mode). Whichever mode results in the greatest inventory (considering

barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the Additional Security Measures:

- Include any single source equal to or greater than the quantity of concern in Table
- Include multiple collocated sources *of the same radionuclide* when the combined quantity equals or exceeds the quantity of concern
- For combinations of radionuclides, include multiple collocated sources of *different radionuclides* when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) ÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B) ÷ (quantity of concern of radionuclide B)] + etc.....≥ 1

Attachment 3: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information or Unescorted Access to Radioactive Materials

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI) or unescorted access radioactive materials equal to or greater than the quantities listed in Attachment 2 to this Order. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in this Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably-decided U.S. Government criminal history check (e.g. National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 27 CFR Part 555, Hazardous Material security threat assessments for hazardous material endorsement to commercial driver's license in accordance with 49 CFR Part 1572, Customs and Border Protection's Free and Secure Trade Program [1]) within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facility and Security, Mail Stop T–03B46M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRC000Z) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order, to the Director of the Division of Facility and Security, marked for the attention of the Division's Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 630–829–9565, or by email to *forms.resource@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee. Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for

[1] The FAST program is a cooperative effort between the Bureau of Customs and Border Protection and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

processing fingerprints by corporate check, certified check, cashier's check, or money order, made payable to "U.S. NRC." [For guidance on making electronic payments, contact the Facility Security Branch, Division of Facility and Security, at 301–415–7513]. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR Part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information, such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics, for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. 2013–26376 Filed 11–1–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30770; 812–14004]

DBX ETF Trust, et al.; Notice of Application

October 29, 2013.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: DBX ETF Trust and db-X Exchange Traded Funds, Inc. (collectively, the "Trusts"); DBX Advisors LLC and DBX Strategic Advisors LLC (each, an "Adviser," and collectively, the "Advisers"); and ALPS Distributors, Inc. (the "Distributor").

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the

purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

FILING DATES: The application was filed on January 30, 2012, and amended on June 11, 2012, December 19, 2012, June 6, 2013, and October 15, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: the Trusts and the Advisers, 60 Wall Street, New York, NY 10005; the Distributor, 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879 or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trusts, which are organized as a Delaware statutory trust and a Maryland corporation, are registered under the Act as open-end management investment companies. Each Trust currently consists of multiple series. DBX ETF Trust will initially offer one series (the "Initial Fund") that will rely on the order. The Initial Fund's investment objective is to seek current income consistent with total return.

2. The Advisers are registered as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"). An Adviser will serve as investment adviser to each of the Funds (as defined below). The Advisers may enter into sub-advisory agreements with one or more affiliated or unaffiliated investment advisers, each of which will serve as sub-adviser to a Fund (each, a "Sub-Adviser"). Any Sub-Adviser will be registered under the Advisers Act. The Distributor is a registered broker-dealer ("Broker") under the Securities Exchange Act of 1934 ("Exchange Act") and will act as the distributor and principal underwriter of the Funds (as defined below).

3. Applicants request that the order apply to the Initial Fund as well as to future series of the Trusts and any future open-end management investment companies or series thereof that would operate as actively-managed exchange-traded funds ("Future Funds"). Any Future Fund will (a) be advised by the Advisers or an entity controlling, controlled by, or under common control with the Advisers and (b) comply with the terms and conditions of the application.[1] The Initial Fund and Future Funds together are the "Funds."[2] Each Fund will operate as an actively managed exchange-traded fund ("ETF"), and a Fund may operate as a feeder fund in a master-feeder structure ("Feeder Fund").

4. Applicants state that the Funds, or their respective Master Funds (as defined below), may invest in equity securities or fixed income securities ("Fixed Income Funds") traded in the U.S. or non-U.S. markets. Fixed Income Funds may also include Funds that invest in a combination of equity and fixed-income securities. Funds, or their respective Master Funds, that invest in foreign equity and/or fixed income securities, are "Foreign Funds." Foreign Funds may also include Funds that invest in a combination of foreign and domestic equity and/or fixed income securities. Applicants state that the Funds may also invest in a broad variety of other instruments[3] and that a Foreign Fund, either directly or through a Master Fund, may invest a significant portion of its assets in depositary receipts representing foreign securities in which they seek to invest ("Depositary Receipts").[4] Applicants further state that, in order to implement each Fund's investment strategy, the Adviser and/or Sub-Advisers of a Fund may review and change the securities, other assets and other positions held by the Fund or its respective Master Fund ("Portfolio Instruments") daily.

5. With respect to Section 12(d)(1), Applicants are requesting relief ("Fund of Funds Relief") to permit management investment companies and unit investment trusts ("UITs") registered under the Act that are not part of the same "group of investment companies," within the meaning of Section 12(d)(1)(G)(ii) of the Act, as the Funds (such registered management investment companies are referred to as "Investing Management Companies," such UITs are referred to as "Investing Trusts," and Investing Management Companies and Investing Trusts are collectively referred to as "Funds of Funds"), to acquire Shares beyond the limitations in Section 12(d)(1)(A) and to permit the Funds, and any principal underwriter for the Funds, and any Broker, to sell Shares beyond the limitations in Section 12(d)(l)(B) to Funds of Funds. Applicants request that any exemption under Section 12(d)(1)(J) from Sections 12(d)(1)(A) and (B) apply to: (1) Each Fund that is currently or subsequently part of the same "group of investment companies" as the Initial Fund within the meaning of Section 12(d)(1)(G)(ii) of the Act, as well as any principal underwriter for the Funds and any Brokers selling Shares of a Fund to Funds of Funds; and (2) each Fund of Funds that enters into a participation

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] Applicants further request that the order apply to any future distributor of the Funds, which would be a registered broker-dealer under the Exchange Act and would comply with the terms and conditions of the application ("Future Distributor"). Applicants state that the Distributor or Future Distributor of any Fund may be an affiliated person or a second-tier affiliate of that Fund's Adviser and/or Sub-Advisers.

[3] If a Fund (or its respective Master Fund) invests in derivatives, then (a) the board of trustees ("Board") of the Fund will periodically review and approve the Fund's (or, in the case of a Feeder Fund, its Master Fund's) use of derivatives and how the Adviser assesses and manages risk with respect to the Fund's (or, in the case of a Feeder Fund, its Master Fund's) use of derivatives and (b) the Fund's disclosure of its (or, in the case of a Feeder Fund, its Master Fund's) use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[4] Depositary Receipts are typically issued by a financial institution, a "depositary", and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund (or its respective Master Fund) will not invest in any Depositary Receipts that the Adviser or Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

agreement ("FOF Participation Agreement") with a Fund. "Funds of Funds" do not include the Funds. Each Investing Management Company's investment adviser within the meaning of Section 2(a)(20)(A) of the Act is the "Fund of Funds Adviser." Similarly, each Investing Trust's sponsor is the "Sponsor." Applicants represent that each Fund of Funds Adviser will be registered as an investment adviser under the Advisers Act and that no Fund of Funds Adviser or Sponsor will control, be controlled by, or be under common control with the Adviser.[5]

6. Applicants further request that the order permit a Fund to operate as a Feeder Fund ("Master-Feeder Relief"). Under the order, a Feeder Fund would be permitted to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) of the Act,[6] and the Master Fund, and any principal underwriter for the Master Fund, would be permitted to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act. Applicants request that the Master-Feeder Relief apply to any Feeder Fund, any Master Fund and any principal underwriter for the Master Funds selling shares of a Master Fund to a Feeder Fund. Applicants state that creating an exchange-traded feeder fund may be preferable to creating entirely new series for several reasons, including avoiding additional overhead costs and economies of scale for the Feeder Funds.[7] Applicants assert that, while certain costs may be higher in a master-feeder structure and there may possibly be lower tax efficiencies for the Feeder Funds, the Feeder Funds' Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure.

7. Each Fund will issue, on a continuous offering basis, its Shares in one or more groups of a fixed number of Shares (e.g., at least 25,000 Shares). Applicants believe that a conventional trading range will be between $20–$100 per Share. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund ("Authorized Participant") with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission or (b) a participant in the DTC (such participant, "DTC Participant").

8. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis.[8] Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").[9] On any given Business Day[10] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the "Creation Basket." In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[11] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[12] or (c) TBA Transactions,[13] short positions and other positions that cannot be transferred in kind[14] will be excluded from the Creation Basket.[15] If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Balancing Amount").

9. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the

[5] A Fund of Funds may rely on the order only to invest in Funds and not in any other registered investment company.

[6] A Feeder Fund managed in a master-feeder structure will not make direct investments in any security or other instrument other than the securities issued by its respective Master Fund.

[7] In a master-feeder structure, the Master Fund, rather than the Feeder Fund, would invest its portfolio in compliance with the order. There would be no ability by Fund shareholders to exchange shares of Feeder Funds for shares of another feeder series of the Master Fund.

[8] Feeder Funds will redeem shares from the appropriate Master Fund and then deliver to the redeeming shareholder the applicable redemption payment.

[9] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[10] Each Fund will sell and redeem Creation Units on any day the Trust is open, including as required by section 22(e) of the Act (each, a "Business Day").

[11] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value ("NAV") for that Business Day.

[12] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[13] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[14] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[15] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[16]

10. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act ("Exchange"), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Exchange.

11. Transaction expenses, including operational processing and brokerage costs, may be incurred by a Fund when investors purchase or redeem Creation Units "in-kind" and such costs have the potential to dilute the interests of the Fund's existing Beneficial Owners. Accordingly, applicants state that each Fund may impose purchase or redemption transaction fees ("Transaction Fees") in connection with effecting such purchases or redemptions.[17] Applicants further state that, because the Transaction Fees are intended to defray the transaction expenses, as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by purchasers or redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Fund.[18] The Distributor will be responsible for delivering a Fund's current prospectus ("Prospectus") or Summary Prospectus, if applicable, to purchasers of Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

12. Shares will be listed and traded at negotiated prices on an Exchange and traded in the secondary market. When NYSE Arca, Inc. is the principal secondary market on which the Shares are listed and traded (the "Primary Listing Exchange"), it is expected that one or more Exchange member firms will be designated by the Exchange to act as a market maker (a "Market Maker").[19] The price of Shares trading on the Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Exchange will be subject to customary brokerage commissions and charges.

13. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[20] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

14. Shares will not be individually redeemable, and only Shares combined into Creation Units of a specified size will be redeemable. Redemption requests must be placed by or through an Authorized Participant.

15. Neither the Trust nor any Fund will be marketed or otherwise held out as a "mutual fund." Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." In any advertising material where features of obtaining, buying or selling Shares traded on the Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

16. On each Business Day, before the commencement of trading in Shares on the Fund's Primary Listing Exchange, the Fund will disclose on the Trust's Web site ("Web site") the identities and quantities of the Portfolio Instruments and other assets held by the Fund (or its respective Master Fund)[21] that will form the basis of the Fund's calculation of NAV at the end of the Business Day, the Fund's per Share NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV, all as of the prior Business Day.[22]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the

[16] A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[17] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[18] In those instances in which a Fund permits an "in-kind" purchaser to substitute cash in lieu of depositing one or more of the requisite Deposit Instruments or Redemption Securities, the purchaser or seller may be assessed a higher Transaction Fee on the "cash in lieu" portion of its investment to cover the cost of purchasing the necessary securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and offer side of the market relating to such Deposit Instruments or Redemption Instruments. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[19] If Shares are listed on The NASDAQ Stock Market LLC ("Nasdaq") or a similar electronic Exchange (including NYSE Arca), one or more member firms of that Exchange will act as Market Maker and maintain a market for Shares trading on that Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or a second-tier affiliate, of the Funds, except within Section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

[20] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[21] Feeder Funds will disclose information about the securities and other assets held by the Master Fund.

[22] Under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T+1"). Accordingly, the Funds 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.

Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would to permit the Trusts to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.[23] Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that, because of the arbitrage possibilities created by the redeemability of Creation Units, they expect that the market price of individual Shares will not deviate materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.[24]

5. Applicants state that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers and (c) to ensure an orderly distribution system of shares by contract dealers by eliminating price competition from non-contract dealers who could offer investors shares at less than the published sales price and who could pay investors a little more than the published redemption price.

6. Applicants assert that the protections intended to be afforded by Section 22(d) and rule 22c–1 are adequately addressed by the proposed methods for creating, redeeming and pricing Creation Units and pricing and trading Shares. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces but do not occur as a result of unjust or discriminatory manipulation. Finally, applicants assert that competitive forces in the marketplace should ensure that the margin between NAV and the price for the Shares in the secondary market remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions for Foreign Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that the delivery cycles for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process longer than seven calendar days. Applicants therefore request relief from the requirement imposed by Section 22(e) to provide payment or satisfaction of redemptions within seven (7) calendar days following the tender of a Creation Unit of such Funds.[25]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the protections intended to be afforded by Section 22(e) are adequately addressed by the proposed method and securities delivery cycles for redeeming Creation Units. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of fifteen (15) calendar days[26] would not be inconsistent with the spirit and intent of section 22(e).[27] Applicants represent that each Fund's prospectus and/or statement of additional information will identify those instances in a given year where, due to local holidays, more than seven calendar days, up to a maximum of fifteen (15) calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other

[23] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

[24] The Master Funds will not require relief from section 22(d) or rule 22c–1 because shares of the Master Funds will not trade at negotiated prices in the secondary market.

[25] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[26] Certain countries in which a Fund may invest have historically had settlement periods of up to 15 calendar days.

[27] Other feeder funds invested in any Master Fund are not seeking, and will not rely on, the section 22(e) relief requested herein.

investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Funds of Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Funds of Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that certain of their proposed conditions address concerns about potential for undue influence. To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting the Fund of Funds Adviser, Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor ("Fund of Funds Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company ("Fund of Funds Sub-Adviser"), any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser ("Fund of Funds Sub-Advisory Group").

12. Applicants propose a condition to ensure that no Fund of Funds or Fund of Funds Affiliate [28] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting").[29]

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("independent Board members"), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[30]

14. In order to address concerns about complexity, applicants propose condition B.12, which will prohibit Funds from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting a Fund to purchase shares of other investment companies for short-term cash management purposes.

15. Finally, each Fund of Funds must enter into an FOF Participation Agreement with the respective Funds, which will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in a Fund and not in any other investment company.

16. Applicants also are seeking relief from Sections 12(d)(1)(A) and 12(d)(1)(B) to the extent necessary to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of sections 12(d)(1)(A) and (B) will not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held in the investing fund's portfolio (in this case, the Feeder Fund's portfolio). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from sections 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another

[28] A "Fund of Funds Affiliate" is any Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of these entities. A "Fund Affiliate" is the Adviser, Sub-Adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[29] An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

[30] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

person's voting securities. Each Fund may be deemed to be controlled by the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser (an "Affiliated Fund").

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[31] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Funds of Funds of which the Funds are affiliated persons or second-tier affiliates.[32]

19. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

[31] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because the Adviser, or an entity controlling, controlled by or under common control with the Adviser is also an investment adviser to the Fund of Funds.

[32] To the extent that purchases and sales of Shares occur in the secondary market (and not through principal transactions directly between a Fund of Funds and a Fund), relief from section 17(a) would not be necessary. The requested relief is intended to cover, however, transactions directly between Funds and Funds of Funds.

20. Applicants also submit that the sale of Shares to and redemption of Shares from a Fund of Funds meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[33] The FOF Participation Agreement will require any Fund of Funds that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment policies set forth in the Fund of Fund's registration statement.

21. In addition, to the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the request for relief described above would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve "overreaching" by an affiliated person. Applicants represent that such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants state that, in effect, the Feeder Fund will serve as a conduit through which creation and redemption orders by Authorized Participants will be effected.

[33] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

22. Applicants believe that: (a) With respect to the relief requested pursuant to section 17(b), the proposed transactions are fair and reasonable, and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund, and the proposed transactions are consistent with the general purposes of the Act; and (b) with respect to the relief requested pursuant to section 6(c), the requested exemption for the proposed transactions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed ETFs, other than the Master-Feeder Relief.

2. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on an Exchange.

3. Neither the Trusts nor any Fund will be advertised or marketed as open-end investment companies or mutual funds. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire Shares from the Fund and tender Shares for redemption to the Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for the Fund, the prior Business Day's NAV and the market closing price or Bid/Ask Price of the Shares, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. No Adviser or Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. On each Business Day, before the commencement of trading in Shares on

the Fund's Primary Listing Exchange, the Fund will disclose on the Web site the identities and quantities of the Portfolio Instruments and other assets held by the Fund (or its respective Master Fund) that will form the basis of the Fund's calculation of NAV at the end of the Business Day.

B. Section 12(d)(1) Relief

1. The members of the Fund of Funds Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of section 2(a)(9) of the Act. The members of the Fund of Funds Sub-Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds Advisory Group or the Fund of Funds Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds Sub-Advisory Group with respect to a Fund (or its respective Master Fund) for which the Fund of Funds Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Fund (or its respective Master Fund) or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and any Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund (or its respective Master Fund) or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of the Fund (or its respective Master Fund), including a majority of the independent Board members, will determine that any consideration paid by the Fund (or its respective Master Fund) to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund (or its respective Master Fund); (ii) is within the range of consideration that the Fund (or its respective Master Fund) would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund (or its respective Master Fund) and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund (or its respective Master Fund) pursuant to rule 12b–1 under the Act) received from a Fund (or its respective Master Fund) by the Fund of Funds' Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds' Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds' Adviser, or trustee, or Sponsor of an Investing Trust, or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund (or its respective Master Fund) by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund (or its respective Master Fund)) will cause a Fund (or its respective Master Fund) to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund (or its respective Master Fund), including a majority of the independent Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund (or its respective Master Fund) in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund (or its respective Master Fund); (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund (or its respective Master Fund) in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of beneficial owners of the Fund.

8. Each Fund (or its respective Master Fund) will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the

terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), a Fund of Funds will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund (or its respective Master Fund) in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund (or its respective Master Fund) will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that (i) the Fund (or its respective Master Fund) acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to acquire securities of one or more investment companies for short-term cash management purposes, or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26272 Filed 11–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70769; File No. SR–MIAX–2013–49]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Fee Schedule

October 29, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend its Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing*, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its current Priority Customer Rebate Program (the "Program") until November 30, 2013.[3] The Program currently applies to the period beginning July 1, 2013 and ending October 31, 2013.[4] The Program is based on the substantially similar fees of another competing options exchange.[5] Under the Program, the Exchange shall credit each Member the per contract amount set forth in the table below resulting from each Priority Customer[6] order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 1400), provided the Member meets certain volume thresholds in a month as described below. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume will be recorded for and credits will be delivered to the Member Firm that submits the order to the Exchange.

Percentage thresholds of national customer volume in multiply-listed options classes listed on MIAX (monthly)	Per contract credit
0.00%–0.25%	$0.00
Above 0.25%–0.50%	0.10
Above 0.50%–1.00%	0.11
Above 1.00%–2.00%	0.12
Above 2.00%	0.14

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that at the end of the period, the Program will expire unless the Exchange files another 19b–4 Rule Filing to amend its fees.

[4] *See* Securities Exchange Act Release Nos. 70523 (September 26, 2013), 78 FR 60966 (October 2, 2013) (SR–MIAX–2013–47); 69947 (July 9, 2013), 78 FR 42138 (July 15, 2013) (SR–MIAX–2013–31).

[5] *See* Chicago Board Options Exchange, Incorporated ("CBOE") Fees Schedule, p. 4. *See also* Securities Exchange Act Release Nos. 66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR–CBOE–2011–120); 68887 (February 8, 2013), 78 FR 10647 (February 14, 2013) (SR–CBOE–2013–017).

[6] The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). See MIAX Rule 100.

The Exchange will aggregate the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange will adjust the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Priority Customer Rebate Program as a separate direct payment.

In addition, the rebate payments will be calculated from the first executed contract at the applicable threshold per contract credit with the rebate payments made at the highest achieved volume tier for each contract traded in that month. For example, if Member Firm XYZ, Inc. ("XYZ") has enough Priority Customer contracts to achieve 2.5% of the national customer volume in multiply-listed option contracts during the month of October, XYZ will receive a credit of $0.14 for each Priority Customer contract executed in the month of October.

The purpose of the Program is to encourage Members to direct greater Priority Customer trade volume to the Exchange. Increased Priority Customer volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,[7] and customer posting incentive programs,[8] are based on attracting public customer order flow. The Program similarly intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The specific volume thresholds of the Program's tiers were set based upon business determinations and an analysis of current volume levels. The volume thresholds are intended to incentivize firms that route some Priority Customer orders to the Exchange to increase the number of orders that are sent to the Exchange to achieve the next threshold and to incent new participants to send Priority Customer orders as well. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing "rewards" for increasing the volume of trades sent to the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Priority Customer order flow to reach for higher tiers.

The Exchange proposes limiting the Program to multiply-listed options classes on MIAX because MIAX does not compete with other exchanges for order flow in the proprietary, singly-listed products.[9] In addition, the Exchange does not trade any singly-listed products at this time, but may develop such products in the future. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

The Exchange proposes excluding mini-options and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400 from the Program. The Exchange notes these exclusions are nearly identical to the ones made by CBOE.[10] Mini-options contracts are excluded from the Program because the cost to the Exchange to process quotes, orders and trades in mini-options is the same as for standard options. This, coupled with the lower per-contract transaction fees charged to other market participants, makes it impractical to offer Members a credit for Priority Customer mini-option volume that they transact. Providing rebates to Priority Customer executions that occur on other trading venues would be inconsistent with the proposal. Therefore, routed away volume is excluded from the Program in order to promote the underlying goal of the proposal, which is to increase liquidity and execution volume on the Exchange.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.[11] The Exchange calculates volume thresholds on a monthly basis.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Priority Customer Rebate Program is fair, equitable and not unreasonably discriminatory. The Program is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed rebate program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders. All similarly situated Priority Customer orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits for executing higher percentages of total national customer volume (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage Members to direct increased amounts of Priority Customer contracts to the Exchange. The resulting increased volume and liquidity will benefit those Members who receive the lower tier levels, or do not qualify for the Program

[7] *See* MIAX Fee Schedule, Section 1(b).

[8] *See* NYSE Arca, Inc. Fees Schedule, page 3 (section titled "Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues").

[9] If a multiply-listed options class is not listed on MIAX, then the trading volume in that options class will be omitted from the calculation of national customer volume in multiply-listed options classes.

[10] *See* CBOE Fee Schedule, page 4. CBOE also excludes QCC trades from their rebate program. CBOE excluded QCC trades because a bulk of those trades on CBOE are facilitation orders which are charged at the $0.00 fee rate on their exchange.

[11] Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

at all, by providing more trading opportunities and tighter spreads.

Limiting the Program to multiply-listed options classes listed on MIAX is reasonable because those parties trading heavily in multiply-listed classes will now begin to receive a credit for such trading, and is equitable and not unfairly discriminatory because the Exchange does not trade any singly-listed products at this time. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is additional competitive burden on non-Priority Customers, the Exchange believes that this is appropriate because the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of a customer rebate program into the determination.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov*. Please include File Number SR–MIAX–2013–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–MIAX–2013–49 and should be submitted on or before November 25, 2013. For the Commission, by the

Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26269 Filed 11–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Heritage Worldwide, Inc., Impala Mineral Exploration Corp., Klondike Star Mineral Corporation, MIV Therapeutics Inc., Most Home Corp., Moventis Capital, Inc., and OrganiTECH USA, Inc.; Order of Suspension of Trading

October 31, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Heritage Worldwide, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Impala Mineral Exploration Corp. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Klondike Star Mineral Corporation because it has not filed any periodic reports since the period ended May 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MIV Therapeutics Inc. because it has not filed any periodic reports since the period ended November 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Most Home Corp. because it has not filed any periodic reports since the period ended April 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Moventis Capital, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OrganiTECH USA, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 31, 2013, through 11:59 p.m. EST on November 13, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–26446 Filed 10–31–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Acies Corporation, Immtech Pharmaceuticals, Inc., MRU Holdings, Inc., MSTI Holdings, Inc., Nestor, Inc., New Generation Holdings, Inc., and Nuevo Financial Center, Inc.; Order of Suspension of Trading

October 31, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Acies Corporation because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Immtech Pharmaceuticals, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MRU Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MSTI Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nestor, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New Generation Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nuevo Financial Center, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 31, 2013, through 11:59 p.m. EST on November 13, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–26447 Filed 10–31–13; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Safety Awareness, Feedback, and Evaluation (SAFE) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 12, 2013, vol. 78, no. 71, pages 22020–22021. The information collected will be used by FAA Flight Standards Service to improve the quality and delivery of the services and products provided to their stakeholders.

DATES: Written comments should be submitted by December 4, 2013.

[15] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX

Title: Safety Awareness, Feedback, and Evaluation (SAFE) Program

Form Numbers: No FAA forms are associated with this collection.

Type of Review: Clearance of a new information collection.

Background: Executive Order 12862 requires the Federal Government to provide the "highest quality service possible to the American people." The FAA Flight Standards Service has designed the Safety Awareness, Feedback, and Evaluation (SAFE) Program to measure the aviation community stakeholder perception of effectiveness with various FAA-mandated and regulatory programs.

Respondents: A total sample of 4,782 commercial and non-commercial pilots, repair station operators, maintenance technicians, and air carrier operations managers.

Frequency: Information will be collected once annually per individual stakeholder group.

Estimated Average Burden per Response: 20 minutes.

Estimated Total Annual Burden: 531 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on October 30, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–26339 Filed 11–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, December 17, and Wednesday, December 18, 2013, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at CGH Technologies, Inc., 600 Maryland Ave. SW., Suite 800W, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Norek, ATPAC Executive Director, 800 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, December 17, and Wednesday, December 18, 2013, from 8:30 a.m. to 5:00 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Mr. Gary Norek no later than Friday, November 22, 2013. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on October 25, 2013.

Gary A. Norek,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 2013–26340 Filed 11–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–49]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 25, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0821 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Andrea Copeland, ARM–208, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 29, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0821.

Petitioner: Embry-Riddle Aeronautical University.

Section of 14 CFR Affected: 14 CFR 61.160(c)(1).

Description of Relief Sought: Petitioner seeks relief to enable its Master of Science in Aeronautics graduates who completed instrument and commercial flight training under its part 141 curricula to be eligible for the restricted privileges airline transport pilot certificate without meeting the requirement to hold an associate degree with an aviation major.

[FR Doc. 2013–26271 Filed 11–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–50]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 25, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0818 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Katherine L. Haley, ARM–203, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591; email *Katherine.L.Haley@faa.gov;* (202) 493–5708.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 29, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0818.

Petitioner: ELITE Simulation Solutions.

Section of 14 CFR Affected: § 61.65(i)

Description of Relief Sought: ELITE Simulation Solutions is requesting an increase of the credible time that may be obtained in an Advanced Aviation Training Device toward an instrument rating from a maximum of 10 hours to a maximum of 20 hours.

[FR Doc. 2013–26270 Filed 11–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–22194; FMCSA–2007–28695; FMCSA–2009–0206]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 6, 2013. Comments must be received on or before December 4, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2005–22194; FMCSA–2007–28695; FMCSA–2009–0206], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

John E. Bell (AZ)
Henry L. Chastain (GA)
Thomas R. Crocker (SC)
Gerald W. Fox (PA)
Richard L. Gandee (OH)
Richard H. Kind (WA)
Jason E. Mallette (MS)
Thomas C. Meadows (NC)
David A. Morris (TX)
Richard P. Stanley (MA)
Paul D. Stoddard (NY)
Scott A. Tetter (IL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (70 FR 57353; 70 FR 72689; 72 FR 46261; 72 FR 54972; 72 FR 62897; 74 FR 43217; 74 FR 57551; 74 FR 60021; 76 FR 70210). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 4, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published

notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2005–22194; FMCSA–2007–28695; FMCSA–2009–0206 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2005–22194; FMCSA–2007–28695; FMCSA–2009–0206 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to the proposed rulemaking.

Issued on: October 25, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–26302 Filed 11–1–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0063; Notice 2]

Jaguar Land Rover North America, LLC, on behalf of Jaguar Cars Limited, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Jaguar Land Rover North America, LLC, on behalf of Jaguar Cars Limited (collectively referred to as "Jaguar") has determined that model year 2010 and certain 2011 Jaguar XJ passenger cars manufactured between September 11, 2009 and March 28, 2011, do not fully comply with paragraphs S5.2.1 and S5.5.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and displays*, regarding brake system-related telltales. Jaguar has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, dated April 15, 2011.

ADDRESSES: For further information on this decision contact Mr. Stuart Seigel, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202)366–5287, facsimile (202) 366–7002.

SUPPLEMENTARY INFORMATION:

I. Jaguar's Petition

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Jaguar has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on August 26, 2011 in the **Federal Register** (76 FR 53532). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number "NHTSA–2011–0063."

II. Vehicles Involved

Affected are approximately 8,621 model year 2010 and 2011 Jaguar XJ passenger cars that were manufactured at Jaguar's Castle Bromwich assembly plant between September 11, 2009 and March 28, 2011.

III. Rule Text

Paragraphs S5.2.1 and S5.5.2 of FMVSS No. 101 specifically state:

S5.2.1 Except for the Low Tire Pressure Telltale, each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2. If a symbol is used, each symbol provided pursuant to this paragraph must be substantially similar in form to the symbol as it appears in Table 1 or Table 2. If a symbol is used, each symbol provided pursuant to this paragraph must have the proportional dimensional characteristics of the symbol as it appears in Table 1 or Table . . .

S5.5.2 The telltales for any brake system malfunction required by Table 1 to be red, air bag malfunction, low tire pressure, electronic stability control malfunction (as of September 1, 2011), passenger air bag off, high beam, turn signal, and seat belt must not be shown in the same common space.

Additionally, Table 1 Note 9 states:

Refer to FMVSS 105 or FMVSS 135, as appropriate, for additional specific requirements for brake telltale labeling and color. If a single telltale is to be used to indicate more than one brake system condition, the brake system malfunction identifier must be used.

FMVSS No. 135 is applicable to the subject vehicles. Section 5.5.5, *Labeling*, states in pertinent part:

S5.5.5. *Labeling.*

(a) Each visual indicator shall display a word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (⅛ inch) high and the letters and background shall be of contrasting colors, one of which is red.

Words or symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of clarity.

(d) If separate indicators are used for one or more of the conditions described in S5.5.1(a) through S5.5.1(g), the indicators shall display the following wording:

(1) If a separate indicator is provided for the low brake fluid condition in S5.5.1(a)(1), the words *"Brake Fluid"* (emphasis added) shall be used except for vehicles using hydraulic system mineral oil.

(2) If a separate indicator is provided for the gross loss of pressure condition in S5.5.1(a)(2), the words *"Brake Pressure"* (emphasis added) shall be used.

(3) If a separate indicator is provided for the condition specified in S5.5.1(b), the letters and background shall be of contrasting colors, one of which is yellow. The indicator shall be labeled with the words *"Antilock" or "Anti-lock" or "ABS"*; (emphasis added) or "Brake Proportioning," in accordance with Table 2 of Standard No. 101.

(4) If a separate indicator is provided for application of the parking brake as specified for S5.5.1(c), the single word *"Park"* (emphasis added) or the words *"Parking Brake"* (emphasis added) may be used.

IV. Summary of Jaguar's Analyses

Jaguar explains that the noncompliance for the 8,621 XJ vehicles is that the telltales used for brake warning, park brake warning and Antilock Braking System (ABS) failure warnings are displayed using International Organization for Standardization (ISO) symbols instead of the telltale symbols required by FMVSS No. 101.

Jaguar stated its belief that although the instrument cluster telltales are marked with ISO symbols, the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The functionality of all primary braking systems is not affected by this noncompliance and the vehicle will operate as intended.

(2) The owner's manual shows clearly the ISO warning symbols that may be displayed along with the FMVSS No. 101 compliant equivalents. Further, the owner's manual instructions on required actions to take in the event of a warning being displayed are the same for each telltale regardless of it being marked with an ISO symbol or with its FMVSS No. 101 compliant equivalent.

(3) The colors of the telltales adhere to a common color scheme and are consistent between ISO and FMVSS requirements. The owner's manual provides the following guidance to the driver:

a. RED warning lamps are for primary warnings. A primary warning must be investigated immediately by the driver or seek qualified assistance as soon as possible.

b. AMBER warning lamps are for secondary warnings. Some indicate that a vehicle system is in operation, others indicate that the driver must take action and then seek qualified assistance as soon as possible.

(4) The driver will receive ISO symbol based warnings of any affected system malfunction. These warnings, although displaying telltales marked with ISO symbols, are augmented with a message center text providing further details as to the nature of the warning symbol:

a. If low brake fluid is detected or an Electronic Brakeforce Distribution (EBD) fault identified, the ISO Brake Warning Symbol and the words "Brake Fluid Low" or "EBD Fault" will be displayed in the message center.

b. If the park brake is applied, the ISO Parking Brake symbol will be displayed. If the vehicle is moving in excess of 1.8 mph, the message displayed in the message center is "Caution! Park Brake Applied" and a continuous chime will sound.

c. If an antilock brake system (ABS) malfunction is detected, the ISO ABS symbol illuminates display a message in the message center stating "ABS Fault".

(5) Jaguar is not aware of any incidents or injuries related to this condition.

Jaguar also explains that all unsold vehicles in the dealer stock will have the instrument cluster software configuration file settings updated to display the correct warning telltales as required by FMVSS No. 101 prior to sale.

In summation, Jaguar believes that the described noncompliance of its vehicles to be inconsequential to motor vehicle safety, and that its petition, to exempt Jaguar from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

V. NHTSA'S Analyses

Since these vehicles are equipped with a split service brake system, a low brake fluid condition will potentially reduce the ability of the brakes on two of the four wheels to stop it. When this condition occurs in Jaguar's affected vehicles, the telltale labeled with the ISO brake symbol, which resembles a brake assembly but has no words, is displayed. In addition, in the message center, "Brake Fluid Low" is displayed. Likewise, Jaguar's ISO Park brake applied symbol (P) is accompanied by a message "Caution! Park Brake Applied" and a chime. Regarding the "ABS" telltale, the agency has learned that Jaguar labeled the "ABS" telltale as required by FMVSS Nos. 101 and 135, with letters 3.2 mm high. Therefore, Jaguar incorrectly identified this telltale in its Part 573 report, and this portion of its petition is moot.

Jaguar notified NHTSA that, as of September 19, 2013, they had corrected 95 percent of the noncompliant vehicles by its Field Service Action (FSA). Jaguar also agreed to address the remaining vehicles as part of a supplemental customer notification satisfaction campaign (CNSC) and to continue to notify NHTSA of its progress. While NHTSA believes [1] that telltales labeled "BRAKE FLUID" and "PARK BRAKE" or "PARK" are more readily identified by drivers than an ISO brake symbol, the motor vehicle safety impact of the noncompliances on the remaining uncorrected vehicles is mitigated due to the unique set of indicators available to operators of the subject vehicles as well as Jaguar's ongoing CNSC.

NHTSA has also not received any consumer complaints on issues related to the subject noncompliances.

VI. NHTSA Decision

In consideration of Jaguar's actions and intent to remedy all vehicles, NHTSA has determined that Jaguar has met its burden of persuasion that the FMVSS No. 101 and 135 noncompliances of the subject vehicles, i.e. labeling of the brake system malfunction and park brake applied telltales, are inconsequential to motor vehicle safety. Accordingly, Jaguar's petition is hereby granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the vehicles that Jaguar no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Jaguar notified them that the subject noncompliance existed.

[1] See 60 FR 6414, February 2, 1995 and 70 FR 48295, August 17, 2005.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.95 and 501.8)

Issued On: October 29, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–26319 Filed 11–1–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: list of Applications for Special Permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 4, 2013.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 29, 2013.

Don Burger,

Chief, General Approvals and Permits.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15973–N		Codman & Shurtleff, Inc. Raynham, MA.	49 CFR Parts 171–180	To authorize the transportation in commerce of small amounts of butane contained within a Medstream Pump as unregulated. (modes 4, 5)
15980–N		Windward Aviation, Inc. Puunene, HI.	49 CFR 175.9(a)	To authorize the transportation in commerce of aviation turbine engine fuel by external load. (mode 4)
15985–N		Space Exploration Technologies Corp. Hawthorne, CA.	49 CFR Part 172 and 173	To authorize the transportation in commerce of certain hazardous material as part of the Falcon space capsule without requiring shipping papers, marking and labeling. (mode 1)
15986–N		Helicopter Consultants of Maui, Inc. dba Blue Hawaiian Helicopters Kahului, HI.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300 and 172.400.	To authorize the transportation in commerce of certain hazardous materials by external load in remote areas of the US without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (modes 2, 4)
15991–N		Dockweiler Neustadt-Glewe, Germany.	49 CFR 178.50(d)(1) and (d)(2).	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders similar to DOT 4BW for the transportation in commerce of certain hazardous materials. (modes 1, 2, 3, 4, 5)
15992–N		Ledwell & Son Enterprises, Inc. Texarkana, TX.	49 CFR 178.345–3	To authorize the transportation in commerce of certain cargo tank motor vehicles that have had an appurtenance welded to the cargo tank wall without meeting the requirements of 49 CFR 178.345–3. (mode 1)
15994–N		Pinnacle Helicopter Lubbock, TX.	49 CFR 175.9	To authorize the transportation in commerce of hazardous materials in external load. (mode 4)
15996–N		University of York York	49 CFR 171.23, 173.301(a)(1), and 173.301(j).	To authorize the transportation in commerce of 53 non-DOT specification EU certified cylinders from the United Kingdom into the U.S. Territory of Guam for the atmospheric research field campaign "CONTRAST". (mode 3)
15997–N		Hi-Shear Technology Corporation Torrance, CA.	49 CFR 173.56(b), 173.61 and 173.63.	To authorize the transportation in commerce Sealed Scrap Parts (small parts containing milligram explosive loads) as as UN0352, Articles, explosive, n.o.s. 1.4D without having them re-examined when transported for disposal. (mode 1)
15998–N		U.S. Department of Defense (DOD) Scott AFB, IL.	49 CFR 171.22(e) and 173.62	To authorize the transportation in commerce of certain Class 1 material which is forbidden for transportation by cargo air or exceeds the quantity limitations in 172.101 Column (9B) in alternative packaging. (mode 4)

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15999–N		National Aeronautics & Space Administration (NASA) Washington, DC.	49 CFR Part 172 and 173	To authorize the transportation in commerce of certain hazardous material as part of the Orion space capsule without requiring shipping papers, marking and labeling. (modes 1, 3)
16001–N		VELTEK Malvern, PA	49 CFR Parts 100–180	To authorize exceptions to specification packaging, marking and labeling requirements for certain isopropyl alcohol formulations. (modes 1, 2, 3, 4, 5)
16002–N		Sky Aviation, Inc. Worland, WY.	49 CFR 175.9(a)	To authorize the transportation in commerce of certain hazardous materials by external load. (mode 4)

[FR Doc. 2013–26121 Filed 11–1–13; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Research and Innovative Technology Administration (RITA), U.S. Department of Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Tuesday, November 19th from 8:30 a.m. to 4:00 p.m. E.S.T. in the DOT Conference Center at the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC. Section 52011 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C., App. 2) to advise the Bureau of Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department. The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Follow-up discussion of the usefulness and visibility of current BTS products; (3) Follow-up discussion of strategies for assuring and enhancing quality of BTS products; (4) Future directions for BTS programs; (5) Public Comments and Closing Remarks. Participation is open to the public. Members of the public who wish to participate must notify Courtney Freiberg at *Courtney.Freiberg@dot.gov*, not later than November 14, 2013. Members of the public may present oral statements at the meeting with the approval of Patricia Hu, Director of the Bureau of Transportation Statistics. Noncommittee members wishing to present oral statements or obtain information should contact Courtney Freiberg via email no later than November 14, 2013.

Questions about the agenda or written comments may be emailed (Courtney.Freiberg@dot.gov) or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, *Attention:* Courtney Freiberg, 1200 New Jersey Avenue SE., Room # E34–429, Washington, DC 20590, or faxed to (202) 366–3640. BTS requests that written comments be received by November 14, 2013. Access to the DOT Headquarters building is controlled therefore all persons who plan to attend the meeting must notify Courtney Freiberg at 202–366–1270 prior to November 14, 2013. Individuals attending the meeting must report to the main DOT entrance on New Jersey Avenue SE. for admission to the building. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Courtney Freiberg at 202–366–1270 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 23rd day of October 2013.

Rolf Schmitt,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2013–26126 Filed 11–1–13; 8:45 am]
BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 30, 2013.

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 December 4, 2013 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* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141–D, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 622–1295, email at *PRA@treasury.gov*, or the entire information collection request may be found at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Number: 1545–1433.

Type of Review: Extension without change of a currently approved collection.

Title: CO–11–91 (TD 8597) (Final) Consolidated and Controlled Groups-Intercompany Transactions and Related Rules; CO–24–95 (TD 8660) (Final) Consolidated Groups-Intercompany Transactions and Related Rules.

Abstract: The regulations require common parents that make elections under Section 1.1502–13 to provide certain information. The information will be used to identify and assure that the amount, location, timing and attributes of intercompany transactions and corresponding items are properly maintained.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,050.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2013–26164 Filed 11–1–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the names of two individuals and five entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the two individuals and five entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on October 29, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On October 29, 2013, the Director of OFAC designated the following two individuals and five entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. CALLE QUIROS, Luis Santiago, Madrid, Spain; Lima, Peru; DOB 22 Jul 1965; POB Madrid, Spain; citizen Spain; alt. citizen Peru; D.N.I. 01927713–Z (Spain); alt. D.N.I. 10831176–8 (Peru) (individual) [SDNTK] (Linked To: TEXTIMAX SPAIN S.L.; Linked To: CASTIZAL MADRILENA S.L.; Linked To: INMOBILIARIA CASTIZAL S.A.C.; Linked To: UCALSA PERU S.A.; Linked To: CARTRONIC GROUP PERU S.A.C.).
2. RODRIGUEZ BADILLO, Maria Paloma, Madrid, Spain; DOB 26 Jan 1968; POB Madrid, Spain; citizen Spain; D.N.I. 33503596–W (Spain) (individual) [SDNTK].

Entities

3. CARTRONIC GROUP PERU S.A.C., Lima, Peru; RUC #20544359160 (Peru) [SDNTK].
4. CASTIZAL MADRILENA S.L., Calle Julian Camarillo 47, B 103, Madrid 28037, Spain; C.I.F. B97800221 (Spain) [SDNTK].
5. INMOBILIARIA CASTIZAL S.A.C., Avenida 28 de Julio, No. 562 Int. A, Miraflores, Lima, Peru; RUC #20492694631 (Peru) [SDNTK].
6. TEXTIMAX SPAIN S.L., Calle Julian Camarillo 47, Madrid 28037, Spain; C.I.F. B84639962 (Spain) [SDNTK].
7. UCALSA PERU S.A., Lima, Peru; RUC #20451702760 (Peru) [SDNTK].

Dated: October 29, 2013.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2013–26333 Filed 11–1–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0091]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 30, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB

Control No. 2900–0091" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov*. Please refer to "OMB Control No. 2900–0091, Application and Renewal for Health Benefits."

SUPPLEMENTARY INFORMATION:

Title: Application and Renewal for Health Benefits, VA Form 10–10EZ; 10–10EZR; 10–10HS.

Type of Review: Revision of an existing collection.

a. *Abstract:* Veterans complete VA Form 10–10EZ to enroll in VA health care system. VA will use the information collected to determine the veteran's eligibility for medical benefits.

b. Veterans currently enrolled in VA health care system complete VA Form 10–10EZR to update their personal information such as marital status, address, health insurance and financial information.

c. VA Form 10–10HS collects information only from veterans who are in a copay required status for hospital care and medical services, but due to a loss of income project their income for the current year will be substantially below the VA means test threshold.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 2, 2013, Vol. 78, No. 127, at pages 39832–39833.

Affected Public: Individuals or households.

Estimated Annual Burden: 455,750.

Estimated Average Burden per Respondent: 26.8 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 1,017,000.

By direction of the Secretary.

Dated: October 30, 2013.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–26281 Filed 11–1–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Monday,
No. 213 November 4, 2013

Part II

Environmental Protection Agency

40 CFR Part 63
National Emissions Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2012–0510; FRL–9900–94–OAR]

RIN 2060–AR58

National Emissions Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the National Emissions Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production to address the results of the residual risk and technology review. In light of our review, we are proposing amendments that would prohibit the use of hazardous air pollutant-based auxiliary blowing agents for slabstock foam production facilities. In addition, the EPA is proposing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown and malfunction; to add provisions for affirmative defense; to add requirements for reporting of performance testing through the Electronic Reporting Tool; to revise compliance dates for applicable proposed actions; to clarify the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities; and to revise the rule to add a schedule for delay of leak repairs for valves and connectors.

DATES:

Comments. Comments must be received on or before December 4, 2013. A copy of comments on the information collection provisions should be submitted to the Office of Management and Budget (OMB) on or before December 4, 2013.

Public Hearing. If anyone contacts the EPA requesting a public hearing by November 14, 2013, the public hearing will be held on November 20, 2013, from 10:00 a.m. to 4:00 p.m. on the EPA campus at 109 T.W. Alexander Drive in Research Triangle Park, North Carolina. If EPA holds a public hearing, the EPA will keep the record of the hearing open for 30 days after completion of the hearing to provide an opportunity for submission of rebuttal and supplementary information.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2012–0510, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov,* Attention Docket ID Number EPA–EPA–HQ–OAR–2012–0510.
- *Fax:* (202) 566–9744, Attention Docket ID Number EPA–HQ–OAR–2012–0510.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID Number EPA–HQ–OAR–2012–0510, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2012–0510. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID Number EPA–HQ–OAR–2012–0510. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/dockets.*

Docket. The EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2012–0510. All documents in the docket are listed in the *regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. If anyone contacts the EPA requesting a public hearing by November 14, 2013, the public hearing will be held on November 20, 2013, from 10:00 a.m. to 4:00 p.m. on the EPA campus at 109 T.W. Alexander Drive in Research Triangle Park, North Carolina. Persons interested in presenting oral testimony or inquiring as to whether a public hearing will be held should contact Ms. Pamela Garrett, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–7966; fax number: (919) 541–5450; and email address: *garrett.pamela@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Kaye Whitfield, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2509; fax number: (919) 541–5450; and email address: *whitfield.kaye@epa.gov.* For specific information regarding the risk modeling

methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov*. For information about the applicability of the National Emission Standards for Hazardous Air Pollutants (NESHAP) to a particular entity, contact Mr. Scott Throwe, Office of Enforcement and Compliance Assurance; telephone number: (202) 564–7013; fax number: (202) 564–0050; and email address: *throwe.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations

This preamble includes several acronyms and terms used to describe industrial processes, data inventories and risk modeling. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ABA auxiliary blowing agent
AEGL acute exposure guideline levels
AERMOD air dispersion model used by the HEM–3 model
BAAQMD Bay Area Air Quality Management District
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
EIS Emission Inventory System
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
FPUF Flexible Polyurethane Foam
FR Federal Register
HAP hazardous air pollutants
HCl hydrogen chloride
HEM–3 Human Exposure Model, Version 1.1.0
HI hazard index
HF hydrogen fluoride
HQ hazard quotient
ICR information collection request
IRIS Integrated Risk Information System
kg kilogram
km kilometer
lb pound
LDAR leak detection and repair
MACT maximum achievable control technology
MACT Code Code within the National Emissions Inventory used to identify processes included in a source category
mg/kg-day milligrams per kilogram per day
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP National Emissions Standards for Hazardous Air Pollutants
NRC National Research Council
NRDC Natural Resources Defense Council
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
POM polycyclic organic matter
PFA Polyurethane Foam Association
ppm parts per million
QA quality assurance
REL reference exposure level
RCO recuperative thermal oxidizer
RfC reference concentration
RfD reference dose or daily oral exposure
RTO regenerative thermal oxidizer
RTR residual risk and technology review
SAB Science Advisory Board
SBA Small Business Administration
S/L/Ts State, local, and tribal air pollution control agencies
SOP standing operating procedures
SSM startup, shutdown and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TRI Toxics Release Inventory
TRIM Total Risk Integrated Methodology
TTN Technology Transfer Network
UF uncertainty factors
$\mu g/m^3$ microgram per cubic meter
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
VCS voluntary consensus standards
WWW world wide web

Organization of this Document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive but rather to provide a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once finalized, will be directly applicable to the affected sources. One federal entity is affected by this proposed action, and no state, local or tribal government entities are affected by this proposed action. As defined in the "Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990" (see 57 FR 31576, July 16, 1992), the "Flexible Polyurethane Foam Production" source category is any facility engaged in the

[1] U.S. EPA, 1992. *Documentation for Developing the Initial Source Category List—Final Report.* EPA–450/3–91–030.

manufacture of foam made from a polymer containing a plurality of carbamate linkages in the chain backbone (polyurethane).[1]

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORY AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [a]
Flexible Polyurethane Foam Production	Flexible Polyurethane Foam Production	326150

[a] North American Industry Classification System

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet through the EPA's Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action on the TTN's policy and guidance page for newly proposed or promulgated rules at: *http://www.epa.gov/ttn/oarpg/t3pfpr.html.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents on the project Web site: *http://www.epa.gov/ttn/atw/foam/foampg.html.* Information on the overall residual risk and technology review (RTR) program is available at the following Web site: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.*

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2012–0510.

II. Background

A. What is the statutory authority for this action?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) requires us to promulgate technology-based NESHAP for those sources. "Major sources" are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, the technology-based NESHAP must reflect the maximum degree of emissions reductions of HAP achievable (after considering cost, energy requirements and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards must reflect the maximum degree of emissions reduction achievable through the application of measures, processes, methods, systems or techniques, including, but not limited to, measures that (1) reduce the volume of or eliminate pollutants through process changes, substitution of materials or other modifications; (2) enclose systems or processes to eliminate emissions; (3) capture or treat pollutants when released from a process, stack, storage or fugitive emissions point; (4) are design, equipment, work practice or operational standards (including requirements for operator training or certification); or (5) are a combination of the above. CAA section 112(d)(2)(A)-(E). The MACT standards may take the form of design, equipment, work practice or operational standards where the EPA first determines either that (1) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with law; or (2) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA section 112(h)(1)–(2).

The MACT "floor" is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3) and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT floor for existing sources can be less stringent than floors for new sources but not less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, the EPA must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on considerations of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts and energy requirements.

The EPA is then required to review these technology-based standards and revise them "as necessary (taking into account developments in practices, processes and control technologies)" no

[1] U.S. EPA, 1992. *Documentation for Developing the Initial Source Category List—Final Report.* EPA–450/3–91–030.

less frequently than every eight years. CAA section 112(d)(6). In conducting this review, the EPA is not required to recalculate the MACT floor. Natural Resources Defense Council *(NRDC)* v. *EPA*, 529 F.3d 1077, 1084 (D.C. Cir., 2008). *Association of Battery Recyclers, Inc.* v. *EPA*, 716 F.3d 667 (D.C. Cir. 2013).

The second stage in standard-setting focuses on reducing any remaining (i.e., "residual") risk according to CAA section 112(f). This provision requires, first, that the EPA prepare a report to Congress discussing (among other things) methods of calculating the risks posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks and the EPA's recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted the *Residual Risk Report to Congress*, EPA–453/R–99–001 (Risk Report) in March 1999. Congress did not act in response, thereby triggering the EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

Section 112(f)(2) of the CAA requires the EPA to determine for source categories subject to MACT standards whether the emission standards provide an ample margin of safety to protect public health. Section 112(f)(2)(B) of the CAA expressly preserves the EPA's use of the two-step process for developing standards to address any residual risk and the agency's interpretation of "ample margin of safety" developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the *Risk Report* that the agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations, and in a challenge to the risk review for the Synthetic Organic Chemical Manufacturing source category, the United States Court of Appeals for the District of Columbia Circuit upheld as reasonable the EPA's interpretation that subsection 112(f)(2) incorporates the standards established in the Benzene NESHAP. *See NRDC* v. *EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) ("[S]ubsection 112(f)(2)(B) expressly incorporates the EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the **Federal Register**."); *see also A Legislative History of the Clean Air Act Amendments of 1990*, vol. 1, p. 877 (Senate debate on Conference Report).

The first step in this process is the determination of acceptable risk. If risks are unacceptable, the EPA cannot consider cost in identifying the emissions standards necessary to bring risks to an acceptable level. The second step is the determination of whether standards must be further revised in order to provide an ample margin of safety to protect public health, which is the level at which the standards must be set, unless an even more stringent standard is necessary to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect.

1. Determining Acceptability

The agency in the Benzene NESHAP concluded that "that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information" and that the "judgment on acceptability cannot be reduced to any single factor." Id. at 38046. The determination of what represents an "acceptable" risk is based on a judgment of "what risks are acceptable in the world in which we live" (*Risk Report* at 178, quoting *NRDC* v. *EPA*, 824 F.2d 1146, 1165 (D.C. Cir. 1987) (en banc) ("Vinyl Chloride"), recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that "EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately one in 10 thousand, that risk level is considered acceptable." 54 FR 38045. We discussed the maximum individual lifetime cancer risk (or maximum individual risk (MIR)) as being "the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years." *Id.* We explained that this measure of risk "is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years." *Id.* We acknowledged that maximum individual lifetime cancer risk "does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded." *Id.*

Understanding that there are both benefits and limitations to using the MIR as a metric for determining acceptability, we acknowledged in the Benzene NESHAP that "consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk." *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination. Further, in the Benzene NESHAP, we noted that:

> [p]articular attention will also be accorded to the weight of evidence presented in the risk assessment of potential carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency's judgment on acceptability, including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.

Id. at 38046. The agency also explained in the Benzene NESHAP that:

> [i]n establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 km exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants.

Id. At 38045. In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone.

As noted earlier, in *NRDC* v. *EPA*, the court held that section 112(f)(2) "incorporates the EPA's interpretation of the Clean Air Act from the Benzene Standard." The court further held that Congress' incorporation of the Benzene standard applies equally to carcinogens and non-carcinogens. 529 F.3d at 1081–82. Accordingly, we also consider non-cancer risk metrics in our determination of risk acceptability and ample margin of safety.

2. Determination of Ample Margin of Safety

CAA section 112(f)(2) requires the EPA to determine, for source categories subject to MACT standards, whether

those standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, "the second step of the inquiry, determining an 'ample margin of safety,' again includes consideration of all of the health factors, and whether to reduce the risks even further. . . . Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties and any other relevant factors. Considering all of these factors, the agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112." 54 FR 38046.

According to CAA section 112(f)(2)(A), if the MACT standards for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million," the EPA must promulgate residual risk standards for the source category (or subcategory), as necessary to provide an ample margin of safety to protect public health. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards (i.e. the MACT standards) are sufficiently protective. *NRDC* v. *EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.") The EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[2] but must consider cost, energy, safety and other relevant factors in doing so.

The CAA does not specifically define the terms "individual most exposed," "acceptable level" and "ample margin of safety." In the Benzene NESHAP, 54 FR 38044–38045, we stated as an overall objective:

> In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.*, 100-in-1 million] the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The agency further stated that "[t]he EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risks to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population." Id. at 38045.

In the ample margin of safety decision process, the agency again considers all of the health risks and other health information considered in the first step, including the incremental risk reduction associated with standards more stringent than the MACT standard or a more stringent standard that EPA has determined is necessary to ensure risk is acceptable. In the ample margin of safety analysis, the agency considers additional factors, including costs and economic impacts of controls, technological feasibility, uncertainties and any other relevant factors. Considering all of these factors, the agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). 54 FR 38046.

B. What is this source category and how do the MACT standards regulate its HAP emissions?

The MACT standards for Flexible Polyurethane Foam (FPUF) Production were promulgated on October 7, 1998, (63 FR 53980) and codified at 40 CFR part 63, subpart III. The FPUF Production MACT standards apply to each new and existing flexible polyurethane foam or rebond foam process that produces flexible polyurethane foam or rebond foam, emits HAP, and is located at a contiguous, major source plant site. The requirements of the standards are the same for both new and existing sources.

There are three types of FPUF producers in the source category: Slabstock, molded and rebond. Slabstock foam is produced in large continuous buns that are then cut into the desired size and shape. Slabstock foam products are primarily used in furniture seat cushions and bedding materials. Molded foam is produced by "shooting" the foam mixture into a mold of the desired shape and size. Molded foam is typically used in automotive seats, packaging and a range of specialty products. Rebond foam is made from scrap foam that is converted into a material primarily used for carpet underlay. Rebond foam production is often co-located with slabstock foam production facilities.

Slabstock and molded polyurethane foams are produced by mixing three major ingredients: A polyol polymer, an isocyanate and water. The polyol is either a polyether or polyester polymer with hydroxyl end groups. Other ingredients are often added to modify the polymer, and catalysts are used to balance the principal foam production reactions. Auxiliary blowing agents (ABAs) may be used to produce specific densities and grades of foam where the gases produced by the isocyanate-water reaction are insufficient to achieve the desired density. ABAs are more widely used in the production of slabstock foams than in the production of molded foams. Rebond foam is produced from scrap slabstock or molded polyurethane foam.

The HAP emission points at FPUF production facilities depend on the type of foam being produced. Prior to compliance with the original FPUF Production MACT standards, the primary HAP emission point for slabstock foam facilities was the foam production line, due to emissions of HAP ABAs. Other HAP emission points at slabstock production facilities include storage vessels and equipment leaks. At molded and rebond foam facilities, the primary HAP emission points are storage vessels and equipment leaks.

Many facilities discontinued use of HAP ABAs before the rule's October 2001 compliance date, allowing these facilities to be designated as area sources. Based on the best information available, slabstock production facilities using HAP ABAs on, or after, the rule's October 2001 compliance date also have discontinued use of HAP-based ABAs. We solicit comment on the use of HAP-based ABAs and whether any facilities in the FPUF production source category currently use these products.

In the past decade, the FPUF production source category has experienced plant closures and consolidations. Today, there are 13 FPUF production facilities subject to the MACT standards: 7 slabstock, 6 molded and 2 rebond. One rebond facility is co-located with a slabstock facility, and the other rebond facility is co-located with a molded foam facility. A list of these facilities is included in the memorandum, *Development of the RTR*

[2] "Adverse environmental effect" is defined as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas. CAA section 112(a)(7).

Emissions Dataset for the Flexible Polyurethane Foam Production Source Category, which is available in the docket for this proposed rulemaking.

The FPUF Production MACT standards contain requirements specific for each of the three types of foam production processes. For slabstock foam production, the FPUF Production MACT standards include diisocyanate and HAP ABA emissions reduction requirements. For molded and rebond foam production, the FPUF Production MACT standards prohibit the use of HAP in mold release agents and equipment cleaners, except in very limited circumstances.

For slabstock foam production, the FPUF Production MACT standards regulate emissions of diisocyanates from storage vessels, transfer pumps and equipment leaks. The storage vessel requirements include the installation of either a vapor recovery system or a carbon adsorption system. Transfer pumps are required to be either sealless pumps or pumps submerged in a neutral oil, and submerged pumps must be visually inspected periodically for leaks. All components in diisocyanate service must be repaired when a leak is detected.

Standards for HAP ABA emissions at slabstock facilities include emission point requirements for the foam production line, storage vessels, equipment leaks and equipment cleaning. For the slabstock production line, the FPUF Production MACT standards contain restrictions on the amount of HAP ABAs that can be used, based on the grades of foam produced. The FPUF Production MACT standards also regulate HAP ABAs by requiring installation of either a vapor recovery system or a carbon adsorption system on storage vessels. For equipment leaks, the FPUF Production MACT standards require a leak detection and repair program (LDAR) for HAP ABAs. The use of HAP or HAP-based products for equipment cleaning is prohibited at slabstock flexible polyurethane foam production facilities. This proposed rule also includes an alternative source-wide HAP ABA emission limit. The source-wide emission limit allows slabstock facilities to comply by limiting the total amount of a single HAP ABA used, rather than by complying with the individual HAP ABA emission point requirements (*e.g., production* line, LDAR, equipment cleaning).

For molded foam and rebond foam production, the FPUF Production MACT standards prohibit the use of HAP-based products as mold release agents and as equipment cleaners, except that diisocyanates may be used to flush the mixhead and associated piping during startup and maintenance if the diisocyanates are contained in a closed-loop system and re-used in production.

C. What data collection activities were conducted to support this action?

In 2011, we surveyed nine companies that own and operate foam production facilities, as provided for under section 114 of the CAA. We also conducted plant visits to four facilities in 2012 and 2013, retrieved permit data from approximately 32 state agencies, and obtained emissions inventory data from state agencies. Finally, we reviewed data in four EPA emission inventory databases: National Emissions Inventory (NEI), Emissions Inventory System (EIS), Toxics Release Inventory (TRI) and Envirofacts to identify facilities that may be part of the source category, emission sources and quantities of emissions. The CAA section 114 questionnaire included requests for available information regarding process equipment, control devices and work practices for emission reductions, point and fugitive emissions and other aspects of facility operations.

The emissions data and risk assessment inputs for the FPUF production source category are described further in the memorandum *Development of the RTR Emissions Dataset for the Flexible Polyurethane Foam Production Source Category,* which is available in the docket for this proposed rulemaking.

III. Analytical Procedures

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How did we estimate post-MACT risks posed by the source category?

The EPA conducted a risk assessment that provided estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause non-cancer health effects and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause non-cancer health effects. The assessment also provided estimates of the distribution of cancer risks within the exposed populations, cancer incidence and an evaluation of the potential for adverse environmental effects for the source category. The risk assessment consisted of eight primary steps, as discussed below. The docket for this rulemaking contains the following document, which provides more information on the risk assessment inputs and models: *Draft Residual Risk Assessment for the Flexible Polyurethane Foam Production Source Category.* The methods used to assess risks (as described in the eight primary steps below) are consistent with those peer-reviewed by a panel of the EPA's Science Advisory Board (SAB) in 2009 and described in their peer review report issued in 2010;[3] they are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

Data from the 13 existing FPUF production facilities were used to create a dataset that is the basis for the risk assessment. We estimated the amount of actual and allowable emissions using data collected through the CAA section 114 request, emission inventories (EIS, NEI and TRI) and site visits. We performed quality assurance (QA) procedures for the emissions data and release characteristics to identify any outliers, and then confirmed or corrected the data. For facilities where speciated HAP data were unavailable or unreliable, more recent inventory data were obtained from state or local permitting agencies. In addition to the QA of the source data for the facilities contained in the dataset, we also checked the coordinates of every emission source in the dataset through visual observations using tools such as Google Earth and ArcView, and made corrections, as necessary. Further information about the development of the dataset is provided in the technical document: *Draft Development of the RTR Emissions Dataset for the Flexible Polyurethane Foam Production Source Category,* which is available in the docket for this action.

2. How did we estimate MACT-Allowable emissions?

The available emissions data in the MACT dataset include estimates of the mass of HAP emitted during the specified annual time period. In some cases, these "actual" emission levels are lower than the emission levels a facility is allowed to emit and still comply with the MACT standards. The emissions level allowed to be emitted by the MACT standards is referred to as the "MACT-allowable" emissions level. This represents the highest emissions

[3] U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* May 2010.

level that could be emitted by facilities without violating the MACT standards. We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those previous actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP. (54 FR 38044, September 14, 1989.)

For the FPUF production source category, we determined that actual emissions are a reasonable estimate of the MACT-allowable emissions for molded and rebond foam facilities. The MACT requirements for these facilities are HAP use prohibitions, and both the actual and the MACT-allowable emissions, while in compliance with these requirements, are therefore zero.

For slabstock foam production facilities, we estimate that the level of diisocyanate actual emissions is a reasonable estimate of the MACT-allowable diisocyanate emissions. The diisocyanate storage vessels and other equipment are subject to equipment standards and work practices. For equipment standards, sources subject to the standards are required to install specific equipment. In order to comply with this proposed rule, the equipment must be maintained properly and in good working condition. Therefore, we do not expect any difference between the actual emissions level and the level allowed by the MACT standards because the level of control typically does not vary for equipment standards. Similarly, we do not expect any difference between actual and MACT-allowable emissions for emission sources subject to work practice requirements, provided that facilities are not conducting additional work practices proven to reduce emissions beyond those required in this proposed rule. We are not aware of any such situations at facilities in this source category. Therefore, for facilities complying with the equipment and work practice standards, we believe that the actual diisocyanate emission levels are a reasonable estimation of the levels allowed by the standards.

For HAP ABA emissions from slabstock facilities, we estimate that MACT-allowable emissions are higher than actual emissions. While we believe that all slabstock production facilities have discontinued use of HAP-based ABAs, and they are reporting zero emissions of HAP ABA, the MACT rule does not prohibit the use of HAP ABAs. Therefore, MACT-allowable HAP ABA emissions were attributed to each slabstock facility based on emissions information gathered during development of the MACT standards. We assigned appropriate emissions release parameters for each facility, and modeled using the same procedures and tools used for modeling actual emissions, to obtain facility-specific maximum risk values based on MACT-allowable emissions. The docket for this rulemaking contains the following document which provides more information on the development of estimated MACT-allowable emissions: *MACT-Allowable Emissions for the Flexible Polyurethane Foam Production Source Category.*

3. How did we conduct dispersion modeling, determine inhalation exposure and estimate individual and population inhalation risks?

Both long-term and short-term inhalation exposure concentrations and health risks from the source category addressed in this proposal were estimated using the Human Exposure Model (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources,[4] and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The air dispersion model used by the HEM–3 model (AERMOD) is one of the EPA's preferred models for assessing pollutant concentrations from industrial facilities.[5] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2011) of hourly surface and upper air observations for more than 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[6] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by the EPA for HAP and other toxic air pollutants. These values are available at: *http://www.epa.gov/ttn/atw/toxsource/summary.html* and are discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week and 52 weeks per year for a 70-year period) exposure to the maximum concentration at the centroid of inhabited census blocks. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each of the HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate (URE), which is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use URE values from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without EPA IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) URE values, where available. In cases where new, scientifically credible dose response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-

[4] This metric comes from the Benzene NESHAP. See 54 FR 38046.

[5] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terroin) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[6] A census block is the smallest geographic area for which census statistics are tabulated.

response values in place of, or, in addition to, other values, if appropriate.

The EPA estimated incremental individual lifetime cancer risks associated with emissions from the facilities in the source category as the sum of the risks for each of the carcinogenic HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans and suggestive evidence of carcinogenic potential [7]) emitted by the modeled sources. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources were also estimated for the source category as part of this assessment by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion models, including AERMOD.

To assess the risk of non-cancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ is the estimated exposure divided by the chronic reference value, which is either the EPA reference concentration (RfC) (*http://www.epa.gov/riskassessment/glossary.htm*), defined as "an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime," or, in cases where an RfC from the EPA's IRIS database is not available, a value from the following prioritized sources: (1) The Agency for Toxic Substances and Disease Registry Minimum Risk Level (*http://www.atsdr.cdc.gov/mrls/index.asp*), which is defined as "an estimate of daily human exposure to a hazardous substance that is likely to be without an appreciable risk of adverse non-cancer health effects (other than cancer) over a specified duration of exposure"; (2) the CalEPA Chronic Reference Exposure Level (REL) (*http://www.oehha.ca.gov/air/hot_spots/pdf/HRAguidefinal.pdf*), which is defined as "the concentration level (that is expressed in units of micrograms per cubic meter (µg/m^3) for inhalation exposure and in a dose expressed in units of milligram per kilogram-day (mg/kg-day) for oral exposures), at or below which no adverse health effects are anticipated for a specified exposure duration"; or (3), as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA, in place of or in concert with other values.

The EPA also evaluated screening estimates of acute exposures and risks for each of the HAP at the point of highest off-site exposure for each facility (i.e., not just the census block centroids), assuming that a person is located at this spot at a time when both the peak (hourly) emissions rate and worst-case dispersion conditions occur. The acute HQ is the estimated acute exposure divided by the acute dose-response value. In each case, the EPA calculated acute HQ values using best available, short-term dose-response values. These acute dose-response values, which are described below, include the acute REL, acute exposure guideline levels (AEGL) and emergency response planning guidelines (ERPG) for 1-hour exposure durations. As discussed below, we used conservative assumptions for emissions rates, meteorology and exposure location for our acute analysis.

As described in the *CalEPA's Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants*, an acute REL value (*http://www.oehha.ca.gov/air/pdf/acuterel.pdf*) is defined as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration." Id. at page 2. Acute REL values are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. Acute REL values are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact.

AEGL values were derived in response to recommendations from the National Research Council (NRC). As described in *Standing Operating Procedures (SOP) of the National Advisory Committee on Acute Exposure Guideline Levels for Hazardous Substances* (*http://www.epa.gov/oppt/aegl/pubs/sop.pdf*),[8] "the NRC's previous name for acute exposure levels—community emergency exposure levels—was replaced by the term AEGL to reflect the broad application of these values to planning, response, and prevention in the community, the workplace, transportation, the military, and the remediation of Superfund sites." Id. at 2. This document also states that AEGL values "represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to eight hours." Id. at 2. The document lays out the purpose and objectives of AEGL by stating that "the primary purpose of the AEGL program and the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals." Id. at 21. In detailing the intended application of AEGL values, the document states that "[i]t is anticipated that the AEGL values will be used for regulatory and nonregulatory purposes by U.S. federal and state agencies and possibly the international community in conjunction with chemical emergency response, planning and prevention programs. More specifically, the AEGL values will be used for conducting various risk assessments to aid in the development of emergency preparedness and prevention plans, as well as real-time emergency response actions, for accidental chemical releases at fixed facilities and from transport carriers." Id. at 31.

The AEGL–1 value is then specifically defined as "the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure." Id. at 3. The document also notes that, "Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and

[7] These classifications also coincide with the terms "known carcinogen, probable carcinogen, and possible carcinogen," respectively, which are the terms advocated in the EPA's previous *Guidelines for Carcinogen Risk Assessment*, published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's Science Advisory Board (SAB) in their 2002 peer review of EPA's National Air Toxics Assessment (NATA) titled, *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory*, available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E916BB04E14852570CA007A682C/$File/ecadv02001.pdf*.

[8] National Academy of Sciences (NAS). 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals*, page 2.

nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects." Id. Similarly, the document defines AEGL–2 values as "the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape." Id.

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association's ERP Committee document titled, *ERPGS Procedures and Responsibilities* (*http://sp4m.aiha.org/insideaiha/GuidelineDevelopment/ERPG/Documents/ERP-SOPs2006.pdf*), which states that, "Emergency Response Planning Guidelines were developed for emergency planning and are intended as health based guideline concentrations for single exposures to chemicals." [9] Id. at 1. The ERPG–1 value is defined as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor." Id. at 2. Similarly, the ERPG–2 value is defined as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action." Id. at 1.

As can be seen from the definitions above, the AEGL and ERPG values include the similarly-defined severity levels 1 and 2. For many chemicals, a severity level 1 value AEGL or ERPG has not been developed because the types of effects for these chemicals are not consistent with the AEGL–1/ERPG–1 definitions; in these instances, we compare higher severity level AEGL–2 or ERPG–2 values to our modeled exposure levels to screen for potential acute concerns. When AEGL–1/ERPG–1 values are available, they are used in our acute risk assessments.

Acute REL values for 1-hour exposure durations are typically lower than their corresponding AEGL–1 and ERPG–1 values. Even though their definitions are slightly different, AEGL–1 values are often the same as the corresponding ERPG–1 values, and AEGL–2 values are often equal to ERPG–2 values. Maximum HQ values from our acute screening risk assessments typically result when basing them on the acute REL value for a particular pollutant. In cases where our maximum acute HQ value exceeds 1, we also report the HQ value based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1 value).

To develop screening estimates of acute exposures in the absence of hourly emissions data, generally we first develop estimates of maximum hourly emissions rates by multiplying the average actual annual hourly emissions rates by a default factor to cover routinely variable emissions. We choose the factor to use partially based on process knowledge and engineering judgment, but also reflecting a Texas study of short-term emissions variability, which showed that most peak emission events in a heavily-industrialized four-county area (Harris, Galveston, Chambers and Brazoria Counties, Texas) were less than twice the annual average hourly emissions rate. The highest peak emissions event was 74 times the annual average hourly emissions rate, and the 99th percentile ratio of peak hourly emissions rate to the annual average hourly emissions rate was 9.[10] Considering this analysis, to account for more than 99 percent of the peak hourly emissions, we apply a conservative screening multiplication factor of 10 to the average annual hourly emissions rate in our acute exposure screening assessments as our default approach. However, we use a factor other than 10 if we have information that indicates that a different factor is appropriate for a particular source category. For this source category, however, there was no such information available and the default factor of 10 was used in the acute screening process.

As part of our acute risk assessment process, for cases where acute HQ values from the screening step were less than or equal to 1 (even under the conservative assumptions of the screening analysis), acute impacts were deemed negligible and no further analysis was performed. In cases where an acute HQ from the screening step was greater than 1, additional site-specific data were considered to develop a more refined estimate of the potential for acute impacts of concern. Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emissions rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. However, we recognize that having this level of data is rare; hence, our use of the multiplier approach.

To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the SAB's peer review of the EPA's RTR risk assessment methodologies,[11] we generally examine a wider range of available acute health metrics (*e.g.*, RELs, AEGLs) than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. In some cases, when Reference Value Arrays [12] for HAP have been developed, we consider additional acute values (i.e., occupational and international values) to provide a more complete risk characterization.

4. How did we conduct the multipathway exposure and risk screening?

The EPA conducted a screening analysis examining the potential for significant human health risks due to exposures via routes other than inhalation (i.e., ingestion). We first determined whether any sources in the source category emitted any hazardous air pollutants known to be persistent and bioaccumulative in the environment (PB–HAP). The PB–HAP compounds or compound classes are identified for the screening from the EPA's *Air Toxics Risk Assessment Library* (available at *http://www.epa.gov/ttn/fera/risk_atra_vol1.html*).

For the FPUF production source category, we did not identify emissions of any PB–HAP. Because we did not identify PB–HAP emissions, no further

[9] *ERP Committee Procedures and Responsibilities.* November 1, 2006. American Industrial Hygiene Association.

[10] See *http://www.tceq.state.tx.us/compliance/field_ops/eer/index.html* or docket to access the source of these data.

[11] The SAB peer review of RTR Risk Assessment Methodologies is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

[12] U.S. EPA. (2009) Chapter 2.9 Chemical Specific Reference Values for Formaldehyde in Graphical Arrays of Chemical-Specific Health Effect Reference Values for Inhalation Exposures (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/061, and available on-line at *http://cfpub.epa.gov/nceo/cfm/recordisplay.cfm?deid=211003.*

evaluation of multipathway risk was conducted for this source category.

5. How did we assess risks considering emissions control options?

In addition to assessing baseline inhalation risks and screening for potential multipathway risks, we also estimated risks considering the potential emissions reductions that would be achieved by the control options under consideration. In these cases, the expected emissions reductions were applied to the specific HAP and emissions points in the source category dataset to develop corresponding estimates of risk and incremental risk reductions.

6. How did we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect

The EPA developed a screening approach to examine the potential for adverse environmental effects as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

b. Environmental HAP

The EPA focuses on seven HAP, which we refer to as "environmental HAP," in its screening analysis: Five persistent bioaccumulative HAP (PB–HAP) and two acid gases. The five PB–HAP are cadmium, dioxins/furans, polycyclic organic matter (POM), mercury (both inorganic mercury and methyl mercury) and lead. The two acid gases are hydrogen chloride (HCl) and hydrogen fluoride (HF). The rationale for including these seven HAP in the environmental risk screening analysis is presented below.

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment and water. The PB–HAP are taken up, through sediment, soil, water, and/or ingestion of other organisms, by plants or animals (*e.g.*, small fish) at the bottom of the food chain. As larger and larger predators consume these organisms, concentrations of the PB–HAP in the animal tissues increases as does the potential for adverse effects. The five PB–HAP we evaluate as part of our screening analysis account for 99.8 percent of all PB–HAP emissions (based on data from the 2005 NEI).

In addition to accounting for almost all of the mass of PB–HAP emitted, we note that the TRIM.Fate model that we use to evaluate multipathway risk allows us to estimate concentrations of cadmium compounds, dioxins/furans, POM and mercury in soil, sediment and water. For lead, we currently do not have the ability to calculate these concentrations using the TRIM.Fate model. Therefore, to evaluate the potential for environmental effects from lead, we compare the estimated chronic inhalation exposures from the source category emissions of lead with the level of the secondary National Ambient Air Quality Standard (NAAQS) for lead.[13] We consider values below the level of the secondary lead NAAQS as unlikely to cause adverse environmental effects.

Due to their well-documented potential to cause direct damage to terrestrial plants, we include two acid gases, HCl and HF, in the environmental screening analysis. According to the 2005 NEI, HCl and HF account for about 99 percent of the total acid gas HAP emitted by stationary sources. In addition to the potential to cause direct damage to plants, high concentrations of HF in the air have been linked to fluorosis in livestock. Air concentrations of these HAP are already calculated as part of the human multipathway exposure and risk screening analysis using the HEM3–AERMOD air dispersion model, and we are able to use the air dispersion modeling to estimate the potential for an adverse environmental effect.

For the FPUF production source category, the data do not show emissions of any of the seven HAP (cadmium, dioxins/furans, POM, mercury, HCL or HF) in the environmental risk screen. Because we did not identify emissions of these seven HAP from the source category, we did not conduct any further quantitative evaluation of environmental risk.

The EPA acknowledges that other HAP beyond the seven HAP discussed above may have the potential to cause adverse environmental effects. Therefore, the EPA may include other relevant HAP in its environmental risk screening in the future, as modeling science and resources allow. The EPA invites comment on the extent to which other HAP emitted by the source category may cause adverse environmental effects. Such information should include references to peer-reviewed ecological effects benchmarks that are of sufficient quality for making regulatory decisions, as well as information on the presence of organisms located near facilities within the source category that such benchmarks indicate could be adversely affected.

7. How did we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire "facility," where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emissions sources at the facility for which we have data. The emissions data for estimating these "facility-wide" risks were obtained from the 2005 NEI (available at *http://www.epa.gov/ttn/atw/nata2005*). We analyzed risks due to the inhalation of HAP that are emitted "facility-wide" for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled FPUF production source category risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to the FPUF production source category. We specifically examined the facilities associated with the highest estimates of risk and determined the percentage of that risk attributable to the FPUF production source category. The *Draft Residual Risk Assessment for the Flexible Polyurethane Foam Production Source Category*, available through the docket for this action, provides all the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of FPUF production source category contribution to facility-wide risks.

8. How did we consider uncertainties in risk assessment?

In the Benzene NESHAP, we concluded that risk estimation uncertainty should be considered in our decision-making under the ample margin of safety framework. Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our

[13] The secondary lead NAAQS is a reasonable measure of determining whether there is an adverse environmental effect since it was established considering "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

approach, which used conservative tools and assumptions, ensures that our decisions are health-protective. A brief discussion of the uncertainties in the emissions dataset, dispersion modeling, inhalation exposure estimates and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the *Draft Residual Risk Assessment for the Flexible Polyurethane Foam Production Source Category*, which is available in the docket for this action.

a. Uncertainties in the Emissions Dataset

Although the development of the RTR dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emissions estimates and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emissions rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emissions rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimated ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.*, not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.*, not including building downwash). Other options that we select have the potential to either under- or over-estimate ambient levels (*e.g.*, meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations.

c. Uncertainties in Inhalation Exposure

The EPA did not include the effects of human mobility on exposures in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[14] The approach of not considering short- or long-term population mobility does not bias the estimate of the theoretical MIR (by definition), nor does it affect the estimate of cancer incidence because the total population number remains the same. It does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby increasing the estimated number of people at specific high risk levels (*e.g.*, 1-in-10 thousand or 1-in-1 million).

In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live farther from the facility and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum impact, but is an unbiased estimate of average risk and incidence. We reduce this uncertainty by analyzing large census blocks near facilities using aerial imagery and adjusting the location of the block centroid to better represent the population in the block, as well as adding additional receptors where the block population is not well represented by a single location.

The assessment evaluates the cancer inhalation risks associated with pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emissions sources at facilities actually operate (i.e., more or less than 70 years) and the domestic growth or decline of the modeled industry (i.e., the increase or decrease in the number or size of domestic facilities) will influence the future risks posed by a given source or source category. Depending on the characteristics of the industry, these factors will, in most cases, result in an overestimate both in individual risk levels and in the total estimated number of cancer cases. However, in the unlikely scenario where a facility maintains, or even increases, its emissions levels over a period of more than 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the cancer inhalation risks could potentially be underestimated. However, annual cancer incidence estimates from exposures to emissions from these sources would not be affected by the length of time an emissions source operates.

The exposure estimates used in these analyses assume chronic exposures to ambient (outdoor) levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many of the HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, indoor levels are typically lower. This factor has the potential to result in an overstatement of 25 to 30 percent of exposures.[15]

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that should be highlighted. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology and human activity patterns. In this assessment, we assume that individuals remain for 1 hour at the point of maximum ambient concentration as determined by the co-occurrence of peak emissions and worst-case meteorological conditions. These assumptions would tend to be worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure during the time of worst-case impact.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and non-cancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are

[14] Short-term mobility is movement from one micro-environment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

[15] U.S. EPA. *National-Scale Air Toxics Assessment for 1996*. (EPA 453/R–01–003; January 2001; page 85.)

expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in the EPA's *2005 Cancer Guidelines;* namely, that "the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective" (*EPA 2005 Cancer Guidelines,* pages 1–7). This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variability in dose-response relationships is given in the *Draft Residual Risk Assessment for the Flexible Polyurethane Foam Production Source Category,* which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a "plausible upper limit to the true value of a quantity" (although this is usually not a true statistical confidence limit).[16] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[17] When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health protection, the EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for other uses (*e.g.,* priority-setting or expected benefits analysis).

RfCs and reference doses (RfDs) represent chronic exposure levels that provide an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure or a daily oral exposure, respectively, to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be "without appreciable risk," the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993, 1994) which considers uncertainty, variability and gaps in the available data. The UFs are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. The UFs are commonly default values,[18] *e.g.,* factors of 10 or 3, used in the absence of compound-specific data; where data are available, UFs may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UFs are used.

While collectively termed "UF," these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to account for: (1) Variation in susceptibility among the members of the human population (i.e., inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (i.e., interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure (i.e., extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies.

Many of the UF used to account for variability and uncertainty in the development of acute reference values are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. The UF are applied based on chemical-specific or health effect-specific information (*e.g.,* simple irritation effects do not vary appreciably between human individuals; hence a value of 3 is typically used), or based on the purpose for the reference value (see the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observed adverse effect (exposure) level to no observed adverse effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute reference value at another exposure duration (*e.g.,* 1 hour).

Not all acute reference values are developed for the same purpose and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of short-term dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective reference value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified reference value, we also apply the most protective reference value from the other compounds in the group to estimate risk.

e. Uncertainties in the Multipathway Assessment

For each source category, we generally rely on site-specific levels of PB–HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary. This determination is based on the results of a two-tiered screening analysis that relies on the outputs from models that estimate environmental pollutant concentrations and human exposures for four PB–HAP. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[19]

[16] IRIS glossary (*http://www.epa.gov/NCEA/iris/help_gloss.htm*).

[17] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[18] According to the NRC report, *Science and Judgment in Risk Assessment* (NRC, 1994) "[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain." The 1983 NRC report, *Risk Assessment in the Federal Government: Managing the Process,* defined default option as "the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary" (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the agency; rather, the agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). See EPA, 2004, *An Examination of EPA Risk Assessment Principles and Practices,* EPA/100/B–04/001 available at: *http://www.epa.gov/osa/pdfs/ratf-final.pdf.*

[19] In the context of this discussion, the term "uncertainty" as it pertains to exposure and risk encompasses both variability in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as uncertainty in being able to accurately estimate the true result.

Model uncertainty concerns whether the selected models are appropriate for the assessment being conducted and whether they adequately represent the actual processes that might occur for that situation. An example of model uncertainty is the question of whether the model adequately describes the movement of a pollutant through the soil. This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA Science Advisory Board reviews and other reviews, we are confident that the models used in the screen are appropriate and state-of-the-art for the multipathway risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway screen, we configured the models to avoid underestimating exposure and risk to reduce the likelihood that the results indicate the risks are lower than they actually are. This was accomplished by selecting upper-end values from nationally-representative data sets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water and soil characteristics and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway assessment, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screen. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for Tier 1 and Tier 2.

For both Tiers 1 and 2 of the multipathway assessment, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do screen out, we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do not screen out, it does not mean that multipathway impacts are significant, only that we cannot rule out that possibility and that a refined multipathway analysis for the site might be necessary to obtain a more accurate risk characterization for the source category.

For further information on uncertainties and the Tier 1 and 2 screening methods, refer to the risk document Appendix 5, "Technical Support Document for TRIM-Based Multipathway Tiered Screening Methodology for RTR."

B. How did we consider the risk results in making decisions for this proposal?

As discussed in section II.A of this preamble, in evaluating and developing standards under section 112(f)(2), we apply a two-step process to address residual risk. In the first step, the EPA determines whether risks are acceptable. This determination "considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [20] of approximately [1-in-10 thousand] [*i.e.*, 100-in-1 million]." 54 FR 38045. If risks are unacceptable, the EPA must determine the emissions standards necessary to bring risks to an acceptable level without considering costs. In the second step of the process, the EPA considers whether the emissions standards provide an ample margin of safety "in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision." *Id.* The EPA must promulgate tighter emission standards if necessary to provide an ample margin of safety. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

In past residual risk actions, the EPA considered a number of human health risk metrics associated with emissions from the categories under review, including the MIR, the number of persons in various risk ranges, cancer incidence, the maximum non-cancer HI and the maximum acute non-cancer hazard. *See, e.g.*, 72 FR 25138, May 3, 2007; 71 FR 42724, July 27, 2006. The EPA considered this health information for both actual and allowable emissions. *See, e.g.*, 75 FR 65068, October 21, 2010; 75 FR 80220, December 21, 2010; 76 FR 29032, May 19, 2011. The EPA also discussed risk estimation uncertainties and considered the uncertainties in the determination of acceptable risk and ample margin of safety in these past actions. The EPA considered this same type of information in support of this **Federal Register** notice.

The agency is considering these various measures of health information to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). As explained in the Benzene NESHAP, "the first step judgment on acceptability cannot be reduced to any single factor" and thus "[t]he Administrator believes that the acceptability of risk under [previous] section 112 is best judged on the basis of a broad set of health risk measures and information." 54 FR 38046. Similarly, with regard to the ample margin of safety determination, "the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors." *Id.*

The Benzene NESHAP provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that:

> [t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case.

[20] Although defined as "maximum individual risk," MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health.'

54 FR 38057. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that "an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors." *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: "EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category." *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify those HAP risks that may be associated with emissions from other facilities that do not include the source categories in question, mobile source emissions, natural source emissions, persistent environmental pollution or atmospheric transformation in the vicinity of the sources in these categories.

The agency understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing non-cancer risks, where pollutant-specific exposure health reference levels (*e.g.*, RfCs) are based on the assumption that thresholds exist for adverse health effects. For example, the agency recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse non-cancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.*, other facilities) to which an individual is exposed may be sufficient to result in increased risk of adverse non-cancer health effects. In May 2010, the SAB advised the EPA "that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area." [21]

In response to the SAB recommendations, the EPA is incorporating cumulative risk analyses into its RTR risk assessments. The agency is: (1) Conducting facility-wide assessments, which include source category emission points as well as other emission points within the facilities; (2) considering overlapping sources in the same category; and (3) for some persistent and bioaccumulative pollutants, analyzing the ingestion route of exposure. In addition, the RTR risk assessments have always considered aggregate cancer risk from all carcinogens and aggregate non-cancer hazard indices from all non-carcinogens affecting the same target organ system.

Although we are interested in placing source category and facility-wide HAP risks in the context of total HAP risks from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Because of the contribution to total HAP risk from emissions sources other than those that we have studied in depth during this RTR review, such estimates of total HAP risks would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

[21] EPA's responses to this and all other key recommendations of the SAB's advisory on RTR risk assessment methodologies (which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf*) are outlined in a memo to this rulemaking docket from David Guinnup titled, *EPA's Actions in Response to the Key Recommendations of the SAB Review of RTR Risk Assessment Methodologies.*

C. How did we perform the technology review?

Our technology review focused on the identification and evaluation of developments in practices, processes and control technologies that have occurred since the FPUF Production MACT standards were promulgated. Where we identified such developments, in order to inform our decision of whether it is "necessary" to revise the emissions standards, we analyzed the technical feasibility of applying these developments, and the estimated costs, energy implications, non-air environmental impacts, as well as considering the emissions reductions. We also considered the appropriateness of applying controls to new sources versus retrofitting existing sources.

Based on our analyses of the available data and information, we identified potential developments in practices, processes and control technologies. For this exercise, we considered any of the following to be a "development":

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards.
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction.
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards.
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards.
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

We reviewed a variety of data sources in our investigation of potential practices, processes or controls to consider. Among the sources we reviewed were the NESHAP for various industries that were promulgated since the FPUF Production MACT standards being reviewed in this action. We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes and control technologies considered in these efforts that could be applied to emissions

sources in the FPUF production source category, as well as the costs, non-air impacts and energy implications associated with the use of these technologies. Additionally, we requested information from facilities regarding developments in practices, processes or control technology. Finally, we reviewed information from other sources, such as state and/or local permitting agency databases and industry-supported databases.

D. What other analyses and reviews were conducted in support of this proposal and how did we conduct those analyses and reviews?

In addition to the analyses described above, we reviewed the FPUF Production MACT standards to determine whether we should make additional amendments. From this review we have identified one additional revision. We are proposing revisions to the startup, shutdown and malfunction (SSM) provisions of the MACT rule in order to ensure that they are consistent with the court decision in *Sierra Club* v. *EPA, 551 F.3d 1019* (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable section 112(d) emission standards during periods of SSM. Our analyses and proposed changes related to these issues are presented in section IV.D of this preamble.

IV. Analytical Results and Proposed Decisions

This section of the preamble provides the results of our RTR reviews of the FPUF Production MACT standards and our proposed revisions to the FPUF Production MACT standards regarding the startup, shutdown and malfunction provisions.

A. What are the results of the risk assessment and analyses?

As described above, for the FPUF production source category, we conducted an inhalation risk assessment for all HAP emitted, a multipathway screening analysis for PB–HAP emitted and an environmental HAP screening analysis. We also performed a facility-wide risk assessment for the facilities in the source category. Results of the risk assessment are presented briefly below and in more detail in the residual risk document: *Draft Residual Risk Assessment for the Flexible Polyurethane Foam Production Source Category*, which is available in the docket for this rulemaking.

1. FPUF Production Source Category Inhalation Risk Assessment Results

Table 2 of this preamble provides a summary of the results of the inhalation risk assessment for the source category.

TABLE 2—FLEXIBLE POLYURETHANE FOAM PRODUCTION INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic non-cancer TOSHI [3]		Maximum screening acute non-cancer HQ [4]	
	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level	Based on allowable emissions level	Based on actual emissions level	Based on allowable emissions level
13	0.7	5	0	700	0.00004	0.0004	0.9	0.9	HQ_{ERPG-1} = 0.9	HQ_{REL} = 4 HQ_{ERPG-1}=0.9

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the FPUF production source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value. See section III.A.3 of this preamble for explanation of acute dose-response values.

The results of the inhalation risk modeling using actual emissions level data, as shown in Table 2, indicate that the maximum lifetime individual cancer risk could be up to 0.7-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.9, and the maximum off-site acute HQ value could be up to 0.9. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.00004 excess cancer cases per year or one case in every 25,000 years.

As discussed in section III.A.2, we also determined that MACT-allowable HAP ABA emissions levels at slabstock production facilities are greater than actual HAP ABA emissions, while allowable emissions from all other processes are equal to actual emissions. The inhalation risk modeling using MACT-allowable HAP ABA emissions and the actual emissions for the other processes at slabstock production facilities, indicate that the maximum lifetime individual cancer risk could be up to 5-in-1 million, the maximum chronic non-cancer TOSHI value could be up to 0.9, and the maximum off-site acute HQ value could be up to 4, based on the REL value for methylene chloride. The total estimated national cancer incidence from these facilities based on the MACT-allowable emission levels is 0.0004 excess cancer cases per year or one case in every 2,500 years. For more detail about the MACT-allowable emissions levels, see the memorandum, *MACT-Allowable Emissions for the Flexible Polyurethane Foam Production Source Category*, in the docket for this rulemaking.

2. Acute Risk Results

Table 2 shows the acute risk results for the FPUF production source category. The screening analysis for worst-case acute impacts was based on a conservative default emissions multiplier of 10 to estimate the peak hourly emission rates from the average rates. Refer to Appendix 6 of the draft residual risk document in the docket for the detailed acute risk results.

3. Multipathway Risk Screening Results

There are no PB-HAP emitted by facilities in this category. Therefore, we do not expect there is a potential for human health multipathway risks as a result of emissions of these HAP.

4. Ecological Risk Screening Results

The emissions data for the FPUF source category indicate that sources within this source category do not emit any of the seven pollutants that we identified as "environmental HAP," as discussed earlier in this preamble. Based on the processes and materials used in the source category, we do not expect any of the seven environmental HAP to be emitted. Also, we are unaware of any adverse environmental effect caused by emissions of HAP that are emitted by this source category. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

5. Facility-Wide Inhalation Risk Assessment Results

Table 3 displays the results of the facility-wide risk assessment. This assessment is based on actual emission levels. For detailed facility-specific results, see Appendix 6 of the *Draft Residual Risk Assessment for the Flexible Polyurethane Foam Production Source Category* in the docket for this rulemaking.

TABLE 3—FPUF PRODUCTION FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	13
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	20
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	0
Number of facilities at which the FPUF production source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0
Number of facilities with estimated facility-wide individual cancer risk of 1-in-1 million or more	3
Number of facilities at which the FPUF production source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	0
Chronic Non-cancer Risk:	
Maximum facility-wide chronic non-cancer TOSHI	0.9
Number of facilities with facility-wide maximum non-cancer TOSHI greater than 1	0
Number of facilities at which the FPUF production source category contributes 50 percent or more to the facility-wide maximum non-cancer TOSHI of 1 or more	0

The facility-wide MIR and TOSHI are based on actual emissions from all emissions sources at the identified facilities. The results indicate that 3 facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide MIR is 20-in-1 million, with emission points from the FPUF production source category contributing less than 10 percent of the maximum facility-wide risk. The maximum facility-wide TOSHI is 0.9, with the FPUF production source category contributing 100 percent to the facility-wide TOSHI.

6. What demographic groups might benefit from this regulation?

To determine whether or not to conduct a demographics analysis, we look at a combination of factors including the MIR, non-cancer TOSHI, population around the facilities in the source category and other relevant factors. For the FPUF production source category, our analyses show that actual emissions result in no individuals being exposed to cancer risk greater than 1-in-1 million or a non-cancer TOSHI greater than 1. Therefore, we did not conduct an assessment of risks to individual demographic groups for this rulemaking. However, we did conduct a proximity analysis, which identifies any overrepresentation of minority, low income or indigenous populations near facilities in the source category. The results of this analysis are presented in the section of this preamble titled, "Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

B. What are our proposed decisions regarding risk acceptability, ample margin of safety and adverse environmental effects?

1. Risk Acceptability

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR; the number of persons in various cancer and non-cancer risk ranges; cancer incidence; the maximum non-cancer TOSHI; the maximum acute non-cancer HQ; the extent of non-cancer risks; the potential for adverse environmental effects; the distribution of cancer and non-cancer risks in the exposed population; and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the FPUF production source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 0.7-in-1 million due to actual emissions and 5-in-1 million based on MACT-allowable emissions. These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows very low cancer incidence (0.00004 cases per year), as well as no potential for adverse chronic or multi-pathway health effects. In addition, the risk assessment indicates no significant potential for multi-pathway health effects or adverse environmental effects. The acute non-cancer risks based on actual emissions are all below an HQ of 1. Therefore, we find there is little potential concern of acute non-cancer health impacts from actual emissions. For acute non-cancer risks based on allowable emissions, there was an HQ of 4 based on the REL for methylene chloride. Since the acute modeling scenario is worst-case because of its confluence of peak emission rates and worst-case dispersion conditions, and since the HQ estimates for methylene chloride based on the AEGL–1 and ERPG–1 values for this facility are below 1, we are proposing to find that acute non-cancer health impacts of concern are unlikely.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.A.8 of this preamble, we propose that the risks from the FPUF production source category are acceptable.

2. Ample Margin of Safety Analysis and Proposed Controls

Although we are proposing that the risks from the FPUF production source category are acceptable, risk estimates for 700 individuals in the exposed population are above 1-in-1 million at the MACT-allowable emissions levels. Consequently, we further considered whether the FPUF Production MACT standards provide an ample margin of safety to protect public health at the MACT-allowable emissions levels. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk associated with MACT-allowable emissions from the source category. We considered this information along with all of the health risks and other health information considered in our determination of risk acceptability.

For HAP used as an ABA at slabstock foam production facilities, we considered prohibiting facilities from using any HAP or HAP-based product as an ABA, as an option to reduce risks from this source category. Emissions of HAP ABA were shown to contribute

nearly 100 percent to the maximum individual cancer risks at the MACT-allowable emissions level for this source category. This control option would require facilities to use ABAs that do not contain HAP. We estimate the HAP emissions reduction resulting from this control option would be approximately 735 tpy from the baseline MACT-allowable emissions level. We estimate there would be no costs associated with implementation of this option, as all facilities in the source category are reporting that they do not have HAP ABA emissions from the foam production line, and industry representatives have confirmed that all sources have already discontinued use of a HAP or HAP-based product as an ABA. Furthermore, there are no additional costs associated with the recordkeeping and reporting requirements for compliance. With this control option, we estimate the maximum cancer risks based on allowable emissions would be reduced from 5-in-1 million to less than 1-in-1 million, the annual cancer incidence would be reduced from 0.0004 to 0.00004, the acute HQ would be reduced from 4 to less than 1 and the non-cancer TOSHI would remain unchanged. We believe this HAP ABA prohibition is technically feasible for all slabstock FPUF production operations and is a cost-effective measure to achieve emissions and health risk reductions associated with the MACT-allowable level of emissions. Therefore, based on this analysis, we are proposing under section 112(f)(2) of the CAA to prohibit the use of HAP or HAP-based products as ABAs.

We are proposing that the existing MACT standards, as modified to include the HAP-based ABA prohibition described above, will provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

For diisocyanate storage vessels, as discussed in section IV.C.2. of this preamble, we identified one control option to further reduce HAP emissions from these storage vessels, which were shown to contribute approximately 1 percent to the maximum individual cancer risks at the MACT-allowable emissions level for the source category. This control option would require sources to increase storage vessel HAP emissions control efficiencies to 98 percent, using technologies such as regenerative thermal oxidizers (RTO) or recuperative thermal oxidizers (RCO). We estimate the resulting HAP reduction would be approximately 0.0026 tpy from the baseline MACT-allowable emissions level. The estimated cost effectiveness per ton of HAP emissions reduction would be $124 million and $269 million, based on using a RTO and RCO, respectively. The additional control requirement would not achieve a reduction in the maximum individual cancer risks or any of the other risk metrics due to emissions at the MACT-allowable level. Due to the minimal reductions in HAP emissions and risk, along with the substantial costs associated with this option, we are proposing that additional HAP emissions controls for FPUF production diisocyanate storage vessels are not necessary to provide an ample margin of safety.

For equipment leaks at slabstock foam production facilities, as discussed in section IV.C.3. of this preamble, we identified several control options to further address risks from leaking components. We estimate that up to 3 percent of the emissions and associated risk at the MACT-allowable levels could be attributed to equipment leaks.[22] The control options identified include the use of "leakless" valves in diisocyanate service at slabstock facilities and implementation of an enhanced LDAR program for diisocyanate equipment leaks at slabstock facilities. These control options would require sources to use "leakless" valve technology or implement a LDAR program that would incorporate monitoring with EPA Method 21, specific leak definitions, and possibly a limit on the total number of non-repairable equipment allowed. We estimate the HAP reduction resulting from the "leakless" valve technology would be 1 tpy from the baseline MACT-allowable emissions level, with a cost effectiveness of $305,000/ton HAP reduction. The HAP emissions reduction resulting from an enhanced LDAR program would be 0.38 tpy from the baseline MACT-allowable emissions level, with a cost effectiveness of approximately $74,000/ton HAP reduction. The HAP emissions reduction resulting from the portion of an enhanced LDAR program that incorporates limits on the total number of non-repairable equipment allowed would be 0.08 tpy from the baseline MACT-allowable emissions level, with a cost effectiveness of approximately $234,000/ton HAP emissions reduction. None of these additional control requirements for diisocyanate equipment leaks would achieve a reduction in the maximum individual cancer risks or any of the other health risk metrics. Due to the minimal reductions in HAP emissions and risk, along with the substantial costs associated with these options, we are proposing that additional HAP emissions controls for FPUF production diisocyanate equipment leaks are not necessary to provide an ample margin of safety.

[22] Hazardous Air Pollutant Emissions from the Production of Flexible Polyurethane Foam. Basis and Purpose Document for Proposed Standards." Page 6–9. U.S. EPA Office of Air Quality Planning and Standards. September 1996.

3. Adverse Environmental Effects

We did not identify emissions of the seven environmental HAP included in our environmental risk screening, and are unaware of any adverse environmental effects caused by other HAP emitted by this source category. Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category, and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

C. What are the results and proposed decisions based on our technology review?

As described in section III.C of this preamble, our technology review focused on identifying developments in practices, processes and control technologies for the emission sources in the FPUF production source category. The following sections summarize our technology review results. More information concerning our technology review can be found in the memorandum titled, *Technology Review and Cost Impacts for the Proposed Amendments to the Flexible Polyurethane Foam Production Source Category,* which is available in the docket.

1. Slabstock Foam Production Line

The current MACT standards allow limited use of HAP-based ABAs at slabstock foam production facilities, while prohibiting the use of HAP-based products, with limited exceptions, for specific purposes at other types of FPUF production facilities (including equipment cleaning, mixhead flushing and facilitating mold release at molded and rebond foam facilities). The FPUF Production MACT standards also prohibit HAP and HAP-based products in equipment cleaners at slabstock foam facilities (except at facilities operating under the provisions for a source-wide emission limit for a single HAP ABA). Prohibiting the use of HAP-based ABAs and HAP-based equipment cleaners at slabstock foam production facilities has been identified as a development in

practices and/or processes that could reduce HAP emissions from the slabstock foam production line.

At the time of promulgation of the FPUF MACT standards, the EPA believed that HAP ABAs were necessary for production of some grades of foam. Therefore, the FPUF Production MACT standards significantly limited the use of HAP ABAs by slabstock foam producers, but allowed their use in production of certain grades of foam.

Available data from EPA databases, industry survey responses and contacts with state and local permitting agencies show that none of the 13 facilities currently identified as being subject to the FPUF Production MACT standards are using any HAP ABAs, or ABAs containing HAP (i.e., HAP-based ABAs). Further confirmation was received through discussions with the Polyurethane Foam Association (PFA), a trade association representing the slabstock polyurethane foam production industry. Details of the discussion with PFA are contained in *Documentation of Communications with Industry and Regulatory Agency Contacts for the Flexible Polyurethane Foam Industry*, which is available in the docket for this rulemaking. The discontinuation of HAP ABAs (or HAP-based ABAs) use by FPUF producers demonstrates that foam producers have improved their ability to produce their products using alternatives to HAP or HAP-based ABAs since the promulgation of the original FPUF Production NESHAP.

No facilities subject to subpart III are currently using any HAP or HAP-based ABAs. Therefore, there will be no cost associated with codifying current industry practice prohibiting the use of HAP or HAP-based ABAs. There may be small cost savings at some facilities due to reduced monitoring and recordkeeping costs. Because there are no estimated costs, the industry is already complying with this HAP and HAP-based ABA prohibition in practice, and reductions in allowable emissions would be achieved, we are proposing that it is necessary, pursuant to CAA section 112(d)(6), to revise the MACT to prohibit the use of HAP and HAP-based ABAs at slabstock foam production facilities. As noted in section IV.B.2., we are concurrently proposing this HAP and HAP-based ABA prohibition under section 112(f)(2) of the CAA to provide an ample margin of safety to protect public health. Also, as noted in section II.B, we solicit comments regarding whether any facilities subject to subpart III currently use HAP or HAP-based ABAs.

2. Diisocyanate Storage Vessels

The FPUF Production MACT standards provide two compliance options for diisocyanate storage vessels: Equip the storage vessels (tanks) with a vapor return line from the storage vessel to the truck or rail car during unloading; or equip the storage vessel with a carbon adsorption system which routes displaced vapors through activated carbon. These control systems are estimated to have control efficiencies of 95 percent. For the technology review, we identified two potential control options to capture and control emissions from storage tanks: Regenerative and recuperative thermal oxidizers. Both reportedly have control efficiencies of 98 percent, and known application to low concentration organic vapor gas streams. We estimate an additional emission reduction of 0.0026 tpy would be associated with an increase from 95 percent estimated HAP control in the original FPUF MACT standards to 98 percent HAP control today. The estimated cost per ton of emissions reduction would be $124 million and $270 million per ton of HAP for regenerative and recuperative thermal oxidizers, respectively.

Based on the high costs and the minimal emissions reductions that would be achieved by these diisocyanate tank controls, we are proposing that it is not necessary to revise the MACT standards pursuant to CAA section 112(d)(6) to provide for a stricter level of control.

3. Equipment Leaks

For equipment leaks, we identified two developments in practices, process or control technologies: Use of "leakless" valves in diisocyanate service at slabstock facilities and implementation of an enhanced equipment LDAR for diisocyanate equipment leaks at slabstock facilities. While there are requirements for LDAR in the original MACT standards, we further investigated LDAR for developments that have occurred since the rule was promulgated. The two developments in LDAR programs are a limit on the total number of non-repairable equipment allowed and the inclusion of lower leak detection limits for valves and connectors than those considered previously for the MACT standards.

a. "Leakless" Valves

"Leakless" valves that significantly reduce emissions are in place in some facilities outside the FPUF production source category, particularly oil refineries. We analyzed the costs associated with requiring this "leakless" valve technology for valves in diisocyanate service in the FPUF production source category using cost estimates developed for the synthetic organic chemical manufacturing industry. Nationwide annual costs were estimated to be $310,000/yr, with total capital investments of $2,260,000. Emission reductions were estimated to be 1 tpy, resulting in a cost effectiveness of $305,000/ton HAP reduction.

Based on the high costs and the minimal emissions reductions that would be achieved using this technology, we are proposing that it is not necessary to revise the MACT standards pursuant to CAA section 112(d)(6) to require the installation of "leakless" valves.

b. Implementation of Enhanced LDAR Programs

The current MACT standards require an LDAR program that employs visual, audible or other methods for detecting leaks. This standard requires repair of leaks within 15 calendar days when leaks are detected by visual, audible or any other detection method for equipment, other than transfer pumps, in diisocyanate service. Leakless technology is required for transfer pumps.

During the development of the MACT standards, another LDAR program, using Method 21, was identified as a beyond-the-floor method for controlling emissions from equipment leaks at slabstock foam facilities for equipment in diisocyanate service, but was not chosen as the level of the standard. At that time, the leak definition was set at a HAP concentration of 10,000 ppm or greater. Since the development of the MACT standards, analyses have been performed by the EPA regarding costs and emission reductions in the chemical and petroleum industries associated with lowering the level at which a HAP concentration is considered to be a leak for LDAR programs.[23] We used these analyses in the CAA section 112(d)(6) technology review for the FPUF production source category to assess the effects of adding an enhanced LDAR program for metering pumps, valves, connectors and open-ended lines in diisocyanate service at slabstock foam production facilities. The LDAR program would incorporate monitoring, employing Method 21 of 40 CFR part 60, Appendix A, and lower leak definitions. The lower leak definitions considered

[23] Memorandum from Cindy Hancy, RTI to Jodi Howard, EPA, *Analysis of Emission Reduction Techniques for Equipment Leaks*, December 21, 2011. (EPA–HQ–OAR–2002–0037–0180.) See Attachment 1.

include two options identified in the EPA analysis of emissions reduction techniques for equipment leaks:

1. Leak definition for metering pumps of 2,000 ppm; leak definition for valves, connectors and open-ended lines of 500 ppm;

2. Leak definition for valves of 100 ppm; leak definition for metering pumps, connectors and open-ended lines of 500 ppm.

We analyzed the costs associated with an LDAR programs with these two options for leak definitions for equipment in diisocyanate service. For both options, nationwide total annual costs were estimated to be around $28,200/yr, with total capital investments of approximately $32,400. Reduction of HAP emissions were estimated to be about 0.38 tpy, resulting in a cost effectiveness of approximately $74,000/ton HAP reduction.

The current MACT standards allow leak repairs to be delayed under certain circumstances. Limits on the number of leaking components awaiting repair was also identified as a potential development in practice that could reduce diisocyanate emissions from equipment leaks. Both the California Bay Area Air Quality Management District (BAAQMD) and the South Coast Air Quality Management District have LDAR programs that limit the number of leaking equipment components awaiting repair. The BAAQMD rule also requires mass emission testing for leaking valves and requires valves with a high leak rate to be repaired within 7 days. We estimated the costs of requirements addressing equipment awaiting leak repair like those of the BAAQMD rule, irrespective of the other costs for an LDAR program. Nationwide annual costs were estimated to be $18,212/yr, with no capital investments required. Emission reductions were estimated to be 0.002 tpy, resulting in a cost effectiveness of $233,770 per ton of HAP reduction for equipment in diisocyanate service at slabstock facilities.

Based on the high costs and the minimal emissions reduction that would be achieved with LDAR programs using Method 21 and either of the leak definition options, or with the restrictions on equipment awaiting repair, we are proposing that it is not necessary to revise the MACT standards pursuant to CAA section 112(d)(6) to require an enhanced LDAR program. However, we are adding a provision to the rule to clarify that delay of leak repairs for valves and connectors must be completed within 6 months of detection, as described in section IV.D.4.

D. What other actions are we proposing?

1. Startup, Shutdown and Malfunctions

a. Background

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA*, 551 F.3d 1019 (D.C. Cir. 2008), *cert. denied*, 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1) holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in this proposed rule. Therefore, this proposed rule has changed the indication of "Yes" to "No" in the General Provisions table (Table 2) of this rule for § 63.6(f), in which § 63.6(f)(1) states, "The non-opacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction. . . ." Consistent with *Sierra Club* v. *EPA*, the EPA is proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 2 (Applicability of General Provisions), as is explained in more detail below. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods. Information on periods of startup and shutdown received from the facilities in the FPUF production industry indicate that emissions during these periods are the same as during normal operations. The primary means of compliance with the standards are through work practices and product substitutions, which eliminate the use of HAP, and are in place at all times. Therefore, separate standards for periods of startup and shutdown are not necessary and are not being proposed.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *" (40 CFR 63.2). The EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation "achieved" by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the agency to consider malfunctions in determining the level "achieved" by the best performing or best controlled sources when setting emission standards. Moreover, while the EPA accounts for variability in setting emissions standards consistent with the CAA section 112 case law, nothing in that case law requires the agency to consider malfunctions as part of that analysis. Section 112 of the CAA uses the concept of "best controlled" and "best performing" unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of "best controlled" or "best performing" to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not "reasonably" foreseeable. *See, e.g., Sierra Club* v. *EPA*, 167 F.3d 658, 662 (D.C. Cir. 1999) (the EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to "invest the resources to conduct the perfect study."). *See also, Weyerhaeuser* v. *Costle*, 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no

general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause a violation of the relevant emission standard. *See, e.g.,* State Implementation Plans: Response to Petition for Rulemaking; Findings of Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed rule, 78 FR 12460 (Feb. 22, 2013); State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983). The EPA is, therefore, proposing to add an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions. (See 40 CFR 63.1292 defining "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are proposing other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in § 63.1290(e) (See 40 CFR 22.24). The criteria are designed in part to ensure that the affirmative defense is available only where the event that causes a violation of the emission standard meets the narrow definition of malfunction in § 63.2 (sudden, infrequent, not reasonably preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that the violation "[w]as caused by a sudden, infrequent, and unavoidable failure of air pollution control, process equipment, or a process to operate in a normal or usual manner. . . ." The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with section 63.1290(d) and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that "[r]epairs were made as expeditiously as possible when a violation occurred. . . ." and that "[a]ll possible steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health. . . ." In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with CAA section 113 (see also 40 CFR 22.27).

The EPA included an affirmative defense in the proposed rule in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances beyond the control of the source. The EPA must establish emission standards that "limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis." 42 U.S.C. 7602(k) (defining "emission limitation" and "emission standard"). *See generally Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (D.C. Cir. 2008) Thus, the EPA is required to ensure that emissions standards are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission standard is still enforceable through injunctive relief. The United States Court of Appeals for the Fifth Circuit recently upheld the EPA's view that an affirmative defense provision is consistent with CAA section 113(e). *Luminant Generation Co. LLC* v. *United States EPA,* 714 F.3d 841 (5th Cir. Mar. 25, 2013) (upholding the EPA's approval of affirmative defense provisions in a CAA State Implementation Plan). While "continuous" standards, on the one hand, are required, there is also case law indicating that in many situations it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (D.C. Cir. 1973), the DC Circuit acknowledged that in setting standards under CAA section 111 "variant provisions" such as provisions allowing for upsets during startup, shutdown and equipment malfunction "appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force." *See also, Portland Cement* Association v. Ruckelshaus, 486 F.2d 375 (D.C. Cir. 1973). Though intervening case law, such as *Sierra Club* v. *EPA* and the CAA 1977 amendments, call into question the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for violations that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to malfunctions. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating "upsets beyond the control of the permit holder." *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). *See also, Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d. 1174 (9th Cir. 2012) (rejecting industry argument that reliance on the affirmative defense was not adequate). *But see, Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission standards are "continuous" as required by 42 U.S.C. 7602(k), and account for unplanned upsets and thus

support the reasonableness of the standard as a whole. The EPA is proposing the affirmative defense applicable to malfunctions under the delegation of general regulatory authority set out in CAA section 301(a)(1), 42 U.S.C. 7601(a)(1), in order to balance this tension between provisions of the CAA and the practical reality, as case law recognizes, that technology sometimes fails. *See generally Citizens to Save Spencer County* v. *U.S. Environmental Protection Agency*, 600 F.2d 844, 873 (D.C. Cir. 1979) (using CAA section 301(a) authority to harmonize inconsistent guidelines related to the implementation of federal preconstruction review requirements).

b. Specific SSM-Related Proposed Changes

To address the United States Court of Appeals for the District of Columbia Circuit vacatur of portions of the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM, we are revising and adding certain provisions to the FPUF Production rule. As described in detail below, we are revising the General Provisions (Table 2) to change several of the references related to requirements that apply during periods of SSM. We are also adding the following provisions to the FPUF Production rule: (1) The general duty to minimize emissions at all times, (2) the requirement for sources to comply with the emission limits in the rule at all times, and (3) malfunction recordkeeping and reporting requirements.

i. § 63.1290(d)(4) General Duty

We are proposing to revise the General Provisions table (Table 2) entry for § 63.6(e)(1)-(2) by adding rows specifically for § 63.6(e)(1)(i), 63.6(e)(1)(ii) and 63.6(e)(1)(iii) and to include a "no" in the second column for the § 63.6(e)(1)(i) entry. Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at § 63.1290(d)(4) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore the language the EPA is proposing does not include that language from § 63.6(e)(1).

We are also proposing to include a "no" in the second column for the newly added § 63.6(e)(1)(ii) entry. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant of the general duty requirement being added at § 63.1290(d)(4).

ii. Compliance With Standards

We are proposing to revise the General Provisions table (Table 2) entry for § 63.6(f) by adding a specific entry for § 63.6(f)(1) and including a "no" in the second column for this § 63.6(f)(1) entry. The current language of section 63.6, paragraph (f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club*, the EPA is proposing to revise standards in this rule to apply at all times.

iii. § 63.1307(h) Recordkeeping

We are proposing to revise the General Provisions table (Table 2) entry for § 63.10(a)–(b) by adding rows specifically for § 63.10(a), 63.10(b)(1), 63.10 (b)(2)(i), 63.10 (b)(2)(ii), 63.10 (b)(2)(iii), 63.10 (b)(2)(iv)–(xi), 63.10 (b)(2)(xii), 63.10 (b)(xiii), and 63.10 (b)(2)(xiv) in order to specify changes we are making to the applicability of several of the § 63.10(b)(2) paragraphs. In the entry for § 63.10(b)(2)(i), we are including a "no" in the second column. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

In the entry for § 63.10(b)(2)(ii), we are including a "no" in the second column. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.1307(h). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the "occurrence." The EPA is also proposing to add to § 63.1307(h) a requirement that sources keep records that include a list of the affected sources or equipment and actions taken to minimize emissions, an estimate of the volume of each regulated pollutant emitted over the standard for which the source failed to meet a standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are including a "no" in the second column in the entry for § 63.10(b)(2)(iv) and 63.10(b)(2)(v). When applicable, the provisions require sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. These requirements are not appropriate because SSM plans are not (and were not) required by this rule, and the General Provisions applicability table referenced these sections in error.

iv. § 63.1306(f) Reporting

We are proposing to revise the General Provisions table (Table 2) entry for § 63.10(d)(4)–(5) by adding a specific entry for § 63.10(d)(5) and including a "no" in the second column for this § 63.10(d)(5) entry. Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.1306(f). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual report for slabstock affected sources and in the annual compliance

certification for molded and rebond affected sources, which are already required under this rule. We are proposing that the malfunction report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

The proposed rule eliminates the cross reference to section 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We note that reporting a failure to meet an applicable standard could include malfunction events for which a source may choose to submit documentation to support an assertion of affirmative defense. If a source provides all the material required in section 63.1290(e) to support an affirmative defense, the source need not submit the same information two times in the same report. While assertion of an affirmative defense is not mandatory and occurs only if a source chooses to take advantage of the affirmative defense, the affirmative defense also requires additional reporting that goes beyond these routine requirements related to a failure to meet an applicable standard for a reason other than a malfunction.

The proposed rule also eliminates the cross-reference to section 63.10(d)(5)(ii). Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. These requirements are not appropriate because SSM plans are not required by this rule, and the General Provisions applicability table referenced this section in error.

2. Electronic Reporting of Performance Test Data

In this proposal, the EPA is describing a process to increase the ease and efficiency of performance test data submittal while improving data accessibility. Specifically, the EPA is proposing that owners and operators of FPUF production facilities submit electronic copies of required performance test reports by direct computer-to-computer electronic transfer using EPA-provided software. The direct computer-to-computer electronic transfer is accomplished through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The CDX is EPA's portal for submittal of electronic data. The EPA-provided software is called the Electronic Reporting Tool (ERT) which is used to generate electronic reports of performance tests and evaluations. The ERT generates an electronic report package which will be submitted using the CEDRI. The submitted report package will be stored in the CDX archive (the official copy of record) and EPA's public database called WebFIRE. All stakeholders will have access to all reports and data in WebFIRE and accessing these reports and data will be very straightforward and easy (see the WebFIRE Report Search and Retrieval link at *http://cfpub.epa.gov/webfire/index.cfm?action=fire.searchERTSubmission).* A description and instructions for use of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/index.html* and CEDRI can be accessed through the CDX Web site (*www.epa.gov/cdx*). A description of the WebFIRE database is available at: *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.*

The proposal to submit performance test data electronically to the EPA applies only to those performance tests conducted using test methods that are supported by the ERT. The ERT supports most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at: *http://www.epa.gov/ttn/chief/ert/index.html.*

We believe that industry would benefit from this proposed approach to electronic data submittal. Specifically, by using this approach, industry will save time in the performance test submittal process. Additionally, the standardized format that the ERT uses allows sources to create a more complete test report resulting in less time spent on data backfilling if a source failed to include all data elements required to be submitted. Also through this proposal industry may only need to submit a report once to meet the requirements of the applicable subpart because stakeholders can readily access these reports from the WebFIRE database. This also benefits industry by cutting back on recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be retained in hard copy, thereby, reducing staff time needed to coordinate these records.

Since the EPA will already have performance test data in hand, another benefit to industry is that fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews will be needed. This would result in a decrease in staff time needed to respond to data collection requests.

State, local and tribal air pollution control agencies (S/L/Ts) may also benefit from having electronic versions of the reports they are now receiving. For example, S/L/Ts may be able to conduct a more streamlined and accurate review of electronic data submitted to them. For example, the ERT would allow for an electronic review process, rather than a manual data assessment, therefore, making review and evaluation of the source provided data and calculations easier and more efficient. In addition, the public stands to benefit from electronic reporting of emissions data because the electronic data will be easier for the public to access. How the air emissions data are collected, accessed and reviewed will be more transparent for all stakeholders.

One major advantage of the proposed submittal of performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this proposed rule. The ERT clearly states what testing information would be required by the test method and has the ability to house additional data elements that might be required by a delegated authority.

In addition the EPA must have performance test data to conduct effective reviews of CAA sections 111, 112 and 129 standards, as well as for many other purposes including compliance determinations, emission factor development and annual emission rate determinations. In conducting these required reviews, the EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies and source owners and operators, to locate, collect and submit performance test data. In recent

years, though, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, the EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. Another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors.

Finally, the general public would also benefit from electronic reporting of emissions data because the data would be available for viewing sooner and would be easier for the public to access. The EPA Web site that stores the submitted electronic data will be easily accessible to the public and will provide a user-friendly interface that any stakeholder could access.

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data would save industry, state, local, tribal agencies and the EPA significant time, money and effort, while also improving the quality of emission inventories and air quality regulations. Electronic databases will also benefit the general public by improving accessibility to emissions data in an efficient and timely manner.

3. Clarification to Diisocyanate Storage Vessels Leak Detection Methods

The EPA is proposing to clarify the leak detection methods that may be used for diisocyanate storage vessels at slabstock foam production facilities during unloading events. The current requirements allow the vapor return line to be inspected for leaks during unloading events using visual, audible or any other detection method. Today, the EPA is proposing to clarify, that "any other detection method" must be an instrumental detection method.

4. Clarification to Diisocyanate Equipment Leak Delay of Repair Requirements for Valves and Connectors

The FPUF Production MACT standards generally require equipment leaks to be repaired within 15 days. However, there are also provisions that allow for a delay of repair. A delay of repair for pumps is allowed if repair requires replacing the existing seal design with a sealless pump, and the repair is completed as soon as practicable, but not later than 6 months after the leak is detected. For valves and connectors, a delay of repair is allowed if the owner or operator determines that diisocyanate emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from a delay of repair. However, for valves and connectors, the current provisions do not state how long such a delay may last. To be consistent with the requirements for pumps, we are proposing to clarify that, for valves and connectors, the repair must be completed as soon as practicable, but not later than 6 months after the leak was detected.

E. What compliance dates are we proposing?

We are proposing that FPUF production facilities comply with the new proposed requirements prohibiting the use of HAP ABAs in this action no later than 90 days after the effective date of the final rule. This time period will be sufficient because all FPUF production facilities have already discontinued use of HAP ABAs.

We are proposing that facilities must comply with the SSM reporting and recordkeeping requirements and affirmative defense provisions, and requirements for electronic reporting on the effective date of the rule. We are proposing these compliance dates because the revised SSM requirements should be immediately implementable by the facilities upon the next occurrence of a malfunction, and the electronic reporting requirements should be immediately implementable by the facilities upon their next performance test.

V. Summary of Cost, Environmental and Economic Impacts

A. What are the affected sources?

We anticipate that 13 FPUF production facilities currently operating in the United States will be affected by these proposed amendments. We also expect no new facilities to be constructed in the foreseeable future. For more information about expected new facilities, see the document titled, *Documentation of Communications with Industry and Regulatory Agency Contacts for the Flexible Polyurethane Foam Industry*, located in the docket for this action.

B. What are the air quality impacts?

The EPA estimates that the proposed amendments to the FPUF Production MACT standards will not result in any directly quantifiable reduction of HAP emissions. Emissions of HAP from FPUF production sources have significantly declined since promulgation of the FPUF Production MACT standards because HAP ABAs are no longer used by FPUF production facilities. However, as discussed in section III.A.2, the MACT standards currently allow sources to use HAP ABAs. We estimate that the MACT-allowable emissions for the FPUF production source category are 735 tons of HAP ABAs. If the proposed revision prohibiting the use of HAP ABAs is finalized, the MACT-allowable emissions from ABA use would be zero. A detailed documentation of the analysis can be found in: *MACT-Allowable Emissions for the Flexible Polyurethane Foam Production Source Category*, which is available in the docket for this rulemaking.

C. What are the cost impacts?

Under the proposed amendments, FPUF production facilities are not expected to incur any costs. However, there may be small cost savings at some facilities due to reduced monitoring and recordkeeping costs. The memorandum, *Technology Review and Cost Impacts for the Proposed Amendments to the Flexible Polyurethane Foam Production Source Category*, includes a complete description of the cost estimate methods used for the analyses related to the proposed HAP and HAP-based ABA prohibition and is available in the docket.

D. What are the economic impacts?

Because no costs or a small cost savings are expected as a result of the proposed amendments, there will not be any significant impacts on affected firms and their consumers as a result of this proposal.

Because no small firms face significant control costs, there is no significant impact on small entities. Thus, this regulation is not expected to have a significant impact on a substantial number of small entities.

E. What are the benefits?

We do not anticipate any significant actual emission reductions of HAP as a result of these proposed amendments. However, if finalized, the proposed prohibition on HAP ABA use would eliminate the possibility that facilities

might begin to use HAP ABAs again. Under the existing rule, those possible emissions are estimated at 735 tons of HAP ABAs. If the prohibition is adopted, no emissions of HAP ABA would be allowed by the standard.

VI. Request for Comments

We solicit comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available on the RTR Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*. The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern and provide any "improved" data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR page, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.

2. Fill in the commenter information fields for each suggested revision (i.e., commenter name, commenter organization, commenter email address, commenter phone number and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.*, performance test reports, material balance calculations, etc.).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID Number EPA–HQ–OAR–2012–0510 (through one of the methods described in the **ADDRESSES** section of this preamble).

5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*.

VIII. Statutory and Executive Order Reviews

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" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 1783.07.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

For this proposed rule, the EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $2,188 for the FPUF production source category, and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. With respect to the FPUF production source category, we estimate the annual recordkeeping and reporting burden after the effective date of the proposed rule for affirmative defense to be 30 hours at a cost of $2,188. We expect to gather information on such events in the future and will revise this estimate as better information becomes available.

We estimate approximately 13 regulated entities are currently subject to 40 CFR part 63, subpart III, and will be subject to all proposed standards, a decrease of 119 regulated entities from our estimate for the previous ICR (EPA ICR Number 1783.05, OMB Control Number 2060–0357) for the FPUF production source category. The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the

effective date of the standards) for subpart III (FPUF production), including today's proposed amendments, is estimated to be $90,104 per year. This includes 1,030 labor hours per year at a total labor cost of $90,104 per year, and total non-labor capital and operation and maintenance costs of $0 per year. This represents a decrease of $760,000 and 8,000 labor hours from the previous ICR, due primarily to the reduction in the estimated number of regulated entities. Our estimate of the burden for each regulated entity has increased by $485 and 11 labor hours from the previous ICR estimate. This increase in burden for each regulated entity is not due to the proposed amendments, but is due to a correction of an error in the total number of reports required per year for slabstock foam producers. This was previously estimated to be two semi-annual reports per year, but this estimate did not account for the annual compliance report.

The total burden for the federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 67 hours per year at a total labor cost of $3,607 per year. Burden is defined at 5 CFR 1320.3(b). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2012–0510. Submit any comments related to the ICR to the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after November 4, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by December 4, 2013. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are small businesses. We have determined that three facilities, or 23 percent of the 13 affected facilities, are small entities. Total annualized costs for the proposed rule are estimated to be $0, and no small entities are projected to incur costs. Because HAP ABAs are no longer used by FPUF production facilities, there are no impacts on any entities subject to this rulemaking.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duties on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law, and none of the facilities subject to this action are owned or operated by state governments. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this action from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). There are no FPUF production facilities that are within 3 miles of tribal lands. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This proposed action's health and risk assessments are contained in section IV of this preamble.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to HAP emitted by FPUF production facilities.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this rule is not likely to have any adverse energy effects because the proposed requirements of this rule will not cause the additional use of energy by any facilities in the source category nor is there any expected impact on sources in the energy supply, distribution, or use sectors related to the proposed provisions of this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113 (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

The proposed rulemaking involves technical standards. Therefore, the agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards, and none were brought to our attention in comments. Therefore, the EPA has decided to use EPA Method 25A, "Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer," 40 CFR part 60, Appendix A, to measure organic compound concentrations.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

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

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

To gain a better understanding of the source category and near source populations, the EPA conducted a proximity analysis on FPUF production facilities to identify any overrepresentation of minority, low income or indigenous populations. This analysis only gives some indication of the prevalence of sub-populations that may be exposed to air pollution from the sources; it does not identify the demographic characteristics of the most highly affected individuals or communities, nor does it quantify the level of risk faced by those individuals or communities. More information on the source category's risk can be found in section IV of this preamble.

The proximity analysis reveals that most demographic categories are below or within 20 percent of their corresponding national averages. The one exception is the African American population. The ratio of African Americans living within 3 miles of any source affected by this rule is 48 percent higher than the national average (19 percent versus 13 percent); however, as noted previously, risks from this source category were found to be acceptable for all populations. Additionally, the proposed changes to the standard increase the level of environmental protection for all affected populations by ensuring no future emissions increases from the source category. The proximity analysis results and the details concerning their development are presented in the August 2012 memorandum titled, *Environmental Justice Review: Flexible Polyurethane Foam Production*, a copy of which is available in the docket for this action (EPA–HQ–OAR–2012–0510).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 26, 2013.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection agency (EPA) proposes to amend title 40, chapter I, of the Code of Federal Regulations (CFR) as follows:

PART 63—[AMENDED]

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

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

Subpart III—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

■ 2. Section 63.1290 is amended by:
■ a. Revising paragraph (c); and
■ b. Adding paragraphs (d) and (e).

The additions and revisions read as follows:

§ 63.1290 Applicability.

* * * * *

(c) A process meeting one of the following criteria listed in paragraphs (c)(1) and (2) of this section shall not be subject to the provisions of this subpart:

(1) A process exclusively dedicated to the fabrication of flexible polyurethane foam; or

(2) A research and development process.

(d) *Applicability of this subpart.* (1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

(2) Equipment leak requirements of § 63.1294 shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which the equipment leak requirements apply.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment.

(4) *General duty.* At all times, the owner or operator must operate and

maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(e) *Affirmative defense for violation of emission standards during malfunction.* In response to an action to enforce the standards set forth in paragraphs §§ 63.1293, 63.1294, 63.1297, 63.1298, 63.1300, and 63.1301, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed if the owner or operator fails to meet their burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) *Assertion of affirmative defense.* To establish the affirmative defense in any action to enforce such a standard, the owner or operator must timely meet the reporting requirements in paragraph (e)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation:

(A) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when a violation occurred; and

(iii) The frequency, amount, and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violation resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(2) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that explains how it has met the requirements set forth in paragraph (e)(1) of this section. This affirmative defense report shall be included in the first periodic compliance, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 3. Section 63.1291 is amended by revising paragraph (a) to read as follows:

§ 63.1291 Compliance schedule.

(a) Existing affected sources shall be in compliance with all provisions of this subpart no later than October 8, 2001, with the exception of § 63.1297. Affected sources subject to the requirements of § 63.1297 shall be in compliance with the requirements of this section on or before [DATE 90 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

* * * * *

■ 4. Section 63.1292 is amended by:

■ a. Adding a definition for "affirmative defense" in alphabetical order;

■ b. Revising the definitions for "HAP-based," "Reconstructed source," "Storage vessel" and "Transfer pump"; and

■ c. Removing the definitions for "High-pressure mixhead," "Indentation Force Deflection (IFD)," "In HAP ABA service," "Recovery device," "Run of foam," and "Transfer vehicle".

The additions and revisions read as follows:

§ 63.1292 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

HAP-based means to contain 5 percent (by weight) or more of HAP. This applies to equipment cleaners, mixhead flushes, mold release agents and ABA.

* * * * *

Reconstructed source means an affected source undergoing reconstruction, as defined in subpart A of this part. For the purposes of this subpart, process modifications made to stop using HAP ABA or HAP-based ABA to meet the requirements of this subpart shall not be counted in determining whether or not a change or replacement meets the definition of reconstruction.

* * * * *

Storage vessel means a tank or other vessel that is used to store diisocyanates for use in the production of flexible polyurethane foam. Storage vessels do not include vessels with capacities smaller than 38 cubic meters (or 10,000 gallons).

Transfer pump means all pumps used to transport diisocyanates that are not metering pumps.

■ 5. Section 63.1293 is revised to read as follows:

§ 63.1293 Standards for slabstock flexible polyurethane foam production.

Each owner or operator of a new or existing slabstock affected source shall comply with §§ 63.1294, 63.1297 and 63.1298.

■ 6. Section 63.1294 is amended by revising paragraphs (a)(1)(i), (c) and

(d)(2)(ii), and by adding paragraph (d)(2)(iii) to read as follows:

§ 63.1294 Standards for slabstock flexible polyurethane foam production—diisocyanate emissions.

(a) * * *

(1) * * *

(i) During each unloading event, the vapor return line shall be inspected for leaks by visual, audible, or an instrumental detection method.

* * * * *

(c) *Other components in diisocyanate service.* If evidence of a leak is found by visual, audible, or an instrumental detection method, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (d) of this section. The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) * * *

(2) * * *

(ii) The purged material is collected and destroyed or recovered in a control device when repair procedures are effected, and

(iii) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

* * * * *

§ 63.1295 [Removed and Reserved]

■ 7. Remove and reserve § 63.1295.

§ 63.1296 [Removed and Reserved]

■ 8. Remove and reserve § 63.1296.

■ 9. Revise § 63.1297 to read as follows:

§ 63.1297 Standards for slabstock flexible polyurethane foam production—HAP ABA.

Each owner or operator of a new or existing slabstock affected source shall not use HAP or a HAP-based material as an ABA.

■ 10. Revise § 63.1298 to read as follows:

§ 63.1298 Standards for slabstock flexible polyurethane foam production—HAP emissions from equipment cleaning.

Each owner or operator of a new or existing slabstock affected source shall not use HAP or a HAP-based material as an equipment cleaner.

§ 63.1299 [Removed and Reserved]

■ 11. Remove and reserve § 63.1299.

■ 12. Revise § 63.1302 to read as follows:

§ 63.1302 Applicability of subpart A requirements.

The owner or operator of an affected source shall comply with the applicable requirements of subpart A of this part, as specified in Table 1 of this subpart.

■ 13. Section 63.1303 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing paragraphs (a)(3) and (a)(4);

■ c. Revising paragraph (b); and

■ d. Removing paragraphs (c), (d) and (e).

The revisions read as follows:

§ 63.1303 Monitoring requirements.

* * * * *

(a) *Monitoring requirements for storage vessel carbon adsorption systems.* Each owner or operator using a carbon adsorption system to meet the requirements of § 63.1294(a) shall monitor the concentration level of the HAP or the organic compounds in the exhaust vent stream (or outlet stream exhaust) from the carbon adsorption system at the frequency specified in paragraphs (a)(1) or (2) of this section.

* * * * *

(b) Each owner or operator using a carbon adsorption system to meet the requirements of § 63.1294(a) shall monitor the concentration level of total organic compounds in the exhaust vent stream (or outlet stream exhaust) from the carbon adsorption system using 40 CFR part 60, Appendix A, Method 25A, reported as propane. The measurement shall be conducted over at least one 5-minute interval during which the storage vessel is being filled.

§ 63.1304 [Removed and Reserved]

■ 14. Remove and reserve § 63.1304.

■ 15. Section 63.1306 is amended by:

■ a. Removing paragraph (c);

■ b. Redesigating paragraphs (d) and (e) as paragraphs (c) and (d);

■ c. Revising newly redesignated paragraphs (c) introductory text and (c)(3);

■ d. Revising newly redesignated paragraph (d);

■ e. Revising paragraph (f);

■ f. Redesignating paragraph (g) as paragraph (e);

■ g. Revising newly redesignated paragraphs (e)(1) and (2); and

■ h. Adding a new paragraph (g).

The addition and revisions read as follows:

§ 63.1306 Reporting requirements.

* * * * *

(c) *Notification of compliance status.* Each affected source shall submit a notification of compliance status report no later than 180 days after the compliance date. For slabstock affected sources, this report shall contain the information listed in paragraphs (c)(1) through (3) of this section, as applicable. This report shall contain the information listed in paragraph (c)(4) of this section for molded foam processes and in paragraph (c)(5) of this section for rebond foam processes.

* * * * *

(3) A statement that the slabstock foam affected source is in compliance with §§ 63.1297 and 63.1298, or a statement that slabstock foam processes at an affected source are in compliance with §§ 63.1297 and 63.1298.

* * * * *

(d) *Semiannual reports.* Each slabstock affected source shall submit a report containing the information specified in paragraphs (d)(1) through (3) of this section semiannually no later than 60 days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date that the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date that the Notification of Compliance Status Report is due.

(1) For sources complying with the storage vessel provisions of § 63.1294(a) using a carbon adsorption system, unloading events that occurred after breakthrough was detected and before the carbon was replaced.

(2) Any equipment leaks that were not repaired in accordance with §§ 63.1294(b)(2)(iii) and 63.1294(c).

(3) Any leaks in vapor return lines that were not repaired in accordance with § 63.1294(a)(1)(ii).

(e) * * *

(1) The compliance certification shall be based on information consistent with that contained in § 63.1308, as applicable.

(2) A compliance certification required pursuant to a state or local operating permit program may be used to satisfy the requirements of this section, provided that the compliance certification is based on information consistent with that contained in § 63.1308, and provided that the Administrator has approved the state or local operating permit program under part 70 of this chapter.

* * * * *

(f) *Malfunction reports.* If a source fails to meet an applicable standard, slabstock affected sources must report such events in the next semiannual report and molded and rebond affected sources must report such events in the next annual compliance certification. Report the number of failures to meet an applicable standard. For each instance, report the date, time and duration of each failure. For each failure, the report must include a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit, and a

description of the method used to estimate the emissions.

(g) Within 60 days after the date of completing each performance test (as defined in § 63.2), you must submit the results of the performance tests required by this subpart according to the methods specified in paragraphs (g)(1) or (g)(2) of this section.

(1) For data collected using test methods supported by the EPA-provided software, the owner or operator shall submit the results of the performance test to the EPA by direct computer-to-computer electronic transfer via EPA-provided software, unless otherwise approved by the Administrator. Owners or operators, who claim that some of the information being submitted for performance tests is confidential business information (CBI), must submit a complete file using EPA-provided software that includes information claimed to be CBI on a compact disk, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA by direct computer-to-computer electronic transfer via EPA-provided software.

(2) For any performance test conducted using test methods that are not compatible with the EPA-provided software, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

■ 16. Section 63.1307 is amended by:
■ a. Removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3);
■ b. Revising the newly redesignated paragraphs (a)(2) introductory text, (a)(2)(ii), and (a)(3) introductory text;
■ c. Revising paragraph (b)(1);
■ d. Revising paragraphs (b)(3) introductory text, (b)(3)(i) introductory text and (b)(3)(i)(B);
■ e. Removing paragraph (b)(3)(i)(C);
■ f. Revising paragraphs (b)(3)(ii) introductory text and (b)(3)(ii)(A);
■ g. Removing paragraph (b)(3)(ii)(D);
■ h. Redesignating paragraphs (b)(3)(ii)(E) through (b)(3)(ii)(H) as (b)(3)(ii)(D) through (b)(3)(ii)(G);
■ i. Revising paragraph (c);
■ j. Removing paragraph (d);
■ k. Redesignating paragraphs (e) through (h) as (d) through (g);
■ l. Revising newly redesignated paragraph (e); and
■ m. Adding paragraph (h).

The additions and revisions read as follows:

§ 63.1307 Recordkeeping requirements.

* * * * *

(a) * * *

(2) For storage vessels complying through the use of a carbon adsorption system, paragraphs (a)(2)(i) or (ii), and paragraph (a)(2)(iii) of this section.

* * * * *

(ii) For affected sources monitoring at an interval no greater than 20 percent of the carbon replacement interval, in accordance with § 63.1303(a)(2), the records listed in paragraphs (a)(2)(ii)(A) and (B) of this section.

* * * * *

(3) For storage vessels complying through the use of a vapor return line, paragraphs (a)(3)(i) through (iii) of this section.

* * * * *

(b) * * * (1) A list of components in diisocyanate service.

* * * * *

(3) When a leak is detected as specified in §§ 63.1294(b)(2)(ii) and 63.1294(c), the requirements listed in paragraphs (b)(3)(i) and (ii) of this section apply:

(i) Leaking equipment shall be identified in accordance with the requirements in paragraphs (b)(3)(i)(A) and (B) of this section.

* * * * *

(B) The identification on equipment may be removed after it has been repaired.

(ii) The information in paragraphs (b)(2)(ii)(A) through (G) shall be recorded for leaking components.

(A) The operator identification number and the equipment identification number.

* * * * *

(c) The owner or operator of an affected source subject to § 63.1297 shall maintain a product data sheet for each ABA used which includes the HAP content, in kg of HAP/kg solids (lb HAP/lb solids).

* * * * *

(e) The owner or operator of an affected source following the compliance methods in § 63.1308(b)(1) shall maintain records of each use of a vapor return line during unloading, of any leaks detected during unloading, and of repairs of leaks detected during unloading.

* * * * *

(h) *Malfunction records.* Records shall be kept as specified in paragraphs (h)(1) through (3) of this section for affected sources. Records are not required for emission points that do not require control under this subpart.

(1) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure, record the date, time and duration of the failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.1290(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

■ 17. Section 63.1308 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraphs (b)(3), (b)(6), and (c);
■ c. Removing paragraph (d); and
■ d. Redesignating paragraph (e) as (d).

The revisions read as follows:

§ 63.1308 Compliance demonstrations.

(a) For each affected source, compliance with the requirements described in Tables 2 and 3 of this subpart shall mean compliance with the requirements contained in §§ 63.1293 through 63.1301, absent any credible evidence to the contrary.

* * * * *

(b) * * *

(3) For each affected source complying with § 63.1294(a) in accordance with § 63.1294(a)(2) through the alternative monitoring procedures in § 63.1303(a)(2), each unloading event that the diisocyanate storage vessel is not equipped with a carbon adsorption system, each time that the carbon adsorption system is not monitored for breakthrough in accordance with § 63.1303(b)(1) or (2) at the interval established in the design analysis, and each unloading event that occurs when the carbon is not replaced after an indication of breakthrough;

* * * * *

(6) For each affected source complying with § 63.1294(c), each calendar day after 5 calendar days after detection of a leak that a first attempt at repair has not been made, and the earlier of each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or if a leak is not repaired as soon as practicable, each subsequent calendar day (with the exception of situations meeting the criteria of § 63.1294(d)).

(c) *Slabstock affected sources.* For slabstock foam affected sources, failure to meet the requirements contained in §§ 63.1297 and 63.1298, respectively, shall be considered a violation of this subpart. Violation of each item listed in

the following paragraphs shall be considered a separate violation.

(1) For each slabstock foam affected source subject to the provisions in § 63.1297, each calendar day that a HAP ABA or HAP-based material is used as an ABA;

(2) For each slabstock foam affected source subject to the provisions of § 63.1298, each calendar day that a HAP-based material is used as an equipment cleaner.

* * * * *

■ 18. Section 63.1309 is amended by removing paragraph (b)(4) and redesignating paragraph (b)(5) as (b)(4).

■ 19. Remove Table 1 to Subpart III of part 63.

■ 20. Redesignate Table 2 to Subpart III of Part 63 as Table 1 to Subpart III of Part 63 and amend newly redesignated Table 1 by:

■ a. Revising the heading of newly redesignated Table 1;

■ b. Removing entry § 63.6(e)(1)–(2);

■ c. Adding entries § 63.6(e)(1)(i), § 63.6(e)(1)(ii) and § 63.6(e)(1)(iii);

■ d. Removing entry § 63.6(e)(3);

■ e. Adding entry § 63.6(e)(2)–(3):

■ f. Removing entry § 63.6(f)–(g);

■ g. Adding entries § 63.6(f)(1), § 63.6(f)(2)–(3), and § 63.6(g);

■ h. Removing entry § 63.10(a)–(b);

■ i. Adding entries § 63.10(a), § 63.10(b)(1), § 63.10(b)(2)(i), § 63.10(b)(2)(ii); § 63.10(b)(2)(iii); § 63.10(b)(2)(iv)–(xi); § 63.10(b)(2)(xii); § 63.10(b)(2)(xiii), § 63.10(b)(2)(xiv); and § 63.10(b)(3);

■ j. Removing entry § 63.10(d)(4)–(5); and

■ k. Adding entries § 63.10(d)(4) and § 63.10(d)(5).

The additions and revisions read as follows:

TABLE 1 TO SUBPART III OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART III

Subpart A reference	Applies to subpart III	Comment
* *	*	* * * * *
§ 63.6(e)(1)(i)	NO	See § 63.1290(d)(4) for general duty requirement.
§ 63.6(e)(1)(ii)	NO.	
§ 63.6(e)(1)(iii)	YES.	
§ 63.6(e)(2)–(3)	NO.	
§ 63.6(f)(1)	NO.	
§ 63.6(f)(2)–(3)	YES.	
§ 63.6(g)	YES.	
* *	*	* * * * *
§ 63.10(a)	YES.	
§ 63.10(b)(1)	YES.	
§ 63.10(b)(2)(i)	NO.	
§ 63.10(b)(2)(ii)	NO	See § 63.1307(h) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment and an estimate of the volume of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and any actions taken at the discretion of the owner or operator to prevent recurrence of the failure to meet an applicable requirement.
§ 63.10(b)(2)(iii)	YES.	
§ 63.10(b)(2)(iv)–(xi)	NO.	
§ 63.10(b)(2)(xii)	YES.	
§ 63.10(b)(2)(xiii)	NO.	
§ 63.10(b)(2)(xiv)	YES.	
§ 63.10(b)(3)	YES.	
* *	*	* * * * *
§ 63.10(d)(4)	YES.	
§ 63.10(d)(5)	NO	See § 63.1306(f) for malfunction reporting requirements.
* *	*	* * * * *

■ 21. Redesignate Table 3 to Subpart III of Part 63 as Table 2 to Subpart III of Part 63 and amend newly redesignated Table 2 by:

■ a. Revising the heading for newly redesignated Table 2;

■ b. Removing entries for HAP ABA storage vessels § 63.1295, HAP ABA pumps § 63.1296(a), HAP ABA valves § 63.1296(b), HAP ABA connectors § 63.1296(c), Pressure relief devices § 63.1296(d), Open-ended valves or lines § 63.1296(e), and Production line § 63.1297; and

■ c. Adding an entry for ABAs § 63.1297.

The revisions and addition read as follows:

TABLE 2 TO SUBPART III OF PART 63—COMPLIANCE REQUIREMENTS FOR SLABSTOCK FOAM PRODUCTION AFFECTED SOURCES

Emission point	Emission point compliance option	Emission, work practice, and equipment standards	Monitoring	Recordkeeping	Reporting
* * *	*	*	*	*	*
ABAs § 63.1297	N/A	§ 63.1297		§ 63.1307(e)	

■ 22. Remove Table 4 to Subpart III of Part 63.

■ 23. Redesignate Table 5 to Subpart III of Part 63 as Table 3 to Subpart III of Part 63 and amend newly redesignated Table 3 by revising the heading to read as follows:

Table 3 to Subpart III of Part 63—Compliance Requirements for Molded and Rebond Foam Production Affected Sources

* * * * *

[FR Doc. 2013–24276 Filed 11–1–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 78 Monday,
No. 213 November 4, 2013

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224
Endangered and Threatened Species; Delisting of the Eastern Distinct Population Segment of Steller Sea Lion Under the Endangered Species Act; Amendment to Special Protection Measures for Endangered Marine Mammals; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 110901553–3764–02]

RIN 0648–BB41

Endangered and Threatened Species; Delisting of the Eastern Distinct Population Segment of Steller Sea Lion Under the Endangered Species Act; Amendment to Special Protection Measures for Endangered Marine Mammals

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

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (ESA), we, NMFS, issue this final rule to remove the eastern distinct population segment (DPS) of Steller sea lion (*Eumetopias jubatus*) from the List of Endangered and Threatened Wildlife. After receiving two petitions to delist this DPS, we completed a review of the status of the eastern DPS of Steller Sea Lion. Based on the information presented in the Status Review, the factors for delisting in section 4(a)(1) of the ESA, the recovery criteria in the 2008 Recovery Plan, the continuing efforts to protect the species, and information received during public comment and peer review, we have determined that this DPS has recovered and no longer meets the definition of an endangered or threatened species under the ESA: It is not in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. Thus, we find that the delisting of the DPS is warranted. This rule also makes technical changes that recodify existing regulatory provisions to remove special protections for the eastern DPS and clarify that existing regulatory protections for the western DPS of Steller sea lions continue to apply.

DATES: This rule becomes effective on December 4, 2013.

ADDRESSES: This final rule, references used herein, the related Status Review, the related Post-Delisting Monitoring Plan, and additional information supporting this final determination are available at: *http://www.alaskafisheries.noaa.gov/* and *http://www.regulations.gov* [Docket No. NOAA–NMFS–2011–0208].

FOR FURTHER INFORMATION CONTACT: Dr. Lisa M. Rotterman, NMFS Alaska Region, (907) 271–1692; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Lisa Manning, NMFS Office of Protected Resources, (301) 427–8466.

SUPPLEMENTARY INFORMATION:

ESA Statutory Provisions, Regulations, and Policy Considerations

The ESA regulations require that a species listed as endangered or threatened be removed from the list if the best scientific and commercial data available indicate that the species is no longer endangered or threatened because it has recovered (50 CFR 424.11(c)). Section 4(a)(1) of the ESA (16 U.S.C. 1533(a)(1)) states that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting its continued existence.

Section 3 of the ESA defines a "species" as "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Section 3 of the ESA further defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus, we interpret an "endangered species" to be one that is presently in danger of extinction. A "threatened species," on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

Foreseeable Future

In the delisting process, NMFS determines whether the species' abundance, survival, and distribution, taken together with the threats (i.e., ESA section 4(a)(1) factors), no longer render the species in danger of extinction or "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The duration of the "foreseeable future" is inherently fact-specific and depends on the particular kinds of threats, life-history characteristics, and specific habitat requirements for the species under consideration. The existence of a potential threat to a species and the species' response to that threat are not, in general, equally predictable or foreseeable. Hence, in some cases, the ability to foresee a potential threat to a species may be greater for certain threats, and it may be greater than the ability to foresee the species' exact response, or the timeframe of such a response, to that threat. NMFS must utilize the best scientific and commercial data to assess each threat and the species' anticipated response to each threat.

Significant Portion of Its Range

NMFS and the U.S. Fish and Wildlife Service (USFWS) recently published a draft policy to clarify the interpretation of the phrase "significant portion of the range" (SPR) in the ESA definitions of "threatened" and "endangered" (76 FR 76987; December 9, 2011). The draft policy consists of the following four components:

(1) If a species is found to be endangered or threatened in only an SPR, the entire species is listed as endangered or threatened, respectively, and the ESA's protections apply across the species' entire range.

(2) A portion of the range of a species is "significant" if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

(3) The range of a species is considered to be the general geographical area within which that species can be found at the time USFWS or NMFS makes any particular status determination. This range includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (e.g., seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but it cannot constitute an SPR.

(4) If a species is not endangered or threatened throughout all of its range but is endangered or threatened within an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The Services are currently reviewing public comment received on the draft policy. We therefore consider the draft policy as non-binding guidance in evaluating whether to delist the eastern

DPS of Steller sea lions. In developing this final rule, we also considered public comments on our evaluation of "significant portion of its range" for this species.

Distinct Population Segment Policy

As noted above, the ESA defines "species" to include ". . . any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" (16 U.S.C. 1532(16)). In 1996, NMFS and USFWS released a joint policy on recognizing distinct vertebrate population segments to outline the principles for identifying and managing a DPS under the ESA (DPS Policy; 61 FR 4722; February 7, 1996). Under the DPS Policy, both the discreteness and significance of a population segment in relation to the remainder of the species to which it belongs must be evaluated. A population segment of a vertebrate species 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.

(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 ESA.

If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance is then considered in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. This consideration may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon,

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon,

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

ESA Listing History of Steller Sea Lions

On April 5, 1990, in response to a petition from the Environmental Defense Fund and 17 other organizations, we published an emergency interim rule to list the Steller sea lion as a threatened species under the ESA and to request comment on whether the species should be listed as threatened or endangered, possible causes of the decline, and conservation measures and protective regulations needed to prevent further declines (55 FR 12645). In that emergency interim rule, we held that the Steller sea lion population was declining in certain Alaskan rookeries (by 63% since 1985 and by 82% since 1960), the declines were spreading to previously stable areas and accelerating, and significant declines had also occurred on the Kuril Islands in Russia. Furthermore, the cause of these declines could not be determined. NMFS concluded that the emergency listing of the species as threatened on an interim basis was therefore necessary and that the immediate implementation of the protective measures of the ESA would aid recovery efforts.

That emergency interim rule implemented the following emergency conservation measures to aid recovery: (1) Fishery observer efforts to enable monthly estimates of the level of incidental killing of Steller sea lions in observed fisheries; (2) aggressive enforcement of the emergency regulation; (3) establishment of a recovery program, including the establishment of a recovery team; (4) prohibition of discharging a firearm near or at Steller sea lions; (5) establishment of buffer zones around rookeries, none of which were within the breeding range of the eastern DPS; and (6) establishment of a quota for lethal incidental take in fisheries west of 141 °W longitude.

On July 20, 1990, we published a proposed rule to list the Steller sea lion as a threatened species (55 FR 29793), and on November 26, 1990, we published the final rule listing the Steller sea lion as threatened under the ESA (55 FR 49204).

Identification of Eastern and Western DPSs and Maintenance of Threatened Status for the Eastern DPS

At the time of the 1990 final rule to list, we considered all Steller sea lions as a single species, including those in areas where abundance was stable or not declining significantly, because scientists did not have sufficient information to consider animals in different geographic regions as separate species for ESA purposes. Similarly, the first Steller Sea Lion Recovery Plan, released in 1993, did not distinguish two separate population segments, but identified recovery tasks, reclassification criteria, and delisting criteria for the species as a whole. In 1993, we initiated a status review to determine whether a change in listing status was warranted (58 FR 58318; November 1, 1993). In 1994, we re-convened the Steller Sea Lion Recovery Team (Team) specifically to consider the appropriate listing status for the species and to evaluate the adequacy of ongoing research and management. The Team recommended that NMFS recognize two DPSs, east and west of 144 °W, based on demographic and genetic dissimilarities, elevate the listing status of the western DPS to endangered, and keep the eastern DPS listed as threatened. In 1997, we formally identified two DPSs of Steller sea lions under the ESA: A western DPS and an eastern DPS (62 FR 24345; May 5, 1997). The eastern DPS consists of all Steller sea lions from breeding colonies located east of 144 °W longitude, and the western DPS consists of all Steller sea lions from breeding colonies located west of 144 °W longitude (50 CFR 223.102; 50 CFR 224.101(b)). We classified the western DPS as endangered due to its persistent population decline, and we maintained a status of threatened for the eastern DPS. In the discussion underlying our decision to continue to list the eastern DPS as threatened under the ESA, and in response to comments indicating that we should delist this species, we noted that the "Team . . . agreed that there was continued concern for the eastern population segment . . . despite the fact that its current abundance may be stable" (62 FR 24347; May 5, 1997). Further information on the identification and listing of the two population segments may be found in the final rule (62 FR 24345; May 5, 1997) and in the Status Review (NMFS 2013a).

Recovery Plan

As required under the ESA, the Recovery Plan (NMFS 2008) for both the eastern and the western DPSs of Steller sea lions includes specific, objective, measurable criteria for determining when the eastern DPS has recovered sufficiently to warrant delisting. In the Recovery Plan, we (NMFS 2008:VII–2) specified that these ". . . recovery criteria comprise the core standards upon which the decision to delist will be based." The plan includes both demographic (biological) and listing factor (threats-based) recovery criteria.

The Recovery Plan includes one demographic criterion requiring that the eastern DPS of Steller sea lions increase at an average annual growth rate of three percent per year for 30 years. NMFS (2008) specified that this time period reflects three generations, provides confidence that the increase in natality (the ratio of live births to the larger population) and survival support the population growth rate, and indicates that the recovery is robust enough to sustain the population over multiple environmental regimes. While the Recovery Plan acknowledges concern over the performance of rookeries and haulouts in the southern end of the range in California, it does not contain recovery criteria for sub-regions within the range of the eastern DPS, noting that it is not unusual for the geographical limit of a species range to perform more poorly than the core regions.

The Recovery Plan also specifies ESA threats-based recovery criteria, organized by the ESA section 4(a)(1) factors, that should be achieved in order to delist the eastern DPS. As identified in the Status Review (NMFS 2013a) these are as follows:

(1) Marine habitats, particularly in regard to prey populations, must be maintained through appropriate fisheries management and control of contaminants.

(2) Rookery and haulout sites need to be adequately protected (through state, federal, or private measures) to ensure the continued use of these sites for pupping, breeding, attending young, and resting. Research and monitoring plans should be in place for all projects that have a high probability of negatively impacting sea lions so that these activities do not harm sea lions or their habitat.

(3) Agreement is reached with the State of Alaska which describes its fishery management plan, minimizes the take of Steller sea lions, and describes how future actions taken by the State will comport with the ESA and MMPA.

(4) A Steller sea lion recovery coordinator is on staff at NMFS.

(5) An outreach program is established to educate the public, commercial fishermen and others on the continued need to conserve and protect Steller sea lions.

(6) An Alaska stranding network is in place and functional.

Based on a review of these recovery criteria and on new information that has become available since publication of the 2008 Recovery Plan, we conclude that these criteria together with the five factors specified in section 4(a)(1) of the ESA remain appropriate standards on which to base the decision whether to delist this species.

Status Review and Petitions To Delist

On June 29, 2010, we initiated the first 5-year status review of the eastern DPS of Steller sea lions under the ESA, with a technical correction issued eight days later (June 29, 2010, 75 FR 37385; July 7, 2010, 75 FR 38979). A 5-year status review is intended to ensure that the listing classification of a species is accurate and is based on the best scientific and commercial data available. During the initial comment period following the initiation of the 5-year review, we received two petitions to delist this species: One on August 30, 2010, from the States of Washington and Oregon; and one on September 1, 2010, from the State of Alaska. Both petitions contended that the eastern DPS of Steller sea lions has recovered, is not in danger of extinction, and is not likely to become endangered within the foreseeable future.

Based on the information presented and referenced in the petitions, as well as other information, we found that the petitions presented substantial information indicating that the petitioned action may be warranted (75 FR 77602, December 13, 2010). Thus, we provided notice that we were continuing the status review of the eastern DPS to determine if the petitioned action was warranted. We completed a draft status review report (Status Review) to address all issues required in a 5-year review and to inform a determination of whether delisting is warranted. The draft Status Review underwent independent peer review by four scientists with expertise in population ecology and management of eastern DPS Steller sea lions.

On April 18, 2012, we released a draft Status Review of the eastern DPS of Steller sea lion. This draft Status Review contained a draft post-delisting monitoring plan (PDMP) as an appendix. Concurrently, we published a proposed rule to remove this DPS from the List of Endangered and Threatened Wildlife (77 FR 23209; April 18, 2012). We requested public comment on all of these documents, and we sought additional peer review by seven scientists with relevant expertise.

Review of the Species Delineation

As part of the Status Review, we applied the DPS policy (61 FR 4722; February 7, 1996) to determine whether the current distinction remained appropriate and whether other DPSs may exist. Below are the main conclusions of the analysis. More detail is given in the proposed rule (77 FR 23209; April 18, 2012) and the Status Review (NMFS 2013a).

The analysis confirmed that the currently recognized eastern DPS is both discrete and significant and thus continues to meet the criteria of the DPS Policy. The analysis also included a review of the best available information to evaluate whether Steller sea lions that breed in Washington, Oregon, and California adjacent to the California Current, and whether those that breed in California, meet the criteria for identification as a DPS. We first evaluated whether there was evidence that these sea lions were discrete from Steller sea lions that breed farther north, including from those in southeast Alaska, as a consequence of physical, physiological, ecological, or behavioral factors. We did not find compelling scientific evidence of consistent or marked discontinuity among different segments within the currently recognized eastern DPS of Steller sea lion. The best available evidence indicates that Steller sea lions that breed in California, Oregon, and Washington are not markedly separated from Steller sea lions in British Columbia and southeast Alaska as a consequence of physical, physiological, ecological, or behavioral factors. The best available evidence about genetic patterns, ecology, movement patterns and putative subspecies identity also does not indicate that Steller sea lions that breed in California are discrete from those in the rest of the eastern DPS.

According to the DPS Policy, if a population segment is considered discrete, its biological and ecological significance to the taxon as a whole is then considered (61 FR 4722; February 7, 1996). Since we concluded that there are not population segments within the currently recognized eastern DPS of Steller sea lion that are discrete, we did not consider the biological and ecological significance of any subunits relative to a determination of DPS status.

Biology and Ecology

A review of the taxonomy, life history, and ecology of the eastern DPS of Steller sea lion is presented in the Status Review (NMFS 2013a) and the Recovery Plan (NMFS 2008). We do not repeat that information here.

Evaluation of the Demographic Recovery Criterion

In order to make our evaluation of the demographic recovery criterion transparent, and to describe the basic trend of this DPS, we briefly explain below the way in which population abundance is estimated for Steller sea

lions; discuss uncertainties associated with the estimates; identify data available on which to evaluate trends in abundance; and summarize the information available from pup and non-pup count data. We provide a summary of trends over time for the population as a whole. More detailed data from pup and non-pup counts over time in subareas (southeast Alaska, British Columbia, Washington (non-pup counts only), Oregon, and California) are provided in the Status Review (NMFS 2013a) and elsewhere (e.g., Pitcher *et al.* 2007; DFO 2008; Johnson and Gelatt 2012).

Two types of counts are used to study trends in Steller sea lion populations: counts of pups of up to one month of age and counts of non-pups (Pitcher *et al.* 2007; Olesiuk *et al.* 2008; NMFS 2008; DeMaster 2009). NMFS currently monitors Steller sea lion status by counting animals during the breeding season at trend sites in conjunction with State and other partners. Trend sites are a set of terrestrial rookeries and haulouts where surveys have been consistently undertaken for many years and where the vast majority (over 90%) of all sea lions counted during surveys are observed (NMFS 2008, 2010). Breeding season surveys have been conducted opportunistically and not all sites have been surveyed each season.

The vast majority of Steller sea lion pups are born at a relatively small number of rookeries and are on land for the first month on their life (Pitcher *et al.* 2007; NMFS 2008). Thus, counts of pups on rookeries conducted at the end of the birthing season are nearly complete counts of pup production. In the Recovery Plan, we noted that:

> These counts can be expanded to estimate approximate total population size based on an estimated ratio of pups to non-pups in the population (Calkins and Pitcher 1982; Trites and Larkin 1996). Based on estimates of birth rate and sex and age structure of a stable sea lion population from the Gulf of Alaska, Calkins and Pitcher (1982) estimated total population size was 4.5 times the number of pups born. Some pups die and disappear before the counts are made and a few are born after the counts are conducted (Trites and Larkin 1996); because of this the researchers selected 5.1 as a correction factor. It should be emphasized that this is a very general estimate of population size as several factors can affect the accuracy of this correction factor. Sex and age structure and mortality and birth rates may vary over time and among populations and require different correction factors (NMFS 2008: I–6).

The Department of Fisheries and Oceans Canada (DFO) discussed and acknowledged uncertainty in estimates of pup production and uncertainty associated with extrapolating total abundance from estimates of pup production (DFO 2008). To the extent that the actual demographic characteristics of a population deviate from those assumed for the purposes of estimation, error or biases may be introduced into the estimate. We discuss this issue further in the Status Review (NMFS 2013a).

At the time of finalization of the Recovery Plan (NMFS 2008), the analyses of trend data throughout the range of the eastern DPS provided in Pitcher *et al.* (2007) represented the best available data for the population overall and for many of the subareas. Based on the comprehensive eastern DPS range-wide survey conducted in 2002, Pitcher *et al.* (2007) estimated that about 11,000 pups were produced in the eastern DPS in 2002. They provided what they emphasized should be regarded as a general estimate of total abundance for this DPS of about 46,000–58,000, noting that several factors can affect the accuracy both of the counts and of correction factors applied during estimation. In their estimate of pup production, upon which the estimate of total abundance is based, Pitcher *et al.* (2007:112) followed Trites and Larkin (1996) and added 10% to the pup counts, an adjustment they stated "seems reasonable" but which is "subjective and arbitrary" since the real adjustment likely varies both spatially and temporally. They used sensitivity analysis to delineate the possible range of changes in the correction factors and discussed biases in the estimates given certain assumptions regarding population productivity and growth. Pitcher *et al.* (2007) estimated that, for the 25-year period between 1977 and 2002, overall abundance of the eastern DPS of Steller sea lion had increased at an average rate of 3.1% per year.

New pup and non-pup count data since Pitcher *et al.*'s (2007) analyses are available from all portions of the range including southeast Alaska (DeMaster 2009), British Columbia (Olesiuk 2008; P. Olesiuk, pers. comm.), Washington State (S. Jeffries, unpublished data), Oregon (B. Wright and R. Brown, pers. comm.), and California (NMFS unpublished data). When these new data are added to Pitcher *et al.*'s (2007) time series of surveys, the interval over which we can assess population trends is lengthened, and confidence that the positive trend is real and sustained is increased.

Johnson and Gelatt (2012) provided a new analysis of eastern DPS abundance trends from 1979–2010 using models for each subarea (southeast Alaska, British Columbia, Washington (non-pups only), Oregon, and California). Since the demographic recovery criterion described the growth of the sum of the subareas, but counts generally were not conducted in the same years, this analysis was developed to allow for the analysis of ". . . growth trends of the abundance of an entire population when censuses have been conducted at disparate times on subpopulations with possibly differing annual rates of growth (or decline)" (Johnson and Gelatt 2012:1). Their estimates of population-wide growth rate, based upon pup counts, indicates that the eastern DPS increased from an estimated 18,313 animals in 1979 (90% confidence interval (CI): 16,247–20,436) to 70,174 animals in 2010 (90% CI = 61,146–78,886). The estimated annual growth rate of the eastern DPS from 1979–2010 was 4.18% with a 90% CI of 3.71%–4.62%. The probability that the growth rate exceeded 3% was 0.9999 (Johnson and Gelatt 2012).

Most of the overall increase in estimated population abundance from 1970–2010 was due to increases in the northern portion of the range in southeast Alaska and British Columbia (first pup count used in analysis from 1982). However, data in Johnson and Gelatt (2012) indicate that pup counts in Oregon (at least since 1990) and California (at least since 1996) also increased. More detail is provided in Johnson and Gelatt (2012), the Status Review (NMFS 2013a), and elsewhere e.g., Fritz *et al.* 2008; Olesiuk 2008 pers. comm.; DeMaster 2009; NMML 2012).

Based on non-pup count data, which include new count data provided by Washington (1989–2011), Oregon (1976–2008), DFO (1971–2010), NMFS (for southeast Alaska, 1979–2010), and California (1990–2011), the estimated annual growth rate for the eastern DPS as a whole from 1979–2010 is 2.99% (90% CI = 2.62%–3.31%; see Figure 2 in Johnson and Gelatt 2012).

Thus, the estimated trends in abundance for the total eastern DPS indicate that the population increased at an annual rate of about 3% (based on estimated trends in non-pup counts) or more (based on estimates of population size from pup counts) between the late 1970s and 2010, a period of more than 30 years. Hence, despite uncertainty about the actual numbers of Steller sea lions in the eastern DPS, NMFS is confident about the magnitude and direction of the trend in abundance over this period. These data indicate that the demographic (or biological) recovery criterion specified in the Recovery Plan has been met.

Goodman (2006) conducted an analysis of the extinction risk of the eastern DPS of Steller sea lion using two

series of data related to population trend: 1) 24 counts, conducted annually except for missing counts in 1978 and 1991, of non-pups from Oregon sites from 1977–2002, and 2) nine counts of pups at southeast Alaska sites from 1979–2002. Goodman concluded that probability of low growth rates is very small, and that if his working hypothesis to account for the observations was and continues to be true, the near and mid-term risks of extinction are very low. Since 2002, NMFS has undertaken additional aerial surveys of pups in southeast Alaska, generally on a biennial basis. The most recent pup counts available for consideration in this decision were conducted in 2009, and trends from these data are summarized in the Status Review (NMFS 2013a). These data show that the positive growth rates apparent at the time of Goodman's analysis have continued with a very strong upward trend in pup production in this region since 2002. Likewise, more recent data from Oregon show continued population growth. The final count for 2003 was anomalously high at 5,714 non-pups counted and, in that year, increases in non-pup numbers were seen at multiple locations throughout the state. The count for 2005 was incomplete due to poor weather. Counts for 2006 and 2008 indicate that the non-pup abundance trajectory generally follows the upward trend line depicted in Pitcher *et al.* (2007) (B. Wright, ODFW, pers. comm.; more details can be found in the Status Review (NMFS 2013a)). Based on the continued upward trend in both data sets, we concur with Goodman's conclusion that the risk of near-term and mid-term extinction is very low for this DPS.

Evaluation of the ESA Section 4(a)(1) Factors and Associated Recovery Criteria

We reviewed the status of the eastern DPS in the context of the ESA listing factors and the associated criteria set forth in the Recovery Plan (NMFS 2008). Below we summarize information regarding the status of the DPS according to each of the ESA section 4(a)(1) factors and identify the steps taken by NMFS and others to accomplish recommended actions set forth in the Recovery Plan. More detailed information can be found in the Status Review (NMFS 2013a).

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of a Species' Habitat or Range

In the 2008 Recovery Plan, NMFS (2008a:VII–1) concluded that "At present, the most likely threats" "are development, increased disturbance and habitat destruction, increases in magnitude or distribution of commercial or recreation fisheries, and environmental change." The Status Review identified the following residual and/or emerging potential future sources of threat under this factor: Global climate warming and ocean acidification; indirect fisheries interactions; coastal development and disturbance; toxic substances; and oil and gas development. We considered each of these threats based on information and analysis in the Recovery Plan (NMFS 2008) and updated in the Status Review (NMFS 2013a).

Based on the available information, certain global warming and ocean acidification effects are likely already being manifested within the California Current Ecosystem and possibly other marine ecosystems in the eastern North Pacific, of which the eastern DPS of Steller sea lion is a part, and data indicate that ecosystems in the range of the eastern DPS will continue to be affected by these factors by the end of the century. The California Current System may be particularly vulnerable to climate change and ocean acidification effects. The northward shift of the range of this DPS may be, at least in part, a result of climate change. However, given the increasing population trends of the eastern DPS of Steller sea lion, the robust reproduction over a large range from Oregon to southeast Alaska, and the relatively large population size, the available information suggests that global warming and ocean acidification are not currently impeding this population's overall recovery or viability. In contrast, the best scientific and commercial data available indicate that global climate change is having, and will have, negative impacts on ice-dependent species, such as polar bears, ringed seals, and bearded seals.

Global climate warming and ocean acidification pose a potential threat to Steller sea lions from potential food web alteration, direct physiological impacts on prey species, or more generally, due to changes in the composition, temporal and spatial distribution, and abundance of prey. If the underlying food webs are affected by ocean acidification and climate change, this DPS of Steller sea lions would also likely be affected. However, consideration of this issue is complicated by the rapidly evolving understanding of this complex threat, the uncertainty about how Steller sea lions might respond, and the inability to predict a response by the eastern DPS reliably within the foreseeable future. Clearly, the issue is not specific to Steller sea lions or their habitat. The magnitude and timing of ecological change in the different parts of the range of the eastern DPS from these two factors and, more importantly, the ways in which such change will affect the eastern DPS of Steller sea lion at the population level, are not yet predictable. Thus, while NMFS is concerned about multi-faceted adverse impacts of climate change and ocean acidification over the next 50–100 years on marine ecosystems of which this DPS is a part, based on the best scientific and commercial data available, we cannot accurately predict the impacts of these factors on the eastern DPS of Steller sea lions or their primary prey during this time period. Thus, in the absence of substantial information to the contrary, we conclude that global warming and ocean acidification are not likely to cause the eastern DPS of Steller sea lion to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future.

Numerous federal, state, and/or provincial commercial fisheries, recreational fisheries, and subsistence fisheries exist within the range of the eastern DPS of Steller sea lion. These include fisheries for salmon, herring, demersal shelf rockfish, ling cod, and black and blue rockfish in state waters of southeast Alaska; herring, hake, sardines, salmon, and groundfish in British Columbia; salmon and herring in state waters off Washington and Oregon; and groundfish along the U.S. west coast. Mechanisms by which fisheries can have indirect effects (e.g., nutritional stress) on Steller sea lions have been reviewed extensively in the scientific literature and in recent NMFS actions (e.g., 75 FR 77535; December 13, 2010). Given the sustained significant increases in non-pup abundance and increases in pup production of eastern DPS Steller sea lions concurrent with the ongoing prosecution of these fisheries, and given current and anticipated fisheries management procedures and regulatory mechanisms, there is no indication that fisheries are competing with eastern DPS Steller sea lions to the point where it constitutes a threat to the survival or recovery of the eastern DPS of Steller sea lions. Due to increasing numbers of Steller sea lions in some locations, and increasing numbers of California sea lions in others, the effects of competition with fisheries may increase in the future as the number of animals competing for the same prey increases or if there is habitat degradation or other factors that

lead to prey declines. However, given current information, we conclude the current management of those fisheries is not likely to cause the eastern DPS to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Coastal development, tourism, industry, shipping, and human population growth may lead to more noise, human presence and other outcomes that increase disturbance of Steller sea lions on terrestrial sites or in the water, or to their prey. However, protections against such disturbance exist and will likely remain in place under a variety of state and federal statutes. Following delisting, significant regulatory mechanisms under the Marine Mammal Protection Act (MMPA) and other laws will provide a means to reduce or minimize possible adverse effects of disturbance from human activity. These mechanisms provide protections against human disturbance for Steller sea lions on coastal haulouts and rookeries, and in other habitats. The prohibitions and penalties related to "take" under the MMPA are particularly relevant (16 USC 1371(a)), as is our ability to require mitigation in authorizations of take incidental to other activities such as shipping, tourism, or coastal development. To authorize any such take, we must find that it will have no more than a negligible impact, which NMFS regulations define 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" (50 CFR 216.103). In addition, we must prescribe permissible methods of taking, as well as other means of having the least practicable adverse impact on affected marine mammal stocks. We must also impose monitoring and reporting requirements. We conclude that there is no current evidence indicating that human disturbance of Steller sea lions on or near coastal habitats is likely to cause the eastern DPS of Steller sea lion to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future.

Toxic substances may adversely affect eastern DPS Steller sea lions, although much remains to be learned about the levels of a suite of contaminants, related physiological mechanisms, and the reproduction, health and survival consequences of such substances (Atkinson *et al.* 2008; Meyers *et al.* 2008; Barron *et al.* 2003). In the past two decades there has been an emerging understanding that contaminants, especially those that bioaccumulate and are persistent, can pose a risk to the reproductive success and health of marine mammals (e.g., Ross *et al.* 1995; Beckmen *et al.* 2003; Hammond *et al.* 2005). Studies conducted in southern and central California (Sydeman and Jarman 1988; DeLong *et al.* 1973; Le Boeuf *et al.* 2002: Ylitalo *et al.* 2005; Blasius and Goodmanlowe 2006; and see Heintz and Barron 2001 for review) have recognized the potential for adverse consequences of high levels of contaminants in pinnipeds in this more industrialized portion of their range. However, this potential for negative impacts is in contrast to the robust populations of some species of pinnipeds in these areas. Thus, while a body of literature on Steller sea lions and other pinnipeds suggests that toxic substances may have been a factor that adversely affected Steller sea lions in some parts of California, in most of the range of this DPS, if toxic compounds have affected reproduction or survival, the effects have not been sufficient to impede sustained recovery, and they have not been sufficient to impede the overall recovery of this DPS. While there is uncertainty concerning the potential for toxic substances to affect reproduction, survival, and population increase in the southern part of the range of this species, the best scientific and commercial data available do not indicate that toxic substances are likely placing this population in danger of extinction throughout all or a significant portion of its range or likely to become such within the foreseeable future.

Oil and gas activity such as exploration, production, and transportation of petroleum products within the eastern DPS Steller sea lion range has the potential to adversely affect animals within this DPS due to disturbance or pollution in the event of spills. The most significant effects could result if repeated disturbances or a large spill were to occur near large rookeries. Large oil and fuel spills have occurred in the past in multiple locations within the range of this DPS. Based on current information, the risks posed by such events do not place this species in danger of extinction throughout all or a significant portion of its range or make it likely that it will become so within the foreseeable future.

Based on the considerations for Factor A summarized above, and the additional information provided in the Status Review (NMFS 2013a), we conclude that the eastern DPS of Steller sea lion is not in danger of extinction throughout all or a significant portion of its range, nor likely to become so within the foreseeable future due to the present or threatened destruction, modification, or curtailment of its habitat or range.

The Recovery Plan (NMFS 2008: VII–4) states that "To provide assurance that delisting is warranted for" this DPS, ". . . threats to its habitat should be reduced as specified under this factor:

1. Marine habitats, particularly in regard to prey populations, must be maintained through appropriate fisheries management and control of contaminants.

2. Rookery and haulout sites need to be adequately protected (through state, federal, or private measures) to insure the continued use of these sites for pupping, breeding, attending young, and resting. Research and monitoring plans should be in place for all projects that have a high probability of negatively impacting sea lions in order to make sure that these activities do not result in harm to sea lions or their habitat."

We identified research and management programs in the Status Review (NMFS 2013a) that help to protect Steller sea lion habitat from adverse effects due to fisheries, coastal development, and other threats, as detailed above for Factor A and below for Factor D. We conclude the recovery criteria and recovery actions recommended under this listing factor have been accomplished and will continue to be accomplished on an ongoing basis.

Factor B: Overutilization for Commercial, Recreational, or Educational Purposes

In the Recovery Plan, NMFS (2008:VI–3) summarized that prior to the MMPA there were both sanctioned and unsanctioned efforts by fishermen and others to control Steller sea lions in the United States, and the killing of sea lions by fishermen and others was commonplace. Additionally, in British Columbia, government control programs killed thousands of Steller sea lions on rookeries and haulouts from 1912 through 1968 (Bigg 1985). By 1970, when sea lions were given protection in Canada, the population had been reduced by about 70%, and one rookery had been eliminated (Olesiuk 2001).

Current documented sources of direct human-caused mortality of Steller sea lions include subsistence harvests, incidental takes in fisheries, illegal shooting, entanglement in marine debris, and take during scientific research. There are currently no commercial harvests or predator control programs in the United States in which Steller sea lions are authorized to be killed. Killing harbor seals and California sea lions at aquatic farms is

authorized by license in Canada, but lethal control of Steller sea lions has been prohibited in Canada since 2004. DFO (2010) noted that Steller sea lions could be shot as a result of being misidentified as either a harbor seal or California sea lion, but they assessed the current level of concern for this threat as negligible. Available information indicates that subsistence harvest rates remain very low and not likely to cause this population to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

While Steller sea lions are taken incidentally by commercial fisheries, the known mortality level from this source is relatively small compared to the species' potential biological removal (PBR). We are, however, uncertain about the actual levels of take of eastern DPS Steller sea lions in fisheries for a variety of reasons. Estimates of fishery-related mortality based on stranding data are considered minimum estimates, because not all stranded animals are observed or reported and not all entangled animals strand (Allen and Angliss 2011). Recent observer data are not available from many fisheries within the U.S. range. The number of Steller sea lions taken in Canadian waters is not known (Allen and Angliss 2011). On the other hand, we are not aware of any information to suggest that the numbers of eastern DPS Steller sea lions taken incidental to commercial fishing will increase appreciably within the foreseeable future. Thus, there is no evidence indicating that the estimated level of incidental take in commercial fishing is likely to cause the eastern DPS of Steller sea lion to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future.

Entanglement of Steller sea lions in packing bands, discarded fishing gear, rope, hooks, and flashers may be reported through the Marine Mammal Stranding Network, field studies, or by opportunistic sightings. Such entanglement can lead to serious injury and mortality. While we are concerned about entanglement and are working with the States and others to reduce it, we are not aware of data that indicate that effects from entanglement are likely to cause this species to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

While only minimum estimates of illegal take (e.g., shootings) of Steller sea lions are available, the estimated level of this illegal take is not likely to pose a threat to this population. Allen and Angliss (2012:19) reported that the minimum estimated U.S. commercial fishery-related mortality and serious injury for this DPS (17.0) is less than 10% of the calculated PBR (200) and, therefore, can be considered to be insignificant and approaching a zero mortality and serious injury rate. The estimated annual level of total human-caused mortality and serious injury is 45.8 for commercial and recreational fisheries, 11.9 for subsistence, and 1.4 for other human-caused mortality, for a total of 59.1. Thus, given the size of the population, the estimated levels of such take are unlikely to place this species in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

The Recovery Plan does not specify recovery criteria under this factor. Research and management programs are in place, or will be put in place post-delisting (e.g., in the PDMP), to monitor and regulate the threats identified under this factor. Consistent with the primary goals of the MMPA, these programs reduce the magnitude of the above types of takings. We will continue to monitor take in selected fisheries and will, as recommended in the Recovery Plan (NMFS 2008), work cooperatively with the States to implement observer programs and other means to identify, evaluate, and reduce levels of uncertainty in the estimates of incidental taking by commercial fishing.

Factor C: Disease, Parasites, and Predation

In the Recovery Plan, NMFS (2008) concludes that no criteria are necessary to reduce disease or predation. The plan briefly discusses the parasites that have been found in eastern DPS Steller sea lions and states that although research is needed, there is no available information to suggest that parasitic infections are limiting population growth. The plan summarizes that, while Steller sea lions are taken by killer whales throughout their range, there is no indication that killer whale predation is outside normal levels expected in this population at their abundance level. NMFS (2008:VI–2) also notes that previous authors (Long and Hanni 1993) suggested that ". . . white shark predation could impede recovery of Steller sea lions in California if the number of sea lions declines further and the shark population continues to increase." There is no new information since the Recovery Plan indicating a greater threat from predation. We conclude that predation is not limiting recovery (NMFS 2008, 2013a).

With respect to disease, the Recovery Plan (NMFS 2008:VI–4) states: "Whereas exposure to many disease agents has been identified in Steller sea lions, little is known about the disease agents themselves or how they may impact the sea lion populations, and no evidence has been found of disease limiting population growth." Based on the information available at that time, NMFS (2008) stated that the diseases known to occur in this DPS appear to be limited to those endemic to the population and they are unlikely to have population level impacts.

New information indicates that the threat of exposure to novel disease vectors is higher now than was known at the time the Recovery Plan was completed. This increased threat is due to the documented infection and exposure of Steller sea lions to at least one infectious, and possibly pathogenic, virus (phocine distemper virus (PDV), which may be novel to them (Goldstein pers. comm. and unpublished data; see also Goldstein *et al.* 2009); the emergence and/or the detection of other disease agents infecting other species of marine mammals within their range (e.g., toxoplasmosis; Conrad *et al.* 2005); increased crowding at some rookeries that may result in increased incidences of density-dependent related disease (e.g., as Spraker *et al.* (2007) have suggested for the hookworm/bacteremia complex in California sea lions); and climatic and oceanic changes that may enhance the probability of Steller sea lion exposure to novel disease agents (e.g., Lafferty and Gerber 2002).

The marine environment of the eastern North Pacific is changing and is likely to change in the future due to global warming and related changing ocean conditions (see section on Climate Change and Ocean Acidification). There is growing understanding of ways in which climate change, other environmental change, and stress may increase disease risk. Lafferty and Gerber (2002) concluded that key threats to biodiversity, such as climate change, resource exploitation, pollution, and habitat alteration can affect the transmission of an infectious disease; introduced pathogens can make abundant species rare; conditions that cause stress may increase susceptibility to disease; cross-species contact may increase transmission; and pathogens are of increasing concern for conservation. Climate change can lead to shifts in the range of the eastern DPS of Steller sea lion or in the range of other species. Such range shifts increase the likelihood that Steller sea lions will be exposed to novel disease agents (e.g., Lafferty and Gerber 2002; Goldstein *et al.* 2009a). The entry of PDV into the North Pacific may have

occurred due to global warming (Goldstein 2009b). Archived samples (primarily from animals in the Aleutians and Prince William Sound) from Steller sea lions collected since 2001 tested positive across several locations and sampling years (T. Goldstein, unpublished data). Goals of current research include determining how widespread PDV is in Steller sea lions across their range and whether this viral infection may be affecting the health of Steller sea lions (T. Goldstein, pers. comm.). Studies of pinnipeds in the North Atlantic indicate the effects of exposure to PDV have ranged from large scale epidemics in Atlantic harbor seals to no detectable population impacts in other species (e.g., see Dietz *et al.* 1989, Heide-Jorgensen *et al.* 1992; Harding *et al.* 2002; Jensen *et al.* 2002; Härkönen *et al.* 2006). Additional information on this virus and other novel disease agents that have been detected within the range of the eastern DPS is provided in the Status Review (NMFS 2013a).

We conclude that the risk of disease to eastern DPS Steller sea lions is likely higher than was known at the time of the Recovery Plan, and it is likely to increase over time due to increased crowding and, especially, due to the emergence of novel disease vectors. The available information available, however, does not indicate that disease is causing population-level effects in the eastern DPS, either alone or in combination with other threats. We recognize the need to continue to test and monitor for the presence of novel and potentially threatening disease agents and have included disease surveillance and parasite studies as components of the PDMP (NMFS 2013b). Through established programs such as Marine Mammal Stranding Networks and ongoing collaborative research, routine sampling to monitor the occurrence of PDV and other diseases will continue, and appropriate responses (e.g., Unusual Mortality Event response) to critical events (e.g., a disease epidemic) will be implemented if the need arises.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

To fully evaluate the adequacy of existing regulatory mechanisms, we considered the existing protections in light of identified threats discussed in Factors A through E. The MMPA establishes a moratorium on the taking and importation of marine mammals and marine mammal products, with some exceptions. Under the MMPA, the term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. It provides a variety of existing regulatory measures designed to protect marine mammals from unauthorized harassment and other forms of take, ensure that the population stocks do not diminish beyond the point at which they cease to be a significant functioning element in their respective ecosystems, and ensure stocks do not fall below their optimum sustainable population levels. The MMPA also provides mechanisms to permit some types of take through a regulated process, including a process for incidental taking that is aimed at ensuring that the taking is small in number, has a negligible effect on the affected marine mammal population, and minimizes adverse effects on the population and its habitat to the least practicable level. The MMPA will continue to provide protection to the eastern DPS Steller sea lion to help ensure that it can remain a fully functioning part of the marine ecosystem. In addition, provisions of the MMPA provide mechanisms to protect the habitat of the eastern DPS against certain kinds of threats, should they emerge.

The location of key terrestrial and aquatic habitats of the eastern DPS of Steller sea lions within state and federal parks and marine protected areas (e.g., Oregon Islands National Wildlife Refuge, Olympic National Park, Farallon Islands National Marine Sanctuary, Three Arch Rocks National Wildlife Refuge) offers additional protections for the eastern DPS of Steller sea lions. These additional protections vary but some are primarily focused on reducing or avoiding disturbance of the animals when they are hauled out. More details are provided in the Status Review (NMFS 2013a).

Federal regulations and management plans established by the government of Canada provide protection for eastern DPS Steller sea lions and their habitat in that country (e.g., Marine Mammal Regulations of the Fisheries Act). The United States and Canada cooperate on research and monitoring (such as in the planning and sometimes the execution of aerial surveys) necessary for detecting declines in status such that steps could be taken, if needed, to ensure the long term health and well-being of this population within Canadian waters.

A number of other federal and state statutes, including the Clean Water Act, National Marine Sanctuaries Act, and Magnuson-Stevens Fishery Conservation and Management Act will continue to provide protection to wildlife and habitat and will likely help facilitate the continued growth and stability of this population. The relationship of these other federal statutes to Steller sea lions is discussed in more detail in the Status Review (NMFS 2013a).

To address and fulfill aspects of Factor D, the Recovery Plan (NMFS 2008) enumerated two recovery criteria:

(1) Agreement is reached with the State of Alaska which describes their fishery management plan, minimizes the take of Steller sea lions, and describes how future actions taken by the State will comport with the ESA and MMPA.

(2) A Steller sea lion recovery coordinator is on staff at NMFS.

During the process of conducting this Status Review, NMFS and the Alaska Department of Fish and Game met to discuss how, in the event the eastern DPS of Steller sea lion is delisted, future State actions will minimize the take of Steller sea lions in accordance with the MMPA. The State of Alaska provided correspondence that describes state fishery management plans, maintains that existing practices followed by the State with respect to fisheries management have minimized the take of eastern DPS Steller sea lions and will continue to do so, and explains the State's perspective on how such fishery management practices will contribute to continued recovery of the eastern DPS and will continue to comport with all aspects of the MMPA for the foreseeable future. NMFS agreed (Balsiger 2012) that the described plans and management actions satisfy the recommended delisting action.

NMFS has a Steller sea lion recovery coordinator on staff. This satisfies the second recommended recovery criterion under this listing/delisting factor.

Therefore, NMFS concludes that the actions identified under Factor D in the Recovery Plan have been met. Based on the considerations for Factor D, we conclude that the protections afforded by existing regulatory mechanisms make it unlikely that the eastern DPS will become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Beyond those threats discussed above, the Recovery Plan (NMFS 2008) did not identify other threats that need to be considered under Factor E. Based on information and analysis in the 2008 Recovery Plan and the Status Review (NMFS 2013a), we find that there are no other factors likely to cause the eastern DPS of Steller sea lions to become in danger of extinction within the

foreseeable future throughout all or a significant portion of its range.

With respect to Listing Factor E, the 2008 Recovery Plan specified that the following criteria should be achieved and accomplished in such a way that delisting is not likely to result in re-emergence of the threat:

1. An outreach program is established to educate the public, commercial fishermen and others to the continued need to conserve and protect Steller sea lions.

2. An Alaska stranding network is in place and functional.

Both NMFS and the Alaska Department of Fish and Game have outreach programs devoted to Steller sea lion conservation and management in an effort to educate commercial fishermen and the general public about the ongoing need to protect and conserve Steller sea lions. Various forms of outreach activities are conducted for the public, commercial fishermen, Alaska Native organizations, and others (Web pages, trainings, classroom presentations, videos, bumper sticker campaigns, interpretive displays, etc.). The NMFS Alaska Region and West Coast Region have Marine Mammal Stranding Programs, and the stranding network is operational. More detail on both outreach and stranding efforts are provided in the Status Review (NMFS 2013a). Based on this information, we conclude that the recovery criteria specified under this listing/delisting factor have been met.

Conservation Efforts

Prior to making a decision regarding the appropriate listing status of a species, NMFS is required under section 4(b)(1)(A) of the ESA to consider the efforts of any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. Such efforts also include measures by Native American tribes and organizations, private organizations and local governments. Under provisions of the ESA and our Policy on the Evaluation of Conservation Efforts (68 FR 15100; March 28, 2003), we are required to identify the conservation efforts, evaluate the certainty of implementing them, and evaluate the certainty that the conservation efforts will be effective. Our basis for evaluating effectiveness should include consideration of whether the effort or plan establishes specific conservation objectives, identifies the necessary steps to reduce threats or factors for decline, includes quantifiable performance measures for monitoring compliance and effectiveness, incorporates the principles of adaptive management, and is likely to improve the species' viability at the time of the listing determination.

Canadian Efforts To Conserve the Eastern DPS of Steller Sea Lion

We have considered efforts by Canada to conserve the eastern DPS of Steller sea lion. These are discussed elsewhere (e.g., Alaska Fisheries Science Center (AFSC) 2011; NMFS 2013a), and we summarize them here. In January 2011, Canada finalized a Management Plan for the Steller sea lion. The DFO (2011:32) specified two management goals for the plan:

- To ensure that anthropogenic threats from Canadian sources do not cause unsustainable population declines or a contraction of the current range or number of breeding sites in Canada.
- Support for, and contribution to, an environment where research and monitoring of Steller Sea Lions in British Columbia contributes to achieving an improved global knowledge of the Eastern Pacific Population.

The Management Plan articulates historical and current status; ecological needs; the history of management in Canada; knowledge gaps; management goals and assessment of threats; population and distribution objectives for management; research and monitoring objectives; and needed management, research, monitoring, and outreach and communication. Hence, Canadian managers have developed a detailed framework to guide their management of this species. Both the process of developing such a framework and the existence of the framework itself helps focus attention on Steller sea lion status and increases the probability that high priority tasks needed to conserve this species are accomplished. The AFSC (2011) concluded that the current conservation and management plan for Steller sea lions in Canada provides protections similar to the protection measures provided by the MMPA.

Tribal Efforts To Conserve the Eastern DPS of Steller Sea Lion

NMFS collaborates with tribal entities on eastern DPS Steller sea lion conservation. These include outreach activities undertaken by The Alaska Sea Otter and Sea Lion Commission (TASSC, an Alaska Native Organization) and research and monitoring efforts undertaken by the Makah Tribe (Makah 2012). The Makah Tribe provided data and other input at multiple stages of the development of the Status Review and the PDMP. The Makah Tribe has operated a Marine Mammal Program to research marine mammals since 2003 and had previously assisted marine mammal studies conducted by NOAA since 1996. The tribe has gathered data on the seasonal patterns of haulout use of Steller sea lions in Northwestern Washington and collected data on the resightings of branded Steller sea lions to contribute to NOAA and Oregon Department of Fish and Wildlife life history studies. Both TASSC and the Makah are listed as Regional Collaborators in the PDMP (NMFS 2013b).

State Efforts To Conserve the Eastern DPS of Steller Sea Lion

Conservation efforts by the States have facilitated the recovery of the eastern DPS and will continue to provide protection and monitoring following delisting. Alaska, Oregon, and Washington have active research programs that provide vital information about status, movements, threats, and ecology. In some cases, States have taken action specifically to address identified threats. For example, in their petition to delist this species the Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fish and Wildlife (WDFW) (2010:4, August 30, 2010) stated: "In the late 1990s the Oregon State Marine Board implemented a boat closure area around one of the more important haul-out and rookery areas on the north coast of Oregon to minimize disturbance." They also stated that ODFW "has established closures to sport fishing and commercial urchin harvest near the most important rookery rocks on the south coast also to minimize disturbance, particularly during the breeding season." In the Status Review (NMFS 2013a), we detail many of the Steller sea lion related outreach activities undertaken by the State of Alaska. Much of the outreach to date has focused on Steller sea lion ingestion of gear and entanglement in marine debris. State institutions, such as Oregon State University, Washington Department of Fish and Wildlife, Humboldt State University, and Alaska Department of Fish and Game participate as part of the stranding networks in their region. The Alaska Department of Fish and Game is an active participant in the Alaska Pinniped Entanglement Group, a collaborative effort between the Alaska Department of Fish and Game, NMFS, the Aleut Community of St. Paul, and others concerned about entanglement in marine debris.

Federal Efforts To Conserve the Eastern DPS of Steller Sea Lion

Current Federal conservation efforts for the eastern DPS of Steller sea lion (other than those conducted under the

ESA) include monitoring, management, assessment, and enforcement under the MMPA; federally sponsored and conducted research on Steller sea lions, their habitat, and their prey; cooperative efforts with Alaska Native subsistence hunters; outreach; stranding response and reporting; and oil spill coordination. Multiple federal agencies in addition to NMFS play roles in this species' conservation, including the National Park Service (NPS), the USFWS, and NOAA National Marine Sanctuaries. Existing federal regulatory actions are discussed under Factor D and in the Status Review and are not repeated here.

Evaluation of Potential Significant Portions of the Range

As part of our Status Review, after considering the status of the eastern DPS of Steller sea lions throughout its range, we also considered whether portions of the range of the eastern DPS qualified as significant portions. Our first step in this evaluation was to identify any portions of the range of the DPS that warrant further consideration. We focused on those portions of the range where there is substantial information indicating that (i) the portions may be significant (i.e., if a portion's contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction either currently or within the foreseeable future) and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future (76 FR 77002; December 9, 2011).

As noted in the proposed rule to delist the eastern DPS of Steller sea lions (77 FR 23209; April 18, 2012), we initially identified only one portion of the eastern DPS's range that warranted further consideration: The southern portion of the range in California. We specifically considered whether the southern portion of the range in California constituted an SPR because the Recovery Plan indicated that there was concern over the performance of rookeries and haulouts in this portion of the range, especially in contrast to the growth observed in southeast Alaska. Following the receipt of public comments on the proposed rule, we also evaluated population, genetic, ecological, and other relevant information to determine whether either the portion of the range within California or the portion of the range within the California Current Ecoregion constitutes an SPR of the eastern DPS.

We evaluated the abundance of Steller sea lions within California, their productivity, movements, habitat use, and new information on their genetic characteristics to determine whether the California portion of the eastern DPS range is so significant that without that portion, the long-term viability of the entire DPS would be so impaired that the species would be in danger of extinction, either currently or within the foreseeable future. The history of the species following its protection indicates that this is not the case. Despite losing rookeries in California, poor pup production at the Farallon Islands, and the fact that the overall statewide population is about one-third of the numbers present in the first half of the century, the overall non-pup trend, as assessed by non-pup counts, for the trend sites within the State of California from 1990–2011 has been stable. Further, pup production in California has increased at about 2.9% per year from 1996–2011. While we do not fully understand the causes of poorer performance of Steller sea lions in California compared to the rest of the DPS, these data indicate that they are not in decline. More importantly, the overall population recovery has met or exceeded the demographic recovery criterion. Increases in numbers throughout much of the rest of the DPS began ten to fifteen years before abundance began to increase in California. Thus, available information does not support a conclusion that the California population's contribution to the viability of the eastern DPS is so important that, without that portion, the eastern DPS would be in danger of extinction now or in the foreseeable future. Therefore, we have concluded that California does not constitute an SPR.

With regard to whether the California Current ecosystem constitutes an SPR, NMFS finds that the evidence is equivocal, as discussed further in the Status Review (NMFS 2013a). However, regardless of whether the California Current portion of the range is an SPR, Steller sea lions within the California Current portion of the range do not meet the definition of a threatened or endangered species under the ESA. This conclusion is based on trend information presented in the Status Review and on the fact that no threats sufficient to impede the recovery of the population now or within the foreseeable future were identified. In other words, if NMFS assumes that the California Current portion is an SPR, NMFS does not find that Steller sea lions are in danger of extinction there or likely to become so within the foreseeable future. The underlying trend information on pups (for California and Oregon) and non-pups (for California, Oregon and Washington) is provided in the Status Review (NMFS 2013a). The threat information is provided in the Status Review (NMFS 2013a) and summarized above under our consideration of the five factors that must be considered in listing decisions (see "Evaluation of the ESA Section 4(a)(1) Factors and Associated Recovery Criteria").

Summary of Public Comments and Responses

We solicited information and public comment during formulation of the Status Review, following publication of our findings regarding the petitions to delist, and following publication of the proposed rule. The first comment period of 60 days followed our initiation of the 5-year status review of the eastern DPS of Steller sea lion under the ESA (75 FR 37385, June 29, 2010; 75 FR 38979, July 7, 2010). On August 31, 2010 (75 FR 53272), we reopened the public comment period for an additional 45 days. To ensure that the Status Review was comprehensive, we again solicited scientific and commercial information regarding this species for 60 days following the release of our 90-day finding on the two petitions to delist the eastern DPS (75 FR 77602, December 13, 2010). Lastly, we solicited public comment for 60 days following the release of the proposed rule, draft Status Review, and draft PDMP. As described more fully below, we also solicited peer review of these documents during the public comment period from seven scientists, four of whom provided a review. All four scientists were outside of the U.S. Federal government. Three had expertise on pinniped ecology, and one had expertise on climate change impacts on marine ecosystems.

During the most recent public comment period NMFS received 1,144 comments relevant to the proposed action. Comments were submitted by individuals; government agencies; fishing groups; environmental and animal rights organizations; tribal entities; and professional scientific societies. The comments raised numerous substantive scientific, policy, and legal issues. Some submissions provided relevant new information for NMFS's consideration. Many comments were complex and had multiple facets, and thus some individual statements are addressed in multiple comments and responses below. Most of the individual commenters were opposed to the delisting. NMFS also received a petition opposing the delisting with hundreds of signatures.

We fully considered all comments received from the public and peer reviewers in developing this final determination to delist the eastern DPS of Steller sea lion. Summaries of the substantive public and peer review comments that we received on the proposed rule and our responses to all of the significant issues they raise are provided below. We made a number of changes to our analysis, the Status Review, and the PDMP in response to comments received and we note those changes in our responses.

Comments on Regulatory Process and Legal Issues

Comment 1: A commenter stated that when a species reaches the level to warrant being delisted, delisting should occur as the law intended. The commenter stated that delisting the eastern DPS of Steller sea lions would be an important step in demonstrating that the ESA process of listing and delisting species is functioning as Congress intended.

Response: We agree that species that do not meet the definition of threatened or endangered should not be listed. We are delisting the eastern DPS of Steller sea lion because we have concluded that the best scientific and commercial information available indicates that it is no longer endangered or threatened.

Comment 2: The State of Alaska stated that recovery does not mean that all threats to a species have been eliminated but rather that threats have been "controlled." Citing a 2001 court case, they further commented that recovery is "the process that stops or reverses the decline of a species and neutralizes threats to its existence." They concluded that recovery represents the point at which a species is no longer declining and threats to its survival have been controlled or neutralized, but not necessarily eliminated. They concluded that all the relevant requirements for delisting the eastern DPS of the Steller sea lion have been satisfied.

Response: The ESA implementing regulations (50 CFR 424.12) state the following about recovery: "The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened." Based on our analysis of such information, we have concluded that this is the case for the eastern DPS of Steller sea lion, and that is why we are delisting it.

Comment 3: A few commenters expressed concern about NMFS's reliance upon, and the quality of, data cited by the States of Washington and Oregon in their petition regarding the trends in Steller sea lion abundance in those two states, which commenters stated was not submitted to NMFS and/or peer reviewed; the fact that NMFS cited and/or relied on these assertions or data in the status review; and the fact that the public was not permitted to review the data or information. A commenter cited a court case indicating that in order to enable meaningful public comment, an agency must make relevant information known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible.

Response: The petition to delist this DPS submitted by the States of Washington and Oregon referred to unpublished count data that add an additional 6 years to the data presented in Pitcher *et al.* (2007), who presented data to 2002. Washington and Oregon did not, however, provide those survey data with the petition. Rather, they included the data in summary forms. For example, the petition included a figure showing non-pup counts in Oregon from 1976–2008 and indicated that the counts for 2006 and 2008 had not been finalized. Subsequently, in June 2011, Washington provided NMFS with count data from 1988–2008. The information provided included the raw counts for each site, log transformed data for each date, and two figures, one of which was reproduced in the draft status review as Figure 3.5.4. After NMFS published the proposed rule, Washington provided further data, including counts through 2011. Similarly, in 2011 and 2012, Oregon provided count data for 2003, 2005 (incomplete), 2006, and 2008. Johnson and Gelatt (2012) included these newer data sets from Washington and Oregon in their analysis of total DPS abundance trends and of trends in non-pups. We have revised sections of the Status Review (NMFS 2013a) related to the trends in abundance in Washington and in Oregon to incorporate the additional data and to clarify the timing and receipt of the additional data. The proposed rule relied on all the data available to NMFS at the time we published the propose rule, some of which was in summary form. We incorporated the subsequently available data into the final rule and Status Review but did not republish the proposed rule, because that data merely corroborated the trends set forth in the proposed rule and draft Status Review.

Comment 4: A commenter stated that Washington and Oregon are primarily focused on what they perceive to be problems posed by the recovery of the eastern DPS. The commenter noted that these so-called "negative interactions" are not grounds for delisting the DPS, and that any decision to delist a species must be based solely on the biological needs of the species and not the interests of fishermen or other industry interest.

Response: We agree that factors that the commenter refers to as "negative interactions" are not a basis for delisting a species. A species may be delisted on the basis of recovery only if the best scientific and commercial information available indicates that it is no longer endangered or threatened after consideration of factors specified in section 4 of the ESA.

Comments Relevant to DPS and SPR Issues

Comment 5: A commenter stated that NMFS has made the correct determination to delist the whole eastern DPS because the population unit being protected is the genetically distinct eastern DPS rather than individual rookeries within the eastern DPS. Citing Bickham (2010), they stated that genetic studies have found no evidence of stock structure within the eastern DPS that might warrant separate management of the southern portion of the range from the rest of the eastern DPS.

Response: We agree that it was appropriate to consider the status of the eastern DPS as it is currently recognized. NMFS evaluated available information about genetic variability, movements, habitat use, ecosystem and ecoregion variability throughout the range, subspecies designation, and other factors related to determining whether there are smaller DPSs within the eastern DPS of Steller sea lion. We concluded that the best available information indicates that there are not such discrete subunits, and thus, we focused our evaluation of status on the DPS as it was described in 1997.

Comment 6: Multiple commenters asserted that the proposed rule to delist failed to conduct a proper DPS analysis. The Marine Mammal Commission (MMC) commented that NMFS should base its delisting decision on the status of the eastern stock as a whole and also on the status of potential units of conservation significance within the eastern stock. They stated that the status review should consider whether any grouping of sea lions within the eastern

stock might warrant recognition as a DPS for listing purposes. Multiple commenters stated that NMFS should consider whether the portions of the eastern stock of Steller sea lions that occupy the Alaska Current and California Current ecosystems are sufficiently discrete and significant for Steller sea lions in those areas to warrant separate consideration under the ESA, i.e., whether Steller sea lions within the California Current System (which they defined as California, Oregon, and Washington) comprise a California Current System DPS based on the best available science. The MMC recommended that NMFS delist the eastern DPS and retain threatened status for a newly designated California Current DPS. Other commenters argued that NMFS should list a California Current DPS. A commenter stated that NMFS should consider protecting the California portion of the range as a separate DPS or retain the listing for the entire DPS. Commenters provided evidence to support the recognition and continued protection of a California DPS or California Current DPS based on differences in population status, ecology, and threats. Commenters provided information regarding different ecoregions and/or ecosystems within the range of the eastern DPS. A commenter noted that NMFS appears to have considered establishing a DPS for the California population, but rejected doing so because "there is no genetic basis to further subdivide the California portion from the eastern DPS in its entirety." A commenter stated that the proposed rule only considered genetic measures of discreteness for the California portion rather than the full suite of physical, physiological, ecological, or behavioral factors as required by the DPS policy. Citing the proposed rule, the commenter stated that the analysis is limited to one brief statement in the draft Status Review: "Recently completed genetic studies have resolved the lingering question of relatedness, establishing that the southern California portion of the population is not a separate 'valid DPS' (Bickham 2010a)." A commenter pointed out that genetic distinctiveness is but one possible rationale for establishing a DPS; it is not a legal requirement for every DPS unit. The commenter stated that the failure to consider other factors for establishing a California Current DPS is not consistent with the NMFS's own policy regarding DPS units.

Response: As described more fully in the Status Review (NMFS 2013a), we explicitly considered whether the best available information still supported the recognition of the eastern DPS of Steller sea lion, as currently recognized as a single DPS—i.e., we determined whether it met the criteria for discreteness and significance as outlined in the DPS Policy (61 FR 4722; February 7, 1996). We concluded that it does. As explained in AFSC (2011), this conclusion is based on an extensive body of research that includes sea lion population genetics, ecology, behavior, and details regarding the physical and physiological characteristics of the species.

In response to comments received at various stages of our evaluation process, we also explicitly considered whether either the population segments of Steller sea lions that breed within the California Current System or in California met the DPS criteria. While there is extensive ecological variability within the breeding range of the eastern DPS, we did not find compelling evidence of consistent or marked separation among different segments within the eastern DPS of Steller sea lion. The best available evidence indicates that Steller sea lions that breed in northern California, southern Oregon, and Washington are not markedly separated from Steller sea lions in British Columbia and southeast Alaska as a consequence of physical, physiological, ecological, or behavioral factors. We did not find persuasive evidence that indicated that some segments of the eastern DPS are discrete from the other portions of the DPS. The best available evidence about genetic patterns, morphology, ecological characteristics of habitat, movement patterns, etc. also does not indicate that Steller sea lions in California are discrete from those in the rest of the eastern DPS. After consideration of the information available to us at the time of the release of the draft Status Review and that provided to NMFS during public comment on the proposed rule, we did not find it appropriate to further subdivide this DPS.

Comment 7: Two scientific organizations commented that there are not sufficient genetic differences between populations of Steller sea lion in California compared to the remainder of the eastern DPS to warrant designation of a DPS unit based solely on that criterion. However, they stated that because adaptive potential is a hedge against unknown future changes in environment, and most genetic variation contributes incrementally to adaptive potential, it is difficult to identify a strict threshold as to how much diversity is enough for any species. They cited Carroll *et al.* (2010) as concluding that, given this inherent uncertainty, geographic distribution across ecosystems may be a more practical surrogate for direct analysis of genetic viability. They stated that an additional benefit of properly considering the representation of Steller sea lions within an ecoregion unit is that "a species [that] is well distributed throughout its historic range (i.e., securely occupies all but an insignificant portion of its range) will generally correspond with the conditions necessary for genetic viability."

Response: We considered the information in Carroll *et al.* (2010) as part of our DPS analysis. We note that in the case of the Steller sea lion, there are multiple studies of patterns of genetic variation from multiple locations throughout the range of the eastern DPS and the western DPS on which to evaluate underlying genetic structure within and between the DPSs. These data are directly relevant to evaluating the discreteness of population segments within the DPS. Thus, NMFS did not require the use of a surrogate for direct analysis of genetic data but rather relied on multiple studies in which such direct analysis was undertaken.

Comment 8: Two scientific organizations commented that the approach of using a species' presence in an ecoregion is a valid rationale for protecting that portion of a species as a DPS unit, and that this rationale appears to have been used by NMFS in some situations such as in its protection of the Atlantic sturgeon (*Acipenser oxyrinchus*) under the ESA. They stated that a similar analytical approach should be used for delineating a California Current DPS of the Steller sea lion. The commenter stated that analyzing the threats to a species at the ecoregion or ecosystem unit level is consistent with multiple listing actions by NMFS and USFWS.

Response: In order to be recognized as a DPS, a population segment must be both "discrete" and "significant" as discussed in the joint USFWS and NMFS DPS Policy (26 FR 4722; February 7, 1996). The DPS Policy states that a "population of a vertebrate species 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 ESA." Once the discreteness criterion is met for a potential DPS, we then evaluate whether the significance criterion is met.

With respect to the recognition of Atlantic sturgeon DPSs, we relied on tagging data and genetic analyses, which demonstrated ecological separation of populations during spawning, as evidence of marked separation or "discreteness" of certain populations (77 FR 5880, 77 FR 5914; February 6, 2012). We subsequently considered several lines of evidence, including persistence in unique ecological settings, as support for the "significance" of each of the potential DPSs to the taxon as a whole.

There is variation in the ecological characteristics of marine habitats within the range of the eastern DPS of Steller sea lions and several different schemes have been designed to describe and classify this variability. Thus, commenters are correct that ecological variability exists in this range, and we agree that ecoregion and/or ecosystem differences in various parts of the range may be useful when evaluating the discreteness of portions of a species. However, as noted by some commenters, including those supporting recognition of a California Current DPS, the best available genetic data within the range of the eastern DPS of Steller sea lion do not support the delineation of a California or California Current DPS. While we considered ecoregion and ecosystem variation throughout the range of the eastern DPS, we did not find consistent compelling evidence of marked discontinuity or separation between segments of the population that breed at rookeries within these different ecoregions. Further, we note that, based on Spalding *et al.*'s (2007:574–575) biogeographic classification scheme, the entire historic and breeding range of the eastern DPS falls within the Temperate North Pacific Realm and the entire current breeding range falls within the Cold Temperate North Pacific Province. Spalding *et al.* (2007) stated that provinces are "Large areas defined by the presence of distinct biotas that have at least some cohesion over evolutionary time frames . . . Although historical isolation will play a role, many of these distinct biotas have arisen as a result of distinctive abiotic features that circumscribe their boundaries . . . In ecological terms, provinces are cohesive units likely, for example, to encompass the broader life history of many constituent taxa, including mobile and dispersive species . . .". Based on the genetic and movement data of eastern DPS Steller sea lions, it would appear that the ecological province does encompass the broader life history of this DPS. This supports the continued recognition of the eastern DPS as a single, discrete entity.

As stated in the DPS Policy, persistence of a species in a unique ecological setting is a factor that can be considered in determining the significance of discrete subunits of a species. Because we did not find sufficient evidence indicating that there were discrete subunits within the eastern DPS of Steller sea lion, we did not address the issue of significance of any potential non-discrete subunits.

Comment 9: A commenter noted that with respect to DPS units, USFWS has repeatedly determined that a gap at the end of a species' range is a valid reason for finding significance under the DPS policy. The commenter stated that court rulings have pointed out that in other listing rules, USFWS has interpreted the term 'gap' to include the loss of peripheral populations. The commenter stated that NMFS has used similar reasoning in protecting several species under the ESA (e.g., the Cook Inlet beluga whale and the southern DPS of spotted seals). The commenter stated that the loss of the southern population of Steller sea lion would represent a similar gap in the range of the species as a whole, and therefore it warrants protection under the ESA.

Response: As noted in the previous response, based on the DPS Policy (26 FR 4722; February 7, 1996), in a DPS analysis, if a population segment is determined to be discrete in relation to the remainder of the species to which it belongs, then its significance to the species is determined. NMFS did not find compelling evidence indicating that a California or California Current subunit of the eastern DPS meets the discreteness criterion of the DPS Policy. Thus, evaluation of the significance of these subunits is moot in the context of a DPS analysis. By contrast, for Cook Inlet beluga whales and spotted seals we had information indicating that there were discrete populations, and thus evaluation of the significance of those populations was relevant (see 65 FR 34590; May 31, 2000 and 75 FR 65239; October 22, 2010).

Comment 10: A commenter stated that NMFS should use its authorities under section 4(d) of the ESA to craft a flexible management regime for Steller sea lions to provide continuing protections of the ESA where needed, while providing regulatory flexibility. Two commenters stated that NMFS should issue a special rule for the eastern DPS to allow certain limited kinds of take, under permit by the agency, and supported by science, such as take authorized under the MMPA, without violating the ESA. The commenters stated that this management tool is a more prudent course of action than delisting the entire eastern DPS.

Response: Based on the evaluation presented in the Status Review and summarized in this final rule, NMFS has concluded that the eastern DPS no longer meets the definition of a threatened or endangered species and warrants delisting. Since we cannot adopt management measures under section 4(d) of the ESA for a species that is no longer listed as threatened, we cannot pursue the regulatory measures described by the commenter. We note, however, that the species will still be protected under the MMPA.

Comment 11: A commenter noted that Steller sea lion biologists have provided evidence supporting the potential subdivision of the DPS and the maintenance of protections for what they termed "southern Steller populations." The commenter cited findings from Hastings and Sydeman (2002) that differences in trends between rookeries in southeast Alaska and those in Canada, Oregon, and California may indicate that these areas deserve separate management considerations and that because significant declines in Steller sea lions have occurred at San Miguel Island, Año Nuevo Island, and the South Farallon Islands, greater monitoring and protection are warranted.

Response: Section 3 of the ESA defines a "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Something must qualify as a "species" to be listed and protected under the ESA. As noted above, we did not find compelling evidence indicating there are population segments within the eastern DPS that meet the definition of a DPS.

With regard to the contention of differences in trends among rookeries in different parts of the range, we note that the only portion of the range in which the best available data indicate that there has not been a sustained increase in non-pup numbers is in California, where the overall trend in non-pup counts has been stable for the past two decades. Pup and non-pup trend data do not indicate that a subset of the population within Canada, Washington, Oregon, and California should warrant

different management than southeast Alaska. NMFS has included elements in the PDMP to monitor threats throughout the range and to determine if the poor performance of the species in parts (but not all) of its historic and current range in California spreads northward.

Comment 12: A commenter stated that scientific evidence and Congressional guidance supports a decision not to delist the eastern DPS of Steller sea lions and instead to reintegrate the two DPSs into a single species. This commenter contended that this reintegration of the Steller sea lion taxon is supported by trends strongly suggesting that the two DPSs are merging geographically and genetically, as well as Congressional guidance that the authority to list DPSs be used sparingly.

Response: We disagree that the weight of scientific evidence supports reintegrating the eastern and western DPSs. Genetic data, subspecies assignment based on genetics and morphology, population trends, and ecological differences in vast parts of the range continue to support the recognition of the eastern and western DPSs. Although recent data in the far northern part of the eastern DPS indicate movement of some western DPS females into the area east of 144 °W longitude (Jemison *et al.* 2013), this mixed part of the breeding range remains small. The findings represent what may be an evolving relationship between the DPSs (Jemison *et al.* 2013). However, at present, we conclude that the weight of evidence supports the continued recognition of the eastern and western DPSs.

Comment 13: Multiple commenters stated that NMFS did not properly interpret the phrase "significant portion of its range" (SPR) in the ESA definitions of "endangered" and "threatened." Commenters stated that NMFS applied the flawed criteria of the draft SPR Policy by determining that a portion of a species' range would be significant only if delisting that portion would place the entire species at risk of extinction in the future. Multiple commenters recommended that NMFS analyze whether the Steller sea lions in the California Current System (which they defined as California, Oregon, and Washington) constitutes an SPR of the eastern DPS, particularly because none of the "populations" meets the demographic or threats-based delisting criteria. They stated that NMFS should retain the listing for the entire eastern DPS based on threats to a California Current System SPR. A commenter stated that California represents a significant portion of the species' range, the species remains threatened there, and delisting is premature and does not meet the best available information mandate within the ESA. Commenters indicated that for these reasons, the eastern DPS warrants continued protection under the ESA. Multiple commenters also stated that the eastern stock occupies two major ecosystems formed as the North Pacific Current approaches western North America and splits into the Alaskan Current flowing northward and the California Current flowing southward. Relatedly, multiple commenters summarized that the offshore waters of California, including the California Current (and one commenter indicated also the Southern California Bight), represent ecological regions that are distinct from those farther north. Multiple commenters stated that the California Current, including the Southern California Bight, represents a logical, science-based ecoregion in which to assess the viability of the Steller sea lion. Commenters maintained that the California Current region clearly meets a threshold of geographic significance since it covers roughly half of the range of the eastern DPS. They stated that this productive upwelling ecoregion also meets a threshold of biological significance.

Response: We will respond to comments on the SPR Policy in the final decision regarding the draft policy. As indicated above, in this rulemaking, we consider the draft SPR Policy to be non-binding guidance. In making our determination to delist the eastern DPS, we reconsidered information on patterns of genetic variability, movement patterns, ecosystem and ecoregion classification, and other relevant information to determine whether either the portion of the range within California or the portion of the range within the California Current ecoregion constitutes an SPR of the eastern DPS. We concluded that California does not constitute an SPR. In reaching this conclusion, we evaluated the abundance of Steller sea lions in California, their productivity, and their diversity to determine whether the California portion of the eastern DPS range is so significant that without that portion, the long-term viability of the entire DPS would be in danger of extinction, either currently or within the foreseeable future. We also evaluated whether the California Current portion of the range is an SPR. As we discuss in more detail in the Status Review, based on the concepts of representation, redundancy, and resiliency, consideration of the demographic consequences of the loss of the California Current portion of the range to the overall population, and consideration of what the loss of that entire segment of the range would indicate about the presence of substantial and uncontrolled threats within the DPS, we found that there were arguments for and against the contention that the California Current portion of the range is an SPR of the eastern DPS. With respect to the recommendation that NMFS retain listing for the entire eastern DPS based on threats to a California Current SPR, we concluded that regardless of whether the California Current portion of the range is an SPR of the eastern DPS of Steller sea lion, that determination would not change the conclusion of the Status Review because Steller sea lions within the California Current portion of the range do not meet the definition of either a threatened or endangered species under the ESA. If the final SPR Policy differs materially from the draft policy considered here as non-binding guidance, we will consider whether any subsequent action with respect to the eastern DPS is appropriate.

Comment 14: A commenter expressed concern with NMFS's assessment that the Steller sea lion "has recently shown a positive trend" in California. Commenters stated that while there may be a slight increase in pup production in California, data from the draft Status Review show no increase in non-pups. A commenter stated that while data from the draft Status Review indicate that the eastern DPS has met the recovery targets for delisting in Alaska, British Columbia, and possibly Washington and Oregon, the data do not demonstrate that recovery targets for the eastern DPS have been met in California. Steller sea lions were extirpated from the Channel Islands in the 1980s and remain well below their historic population levels. The commenter said that Steller sea lion populations in California have at best remained stable for the last 15 years, but remain at approximately one-third the level that the population represented in the first half of the 20th century. Another commenter stated that counts used in the proposed rule for the California portion of the eastern DPS combine the counts for the entire state into a single estimate rather than more appropriately considering the southern portion separately.

Response: NMFS acknowledges there are parts of California where Steller sea lions have not recolonized (e.g., San Miguel Island), and others where performance has been poor (the Farallon Islands), even with protection from

disturbance and direct take. Since the draft Status Review, additional new data have become available regarding trends in non-pups in California. Regression analyses of non-pup count data from 1990–2011 show an average rate of change over that period of 0.0% in California. Thus, commenters are correct that non-pup data from California in the past couple of decades have not shown an increase and the number of Steller sea lions in California remains low compared with their abundance in the first half of the 20th century. We have clarified this in the Status Review and in this final rule and have considered this fact in our findings about the status of the eastern DPS. Based on regression analysis, there has been an average annual increase of 2.9% from 1996–2011 in California pup counts. As discussed in the Status Review (NMFS 2013a), our overall estimation of total population abundance is based on expansion from pup count data. Pup counts have shown a positive annual rate of change throughout all four breeding subareas of the range: California, Oregon, British Columbia, and southeast Alaska. Elsewhere in the range of this DPS, Steller sea lions have established new breeding sites and recolonized some of the old ones. Overall, the performance in California does not negatively affect the viability of the entire population to the point where it places the population in danger of extinction now or within the foreseeable future and it has not impeded robust increases in many other parts of the range of this DPS. Lastly, we reiterate that the Recovery Plan does not specify biological recovery criteria for subareas. Evidence indicates that the DPS, as a whole, has met the biological recovery criterion.

Comment 15: A commenter stated that the flat growth rate in the southern part of the range may presage additional losses to come in other rookeries used by the eastern DPS.

Response: Goodman's (2006) extinction risk analysis for the eastern DPS noted the importance of monitoring to detect any northward extension of the area in California in which the counts of pups and/or non-pups did not increase and/or in which the pattern of increase has been inconsistent or weak. Thus, NMFS included monitoring in the PDMP specifically to determine if there is a northward spread of the kinds of poor performance seen in parts (e.g., the Farallon Islands) of California.

Comments on Listing Factors and Threats

Comment 16: A number of commenters stated that all five factors in section 4(a) of the ESA must be met in order to ensure the species is protected and its long-term conservation is ensured.

Response: We agree that the five listing factors must be considered in a decision about the appropriate ESA listing status of a species and we consider them, as discussed herein and in the Status Review (NMFS 2013a).

Comment 17: A few commenters who expressed support for the proposed delisting noted that human-related serious injury and mortality is likely well below the potential biological removal level, population growth observed over the past three decades provides strong empirical evidence that the eastern stock as a whole has met the biological recovery goal set forth in the Recovery Plan (NMFS 2008), and delisting appears to be consistent with the factors specified in section 4(a)(1) of the ESA.

Response: We agree that delisting appears to be consistent with the factors specified in the ESA.

Comment 18: A commenter criticized the measures by which NMFS evaluated threats, stating that major threats were not properly considered. The commenter asserted that five major areas of negative impact likely to affect the eastern Steller sea lions were dismissed from consideration because NMFS claims none would lead to the extinction of the DPS in the foreseeable future. The commenter identified these five threats as global climate warming and ocean acidification, indirect fisheries interactions, coastal development and disturbance, toxic substances, and oil and gas development. The commenter stated that using this measure (of whether each area of negative impact would lead to the extinction of the DPS) has the effect of considering only the good news and none of the bad. Many commenters expressed their concern that not all of the listing factors have been given proper consideration, are adequately addressed, or have been adequately met to ensure the species' conservation after the protections of the ESA are removed. Multiple individuals and organizations commented that delisting is not warranted because the proposed rule does not adequately evaluate and/or consider threats to the eastern DPS, such as global climate warming and ocean acidification, indirect fisheries interactions, coastal development and disturbance, toxic substances, oil and gas development, overfishing, loss of food sources, encroachment into habitat, disease, and predation.

Response: We reviewed and revised the Status Review in response to these comments. We considered both positive information concerning Steller sea lions as well as information about emerging and/or residual threats, including the threats cited by the commenters. We supplemented and/or revised some sections related to threats.

Comment 19: One commenter stated NMFS should wait at least two years and then re-evaluate the status of this DPS. Another commenter stated that Steller sea lion populations in California, Oregon, and Washington face significant ongoing threats to their existence. A commenter asserted that Steller sea lions in California, Oregon, and Washington do not meet the delisting criteria and face ongoing threats.

Response: NMFS acknowledges that there are some residual threats and potential emerging threats that may have adverse effects on eastern DPS Steller sea lions. We discuss these in the Status Review and elsewhere in this final rule. We have designed a PDMP to monitor such residual threats and potential emerging threats over 10 years following delisting. However, based on the strong performance of the population over an extended period of time despite the presence of these residual threats, NMFS concludes that there are not population-level threats that render this species in danger of extinction throughout all or a significant portion of its range or likely to become so within the foreseeable future.

Comment 20: The USFWS at the Farallon National Wildlife Refuge commented that the causes of the decline of the Farallon colony are uncertain. Contaminant studies in the early 1990s revealed elevated levels of organochlorines and trace metals such as mercury and copper that may have impacted reproduction. Disease, declines in prey availability and competition with increasing numbers of other pinnipeds (e.g., California sea lions) also may have contributed to declines and lack of recovery of this colony.

Response: We appreciate the substantial additional information provided by the refuge and its collaborators. We incorporated a summary of this information into the Status Review.

Comments on Factor A: Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Comment 21: Multiple commenters stated that there are future threats to this population from climate change. The MMC commented that climate-related habitat degradation is one of the leading hypotheses to explain the loss of Steller

sea lion rookeries in California, and Steller sea lions may be shifting their distribution northward as the climate warms and alters the marine ecosystem off California. The NPS at Point Reyes stated that future climate change impacts are likely to affect the population at the southern end of species' ranges, and that they hope NMFS takes these points into account. One commenter wrote that since the short and long-term effects of climate change are at best uncl :r, it is not prudent to delist any endangered or threatened species. A commenter noted that numerous studies have documented climate-change-related shifts in the California Current Ecosystem that threaten food availability for the Steller sea lion. The commenter stated that the decline in the southern end of the range is consistent with the northward range shifts observed for many marine and terrestrial species in response to climate change. A commenter stated that, although only south-central California populations appear to be experiencing population declines at present, Steller sea lions across the California Current system from California to Washington are vulnerable to continuing changes and likely declines in habitat suitability as oceanic conditions continue to affect the California Current and breeding habitat may further contract. A commenter stated that Steller sea lions in the southern portion of the eastern DPS are under significant stress that is not necessarily confined to areas where growth rates are flat and rookeries are already lost. This commenter stated that the changing oceanic conditions in California warrant greater concern for the southern portion of the eastern DPS.

Response: We agree that effects of climate change, especially in the southern part of the range, are a concern. We discussed the emerging, climate-change related threats in the Status Review and considered them in our delisting decision. Due to the specific ecology of the Steller sea lion, including the facts that it is not ice-dependent or associated and is a generalist forager, we conclude that at present the magnitude and timing of effects from climate change on Steller sea lions and the ecosystems of which they are a part are highly uncertain over the foreseeable future. We have included monitoring in the PDMP related to these potential threats so that we can respond as appropriate.

Comment 22: A commenter stated that given the increased recreational visitation to the California coast, human disturbance may play a significant role in the decline of southern Steller sea lions. An example of this is the increase in boaters at the Sea Lion Rocks. A commenter wrote that eastern DPS rookeries are remote with little direct human contact, in addition to enjoying multiple layers of statutory protections. The areas are very much the same now as they were pre-listing and are expected to remain the same for many years. Food resources are abundant and no concerns have ever been identified in this region with regard to a deficit in prey for Steller sea lions.

Response: We have repeatedly acknowledged and highlighted the high vulnerability of Steller sea lions to disturbance. We recognize that terrestrial habitats where Steller sea lions are undisturbed are important to the conservation of Steller sea lions. We share concerns that increased recreational use of the coast in some areas could become a problem. However, it is also the case that most eastern DPS rookeries continue to provide excellent habitat for Steller sea lions, and we included measures in the PDMP to monitor population performance, human activities, and the status of terrestrial habitats. These measures will facilitate our efforts to determine if future disturbance is resulting in population-level effects. We emphasize that the protections of the MMPA will remain in place following delisting. As discussed elsewhere, the MMPA established a moratorium on take of marine mammals with some exceptions. As take includes harassment, unauthorized disturbance of Steller sea lions for a purpose not covered by an exception to the moratorium is illegal under the MMPA.

Comments on Factor B: Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Comment 23: A commenter noted that, in its petition to delist the DPS, Alaska documents only 20 mortalities of eastern Steller sea lions from subsistence hunting. The commenter pointed out that this is based on data that is approximately 15 years old.

Response: While we considered the information in the two petitions to delist this DPS, we did not rely exclusively on that information to evaluate the listing status of this species. In the Status Review (NMFS 2013a), we provide data for estimated subsistence takes of Steller sea lions by Alaska Natives between 1992–2008. This represents the best available information on subsistence harvest in Alaska. Data from southeast Alaska, within the breeding range of this DPS, indicate that the take has increased since the Recovery Plan was written but remains low relative to the size of the population. While we have some uncertainty about actual numbers of animals killed by subsistence hunters, there is no indication that subsistence hunting is having an adverse population level effect on the eastern DPS of Steller sea lions, or that it is likely to have such an effect within the foreseeable future.

Comment 24: A commenter stated that some would have the public believe that commercial fishermen are nearly single-handedly responsible for the decline of sea lions, either incidentally or intentionally. This commenter stated that southeast Alaska is home to more permit holders and fisheries than any other area on the West Coast, and the Steller sea lion population there has never been depleted. A commenter expressed support for the proposed delisting and stated that he hoped that the agencies will stop highlighting takings by commercial fishermen as a top cause of decline in Steller sea lion abundance. The commenter pointed out that many past practices with negative effects on sea lions were not a result of fishermen's actions: Shooting by public officials in California, bounties placed on sea lions by some management agencies, commercial harvests, etc.

Response: Available evidence indicates that illegal and legal shooting associated with fisheries was a source of mortality historically, probably of varying degrees of magnitude and importance, in many parts of the range. Available data (e.g., Raum-Suryan *et al.* 2009; Raum-Suryan unpublished report) indicate that fishery-related entanglement in marine debris is also currently a problem in multiple parts of the range of this species. Hence, it is important for NMFS to consider and accurately portray the available evidence related to the potential levels and importance of fishery-related take, and the levels of uncertainty related to estimating that impact. However, as noted by the commenter, Steller sea lions have demonstrated a sustained recovery in southeast Alaska, an area with considerable commercial fishery activity. We reviewed our discussion of historic factors and current threats in the Status Review in response to this comment to ensure that we accurately portray the magnitude of known take in fisheries versus the likely effects of other factors.

Comment 25: The MMC commented that the eastern DPS of Steller sea lions is not used to any significant degree for commercial, recreational, scientific, or educational purposes and these types of activities are not known to pose a significant risk to the population. In Alaska, they are killed for subsistence purposes and the best available

information indicates a total annual harvest (including those shot but not recovered) from the eastern DPS (U.S. waters only) of about a dozen sea lions.

Response: We agree. In the status review, we acknowledge some uncertainty about the actual level of mortality associated with illegal takes and subsistence hunting, due in part to the vast and remote range within which these animals live, and also due to the fact that our knowledge of the level of subsistence hunting depends on retrospective voluntary surveys, which have not been conducted range-wide since 2008. The Status Review summarizes available information on annual subsistence harvests. There is no indication that these takes are having an adverse population level effect on the eastern DPS of Steller sea lions, or that they are likely to have such an effect within the foreseeable future.

Comment 26: A commenter noted that the 2008 Recovery Plan identified overutilization as the primary reason for the listing of the eastern DPS of Steller sea lions under the ESA and this view is reinforced by the discussion in the draft Status Review that concluded "the main factor limiting Steller Sea Lions along the west coast of North America was predator control . . ." The commenter indicates that NMFS provided an inadequate consideration of this factor, and of the sufficiency of regulatory mechanisms to prevent a recurrence of overutilization.

Response: We reviewed the portion of the Status Review (NMFS 2013a) that discusses overutilization in response to this comment. The general take moratorium in the MMPA, and the findings that NMFS is required to make before authorizing take under the MMPA, should provide adequate protections against the threat of predator control in the future in the U.S. portion of the range of Steller sea lions. Protections against overutilization also exist in British Columbia, as discussed in the Status Review (NMFS 2013a).

Comment 27: A commenter stated that while the agreement in the draft Status Review (Appendix 2) between NMFS and the State of Alaska regarding monitoring of the eastern DPS of Steller sea lions asserts that Alaska has no state-managed fisheries that are of concern, both the draft Status Review and the 2011 NMFS marine mammal stock assessment (Allen and Angliss 2011) document numerous fisheries (including gillnet fisheries) that use gear types known to entangle and kill pinnipeds.

Response: We acknowledge the apparent discrepancy in these statements. The draft Status Review summarized that "Four Alaska state-managed fisheries have been observed to cause serious injury or mortality to eastern DPS Steller sea lions (Alaska southeast salmon drift gillnet, Alaska Gulf of Alaska sablefish longline, Alaska commercial passenger fishing vessel, and Alaska salmon troll)." We also discuss the issue of fisheries-related entanglement in the Status Review. We summarized that the best available information supports a conclusion that while Steller sea lions are taken incidental to commercial fishing, the known mortality level from this source is relatively small compared to the PBR.

Comment 28: A commenter stated that NMFS's stock assessment for this DPS states that no records of fishery related mortality are kept in Canada, so the level of mortality from incidental take or shooting at aquaculture facilities is unknown. A related comment indicated that the absence of monitoring for lethal interactions is not the same thing as having monitoring data confirming the absence of interactions. Citing a study by Credle *et al.* (1994), the commenters stated that self-reporting by fishermen is generally a grossly inaccurate underestimate.

Response: We agree that it is important to clarify when we have data sufficient to evaluate lethal interactions (or other threats) and when we have no data, few data, or outdated data on which to base our evaluation of the threat. Since this is not the only potential threat to which this comment is relevant, we broadly re-evaluated our discussion of threats in the Status Review with this same point in mind. Lastly, we considered the information provided by the Credle *et al.* (1994) reference in our evaluation of fishery interactions. However, despite the lack of data regarding actual levels of incidental take or shooting at aquaculture facilities in Canada, Steller sea lions in Canada have demonstrated a robust and sustained recovery.

Comment 29: Hundreds of commenters urged NMFS not to delist this population due to their concern that a delisting will be followed by programs to kill Steller sea lions to reduce predation of fish at the Bonneville Dam on the Columbia River. Citing a recent increase in illegal killing in the Pacific Northwest, some commenters also expressed concern that delisting will be followed by an increase in illegal killing, especially if a Steller sea lion predator control program is initiated at Bonneville Dam.

Response: Following delisting, the Steller sea lion will continue to be protected against take under the MMPA. However, section 120 of the MMPA (16 USC 1389(a)) provides that a State may apply to the Secretary to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which: (a) Have been listed as threatened species or endangered species under the ESA; (b) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or (c) migrate through the Ballard Locks at Seattle, Washington. Hence, following delisting, the States of Washington and/or Oregon may apply to lethally and intentionally remove individually identifiable eastern DPS Steller sea lions which are having a significant negative impact on the decline or recovery of salmonid fishery stocks. If such an exemption were granted and the authorized level of taking relative to the population were similar to that previously authorized for California sea lions at the site, the level of take would not cause the eastern DPS of Steller sea lions to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. We note the concern regarding potential related increases in illegal shooting that may be prompted by state control efforts. We are also concerned about the increase over the last four years in the level of reported illegal shootings of Steller sea lions in the Pacific Northwest. Per the PDMP, we intend to monitor to detect any substantial increases in illegal takes, and we intend to investigate any such illegal takes.

Comments on Factor C: Disease or Predation

Comment 30: The MMC noted that Steller sea lions in the eastern stock are preyed upon by transient killer whales and large sharks, but the existing information does not indicate that the influence of predation has increased or changed in any significant way. They stated that the significance of killer whale predation on the eastern stock is not controversial.

Response: We agree that the impact of killer whale predation has not changed and is not controversial.

Comment 31: Several commenters referred NMFS to two studies by University of Oregon researchers, one of which they alleged shows that loss of nonhuman predators throws an ecosystem off balance and the other they assert has documented increased predation of sea lion pups by orcas and other large predators. A commenter stated that the number of Steller sea lion females to make it to breeding age may decline as predation on juveniles

continues and that NMFS needs to take these findings into consideration in its threats analysis. Commenters stated that a more extensive study must be conducted before delisting this species to ensure that the sea lions can sustain their numbers. A commenter stated that the eastern DPS should not be delisted until long-range data are collected and evaluated on sea lion predation.

Response: We agree that the Steller sea lion is an important marine predator. Other large marine predators, such as orcas, are also important functioning components of the marine ecosystems of which Steller sea lions are a part. Predation on Steller sea lions is a natural phenomenon, and the recovery of the eastern DPS occurred in the presence of such predation. We have no information to suggest that mortality due to orcas or other large predators is likely to reverse that recovery in the foreseeable future.

Comment 32: The MMC stated that the eastern stock is exposed to a variety of diseases, as are all marine mammal populations, and that the physical changes occurring in marine ecosystems (e.g., rising water temperatures) may increase the risk of disease if sea lions are newly exposed to pathogens or parasites that may have expanded or shifted ranges. They concluded that the evidence to date does not reveal any such cases, but exposure to new pathogens is difficult to detect and often manifested in episodic disease events that are, by their very nature, difficult to predict beforehand and diagnose afterward.

Response: Recent published findings (Goldstein *et al.* 2009) indicate that some potential disease agents may have expanded or shifted their range, resulting in an increased risk of disease to the eastern DPS since the time of the Recovery Plan. We revised and updated the section of the Status Review pertaining to disease to be clear about what we know about Steller sea lion exposure and infection disease agents, and the PDMP includes provisions to monitor for disease outbreaks.

Comment 33: A commenter stated that there has been inadequate consideration given to the potential spread of parasites and diseases as rookeries become more densely occupied. The commenter said the role of hookworm and herpes virus in the health and viability of Steller sea lions was not properly considered in the draft Status Review. The commenter believes that the draft Status Review failed to consider the possible magnitude of health threats that are likely to increase with the increasing density of habitat use in some areas. They stated that diseases that occur at lower levels in more sparsely populated rookeries can dramatically increase with increasing density and could pose a threat to the eastern DPS. Individual commenters and organizations provided comments related to the potential threat to Steller sea lions from viruses that may cause miscarriages or other adverse effects. A commenter noted that the draft Status Review does not discuss a possible threat to Steller sea lions on increasingly dense rookeries from the spread of a herpes virus that can cause cancer and premature death in sea lions, and the potential impact from this disease is also not considered in the proposed delisting. Another commenter pointed NMFS to a news article that suggested that samples from four dead, aborted fetuses revealed that they were killed by a virus. The commenter stated that the news article indicated that a relatively rare virus is being looked at as to the cause of an unusually high number of premature births in Steller sea lions around Kodiak Island. The commenter stated that the discovery that sea lion miscarriages may be caused by a virus weighs against delisting the eastern DPS.

Response: We have considered the information presented in these comments and have revised the portion of the Status Review and final rule related to the potential threat posed by disease to more fully discuss the information about the incidence of herpes virus in California sea lions in the North Pacific Ocean. Additionally, we revised the Status Review (NMFS 2013a) to correct errors and to update the best available information related to phocine distemper virus. We are aware of the four miscarriages that were detected in the Kodiak Archipelago in 2012 and the active research on samples from recovered fetuses. In the Status Review (NMFS 2013a), we concluded that the risk of disease to eastern DPS Steller sea lions is likely higher than was known at the time of the Recovery Plan and is likely to increase over time due to increased crowding and, especially, due to the emergence of disease vectors that may be novel to this species. However, the temporal and spatial pattern of the occurrence of new disease vectors, Steller sea lion exposure to known and new disease vectors, and the potential health effects at the individual and population levels from particular disease agents are uncertain and difficult, if not impossible, to predict. Such uncertainty and lack of foreseeability regarding disease risk are not unique to the eastern DPS of Steller sea lions. More importantly, available information does not indicate that disease is causing population-level effects in the eastern DPS, such that alone, or in combination with other threats, this factor is likely to result in the species becoming in danger of extinction within the foreseeable future throughout all or a significant portion of its range. The foreseeable future for this threat factor is limited by our present understanding of the health risks from some of these disease agents necessary to be able to predict their likely future effect. We recognize the need to continue to test and monitor for the presence of novel and potentially threatening disease agents and we included such monitoring into the PDMP (NMFS 2013b).

Comment 34: A commenter noted that the draft Status Review cites a study by Richmond (2007) that reported hematocrit levels were lower in Steller sea lions in southeast Alaska and recommended additional study of the importance of this factor. The commenter highlighted that the draft Status Review did not report that this same study found that lower hematocrit levels are often found in animals that are hookworm-infested, and that preliminary research suggested that greater than 50% of Steller sea lions aged two to three months had hookworm in southeast Alaska. The commenter noted that the draft Status Review cited a 2010 study by Rea showing higher levels of stress proteins in eastern DPS Steller sea lions than western DPS, which may be affiliated with a high prevalence of hookworm parasites in the eastern DPS where animals are crowded. The commenter summarized that there is apparently no information at all that can confirm a conclusion that disease or parasitism are not problems.

Response: We have considered this information in our decision and we revised our discussion of disease and parasitism in the Status Review to be clearer about what we know, what uncertainties we have, and what the potential risks are. Available data indicate that eastern DPS Steller sea lions are naturally exposed to many parasites and they probably always have been (NMFS 2008). Based on available data discussed above, the prevalence of at least some parasites, such as hookworm, may increase with crowding. This kind of density-dependent phenomenon is normal and inherent in the recovery of this species (e.g., they are now so numerous on some rookeries that we may see effects of crowding). Monitoring for parasites is a component of the PDMP. Based on a review of the best available information, parasitism is not likely to cause the

eastern DPS Steller sea lion to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Comment 35: A commenter stated that ocean research shows that the most dangerous pathogen for sea lions is algae toxins which cause brain damage. The commenter stated that contaminated sea lions lose orientation in the ocean, are not capable of catching fish, and starve to death.

Response: We are aware that there have been large strandings of marine mammals along the California coast concurrent with algal blooms associated with production of domoic acid (e.g., Riva *et al.* 2009), including hundreds of California sea lions along the central California coast that died or exhibited signs of neurological dysfunction concurrent with a diatom bloom (e.g., see Scholin *et al.* 2000). We have considered that researchers have reported that an increase in epileptic seizures and abnormal behavior in California sea lions can result from exposure to low doses of domoic acid as a fetus (Ramsdell and Zabka 2008). Goldstein *et al.* (2007) concluded that domoic acid causes chronic damage to California sea lions, and these health effects are increasing. These and related findings in a closely related and ecologically similar species suggest potential food chain exposure to domoic acid to Steller sea lions in some locations. However, we do not have evidence that algal toxins pose a threat to Steller sea lions and at least some of these studies on California sea lions were focused on southern California (e.g., de la Riva *et al.* 2009) where Steller sea lions are not likely to be present. We are not aware of information indicating that this is a disease agent that poses a threat with population level consequences to the eastern DPS at present or in the foreseeable future.

Comments on Factor D: Inadequacy of Existing Regulatory Mechanisms

Comment 36: USFWS stated that the Farallon National Wildlife Refuge is strictly managed to help protect the populations of Steller sea lions and other pinnipeds and seabirds. Measures are in place to restrict access and protect sea lions and other species from human disturbance.

Response: We considered this information in our evaluation of the sufficiency of existing regulatory mechanisms and in our evaluation of potential causes of the lack of recovery of Steller sea lions in this part of the range.

Comment 37: A commenter expressed concern that existing regulatory mechanisms will be inadequate to protect sea lions from shooting if the population is delisted.

Response: Available information suggests the number of eastern DPS Steller sea lions that are shot is small but has increased in the last 4 years. Following delisting, the U.S. portion of the eastern DPS will continue to be protected under the MMPA, including provisions that prohibit intentional shooting and many other forms of take. Protections against unauthorized take also exist in British Columbia. Collectively, the protections should be adequate if effectively implemented and vigorously enforced. Illegal shooting could still occur, but we have no information to suggest that levels will increase after delisting. The PDMP should help to detect any significant sources of mortality, including shooting.

Comment 38: The MMC commented that existing regulations may or may not be adequate or, if adequate in concept or principle, may not be implemented effectively. They noted that the 2011 stock assessment report (Allen and Angliss 2011) for the eastern stock (as that term is used under the MMPA) estimates the potential biological removal level at 2,378 sea lions and estimates the total annual human-related take as 48.7 sea lions. They stated that fisheries take may be underestimated because some fisheries that potentially injure or kill sea lions are not observed, and estimates of sea lion takes for subsistence purposes are sufficiently low that the error should not be substantial. MMC noted other anthropogenic effects on sea lions including shooting and entanglement in debris, and indicated that available information suggests the number of affected animals is relatively small.

Response: We revised our discussion of Factor D regarding whether existing regulations are adequate and are implemented effectively to be more transparent about uncertainty underlying estimates of various sources of take and other measures of threats. We agree that take in fisheries may be underestimated because some fisheries that potentially injure or kill sea lions are not observed, and that available information on sea lion takes within the eastern DPS for subsistence purposes indicate that the take level is low. Hence, available information does not indicate that the level of take from fisheries, subsistence, and/or other human-caused threats including shooting and entanglement are likely to cause this species to become threatened within all or a significant portion of its range in the foreseeable future. Despite some uncertainty, we conclude that existing regulatory mechanisms should be sufficient to address these threats to the eastern DPS.

Comment 39: Private individuals and organizations questioned the sufficiency of regulatory mechanisms, including the MMPA, to prevent overutilization, a decline, and other threats to the DPS following delisting. Commenters were particularly concerned about the possibility of increasing requests for lethal management of sea lions.

Response: As discussed in response to comment 30 above, the MMPA provides a mechanism for NMFS to regulate requests for lethal management of Steller sea lions, and we anticipate that any authorized level of lethal take would be small.

Comment 40: Commenters raised concerns about whether NMFS would be able to, and would, respond quickly if the DPS declines quickly after delisting.

Response: We crafted a process, through the PDMP, that ensures the timely and regular consideration of relevant available data as well as triggers for changes to monitoring, evaluation, and/or management. NMFS intends to conduct an annual review of information collected as part of the PDMP process. We understand that we will need to be responsive if faced with evidence that indicates either the beginning of population decline or the emergence or increase of threats that have the potential for population level effects. We have the regulatory authority to act quickly if the need arises to provide additional protection.

Comment 41: The State of Alaska commented that the Secretary must take into account the efforts of States to protect the species. The State commented that its monitoring and management of the eastern DPS and fisheries within its range have successfully conserved the eastern DPS. They commented that continued monitoring and management under the MMPA and other authorities such as the Magnuson-Stevens Fishery Conservation and Management Act and Canada's Fisheries Act will provide adequate protections for the eastern DPS after delisting and will maintain a robust population over the long term.

Response: NMFS has taken the efforts of States into account in its decision to delist this species. For example, we considered the agreement between NMFS and the State of Alaska regarding their fishery management plans, state protections of terrestrial habitat in Oregon, and other State efforts to protect this species (e.g., see section on "State

Laws" in the Status Review (NMFS 2013a)).

Comments on Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Comment 42: The MMC commented that the explanation for the loss of rookeries in California and slower growth is not clear but if the decline of Steller sea lions in California waters was caused by competition with the California sea lion population, one could make a reasonable argument that the Steller sea lion decline is a natural phenomenon not warranting the special protections provided by the ESA. They point out that, alternatively, one could also make a strong argument for such protections if the cause is related to human impacts. The MMC commented that NMFS should take a precautionary approach until such time as it has data sufficient to ensure that Steller sea lions in California have recovered or their range retraction is a result of natural causes.

Response: As noted elsewhere, we must make our decision using the best available scientific and commercial data, and the best available data indicate that the eastern DPS no longer meets the definition of a threatened species. We do not fully understand the causes underlying the lack of recolonization of Steller sea lions in the southernmost part of their historic range. However, the overall trend in non-pup counts in California from 1990–2011 shows stability, not decline, and pup production has increased at about 2.9% per year from 1996–2011. The trend elsewhere in the range of this DPS is an increase in non-pup and pup production. We included monitoring in the PDMP specifically to determine if the current status changes in ways that could increase overall risks to the eastern DPS.

Comment 43: Multiple comments discussed the potential adverse effect of competition for prey and space from California sea lions on Steller sea lions in the southern part of the range.

Response: In response to this comment, we reviewed and supplemented the treatment of information related to the potential effect of competition from California sea lions in the southern part of the range and ensured that we are considering the best available scientific information in this evaluation. As discussed in the Status Review (section 3.5.6 on California) available information suggests that competition with California sea lions may have been a factor (e.g., see DeLong and Melin 2000) in the disappearance of the eastern DPS from the southernmost part of its range. However, even if this is true, this competition did not keep the population as a whole from recovering, and we do not have information that indicates that the adverse of impact of any such competition is likely to strengthen to a level where it might affect recovery of this DPS in the foreseeable future.

Comments on Cumulative Threats

Comment 44: Multiple commenters indicated that threats remain to this DPS and thus it is premature to remove ESA protections. A commenter cited Gerber *et al.* (1993) as reporting that the majority of Steller sea lions stranded in California between 1984 and 1990 were underweight pups, which they stated supports a hypothesis of food competition leading to nutritional stress and poor post-weaning survival. Citing Hanni and Pyle (2000), they stated that Steller sea lions are also at risk from entanglement in derelict salmon fishing gear. They stated that more research is needed to understand the causes underlying the continued lack of recovery of Steller sea lions in California and the fact that there are continuing threats to the species warrants its continued protection under ESA. Another commenter stated that the fact that threats remain within a significant portion of the range of the species and have the potential to spread farther north provides reason to retain ESA protection for the eastern DPS.

Response: NMFS is required to assess the status of the eastern DPS based on the best scientific and commercial data available. That information indicates that this DPS does not meet the definition of a threatened or an endangered species under the ESA. The Recovery Team did not identify the need for biological recovery criteria for specific subareas within the eastern DPS as it did within the western DPS. We acknowledge that we do not fully understand the causes underlying the lack of recolonization of Steller sea lions in the southernmost part of their historic range. However, the overall trend in non-pup counts in California from 1990–2011 shows stability, not decline, and pup production has increased at about 2.9% per year from 1996–2011. The trend elsewhere in the range of this DPS is an increase in non-pup and pup production. We included monitoring in the PDMP specifically to determine if the current status changes in ways that could increase overall risks to the eastern DPS.

Comment 45: A commenter stated that NMFS needs to consider all threats, individually and collectively, stating that, even if none of these threats would, in isolation, devastate the population, in combination they appear likely to do just that.

Response: We agree with the need to consider not only the current and foreseeable effect of threats individually but also collectively, and we have done so. The sustained recovery of the eastern DPS indicates that individually and collectively, threats have not been sufficient to thwart recovery, and there is no evidence indicating that this situation is likely to change within the foreseeable future.

Comments Regarding Biological Recovery Criterion, Status, and Overall DPS Trend

Comment 46: The NPS at Glacier Bay National Park commented that several lines of evidence suggest that substantial population growth has occurred in the eastern DPS of Steller sea lions since the 1970s and that the eastern DPS has met the established demographic criterion set forth in the Recovery Plan. They commented also that although there is substantial evidence to suggest that there has been population growth in pups and non-pups in the eastern DPS, recent studies suggest that the area along the eastern/western DPS boundary may warrant further investigation for several reasons. Another commenter stated that the Alaska fishing community has seen first-hand the consistent and significant expansion of the sea lion population in the southeast region and that fishermen all along the coast have reported similar abundances, which are reflected in NMFS's documents.

Response: We agree with the comments and considered the information provided in our decision.

Comment 47: A tribal commenter noted that they have contributed data regarding Steller sea lions in California, Oregon, and Washington, and stated that they support delisting because the eastern DPS has met the criteria set out in the Recovery Plan for population growth and because threats to Steller sea lions do not rise to population level impacts. They stated they have observed increased numbers of Steller sea lion pups born in Washington, suggesting that the state may soon have an established Steller sea lion rookery.

Response: We appreciate the data and other information provided by this commenter. The Status Review notes that increased numbers of pups are being observed in Washington State.

Comment 48: In support of delisting, the State of Alaska and another commenter referred to statements in the 2008 Recovery Plan in which the commenters state that NMFS concluded

that no threats to recovery of the eastern DPS of the Steller sea lion have been identified, the population has been increasing for over 25 years, new rookeries have been created, and the population is at historical high levels. The MMC commented that the growth in Steller sea lion numbers in the various parts of the eastern stock's range, as illustrated graphically in figures within the draft Status Review, presents compelling support for recovery for the stock as a whole. They noted that historical evidence indicates that the stock declined because of shooting or predator control and numbers have increased steadily since Steller sea lions were protected in 1970 under Canada's Fisheries Act and in 1972 under the MMPA.

Response: We agree that the best available scientific evidence supports recovery of the stock as a whole.

Comment 49: A commenter stated that rookery abundances in southern and central California have declined while northern rookery abundances have rapidly increased. Other commenters noted that one of the possible factors in the decline of Steller sea lions in the southern part of their range might be competition for food or space with California sea lions, whose numbers have risen exponentially.

Response: We agree with these comments although we also note that other factors, such as climate warming, contaminants, and possibly other human impacts discussed in the Status Review may be contributing to the failure of Steller sea lions to recolonize some of their rookeries in the southernmost parts of their range and to their poor performance at some, but not all, locations in California. We acknowledge that we do not fully understand the reasons underlying the mixed performance of Steller sea lions in parts of California. However, it has not kept the population as a whole from recovering and does not signify that the DPS is in danger of extinction throughout all or a significant portion of its range or likely to become so within the foreseeable future.

Comment 50: A commenter requested that NMFS provide additional information explaining how the large gap in the breeding range of the Steller sea lion in Washington State does not represent a reason for concern regarding the Steller sea lion in Washington and farther south.

Response: NMFS notes that in both Oregon and British Columbia, data regarding pup and non-pup numbers indicate a substantial increase in abundance over a sustained period of time. Pitcher *et al.* (2007) reported that the numbers of sea lions counted between 1989 and 2002 on Washington haulouts increased significantly, at an average annual rate of 9.2%. Johnson and Gelatt (2012) incorporated these data into their analysis of the overall population trend based on non-pup data for the eastern DPS. This analysis indicates that while counts are not yet at historic levels, Steller sea lion abundance in Washington has been increasing since the early 1990s (increasing trend seen in 1993). WDFW also reported that an increasing number of newborn Steller sea lion have recently been observed along the coast of Washington (ODFW and WDFW 2010) but there are no active rookeries. However, the lack of established rookeries in Washington has not impeded the overall recovery of the population. Genetic data do not indicate that the gap in the breeding range between rookeries in Oregon and British Columbia has resulted in marked genetic discontinuity within the range such as is observed between the eastern and western DPSs.

Comment 51: A commenter stated that the Oregon population appears to be recovering better than populations in California and Washington, but still falls short of meeting the demographic delisting criteria.

Response: In the 2008 Recovery Plan, NMFS did not specify subarea recovery criteria. With respect to the biological (demographic) recovery criterion, NMFS (2008) specified that the eastern DPS would be considered for delisting when ". . .[t]he population has increased at an average annual growth rate of 3% per year for 30 years." Based on abundance estimates derived from pup count data, this criterion has been met and exceeded. However, in response to this comment, we revised our description and discussion of trends throughout the range to more be more transparent about trends in each of the major subregions within the range of the eastern DPS.

Comment 52: A fishing organization stated that the eastern DPS has increased on average about 3% over the past 30 years reaching all-time highs in population size and population density. They stated that it is possible that without large predator interaction (killer whale predation), the population could reach its apex and crash altogether. They noted that for many years their members have seen a large increase in sea lion populations on new rookeries and in greater numbers in southeast Alaska particularly. They believe that delisting should occur due to population increases and sustainability models but that it will also have large rewards for local communities and local fishermen.

Response: With respect to the idea that the current level of abundance is at an all-time high, we note that in a thorough review of available data on Steller sea lion abundance in the eastern DPS, including examination of counts from the early 1900s, Pitcher *et al.* (2007) concluded that the lack of standardization of counts prior to the 1970s and the sparseness of historical data prevents a rigorous comparison of historical and current abundance levels. We agree with Pitcher *et al.* (2007) that this is the case. With respect to the potential behavior of the population in the absence of predation, we note that it is unlikely that large predator interactions will cease to exist. Thus, we do not speculate on the effects of that hypothetical scenario. Lastly, section 4 of the ESA specifies those factors that NMFS can consider in its evaluation of the appropriate listing status of species. NMFS does not consider benefits to local communities, industries, or economics in our evaluation of whether a species meets the definition of a threatened or endangered species under the ESA.

Comments on Trends in the Southern Part of the Range, California Current Ecosystem, and California

Comment 53: The NPS at Point Reyes National Seashore commented that while this DPS has shown recovery over the past three decades in Oregon and Washington, there has been a lack of recovery at historical sites in the southern breeding colonies for the species. They reported that historically, Steller sea lions at the southern end of their range bred at Point Reyes Headland. The NPS has been monitoring this population and has noted that it has not recovered over the last several decades. They stated that the species no longer breeds at Point Reyes, and the number of animals remains low, with maximum counts rarely exceeding 5 animals per observation since the early 1980s. They have also documented population increases in Northern elephant seals and harbor seals at Point Reyes Headland over the past several decades (Sydeman and Allen 1999). They stated that the decline in haulout activity and lack of breeding recovery of Steller sea lions at Point Reyes Headland is of concern for this species' overall recovery.

Response: We considered this information in our evaluation of the recovery status of the eastern DPS. We agree that the lack of increase in breeding of Steller sea lions at Point Reyes Headland is of concern because

the cause of this poor performance is not understood. However, the best available information indicates that the species' overall extinction risk is quite low (see Goodman 2006 and NMFS 2013a). Following recommendations in Goodman (2006), we intend to monitor the eastern DPS to determine if this pattern of poor performance spreads northward.

Comment 54: A commenter stated that NMFS has determined that it is appropriate to overlook the range contraction of the eastern DPS in the south that has occurred for undetermined reasons and to ignore the disparity in growth rates of Steller sea lions in the Alaska/British Columbia portion with that of the southern portion of the range. Another commenter stated that data showing a historic and continuing fall in numbers clearly indicate that the southernmost Steller sea lions should continue to be classified as endangered and additional study of their decline, history, and prehistory should be undertaken to understand this decline. A commenter stated that parts of the range have not been reoccupied and rookeries have been lost. The commenter stated that two rookeries have been lost and concludes that, until the California trend improves and the full extent of the sea lions' range has been recolonized, delisting is contraindicated. The commenter stated that incremental losses of habitat and breeding grounds erode a species' long-term survival.

Response: We considered the loss of rookeries in the southern part of the range and the establishment of new rookeries in the north. In general, we agree that incremental losses of habitat and breeding grounds would tend to diminish a species' long-term viability. NMFS shares concerns about the poor performance of Steller sea lions in parts of California. However, based on the overall strong increase in abundance in other parts of the range during the same time frame and the establishment of new rookeries in the north, neither the loss of the most southerly rookeries, the poor performance in other parts of California such as the Farallon Islands, the overall failure for non-pup abundance to increase in California overall during this same period, nor the northerly shift in range renders this species in danger of extinction throughout all or a significant portion of its range or likely to become so within the foreseeable future.

Comment 55: Giving the example of Erlandson *et al.* (2011), a commenter stated that there are now quantitative data about prehistoric pinniped populations available and indicated that these data considered with data on historical pinniped harvests might be used to reconstruct thousands of years of past changes in the Steller sea lion population in California.

Response: NMFS appreciates this information and is considering this suggestion for future research. However, such a reconstruction is not needed for our assessment of the status of the species here.

Comment 56: The USFWS at Farallon Islands Wildlife Refuge and a scientific contracting company provided summaries, including data and figures, of historical and recent information from the Farallon Islands based on weekly counts of Steller sea lions since the early 1970s. They commented that despite an overall increase in the eastern DPS, they are concerned about the future fate of the Farallon and remainder of the central California population of Steller sea lions. They stated that despite efforts to protect the Farallon colony, numbers have not increased in recent decades and its current status as a rookery is questionable. They stated that if current trends continue this colony, and possibly the entire central California population, may be extirpated within the foreseeable future, continuing the trend of a northward contraction of the species' range.

Response: We appreciate the long-term data from monitoring at the Farallon Islands. We incorporated these data into our discussion of historic and current status of Steller sea lions in California, and we considered it in our evaluation of the listing status of the eastern DPS. The PDMP includes evaluation aimed at determining whether the trend of a northward shift of the species' range continues.

Comments on the Quality of the Science and Presentation of Information Used in the Proposed Rule and Draft Status Review

Comment 57: A commenter requested that NMFS stop using the term "abundance" related to population trends (e.g., an "abundance decline") because it conveys the impression of "plenty" even while discussing "lack."

Response: Our use of the term "abundance" fits with common usage of the term within population ecology and is not meant to mislead readers with regard to the historic and recent trends of this DPS. In response to the comment, we examined our use of the term to ensure that we are not inadvertently giving the wrong impression, and we determined that our use of the term "abundance" is appropriate.

Comment 58: A commenter stated that it is unacceptable to manage a threatened species at minimal population levels because doing so keeps them teetering on the brink of extinction. The commenter wrote that should there be a natural catastrophe the eastern DPS could quickly become imperiled. The commenter stated that while an average annual population growth rate of 4.3% may be sufficient when a species is listed, their continued viability is jeopardized when the protections are removed.

Response: We agree that it would be unacceptable to purposely manage a threatened species at minimal population levels. Under the MMPA, our objective is to manage the population within its Optimum Sustainable Population (OSP) level. OSP is defined by the MMPA, with respect to any population stock, 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. (16 U.S.C. 1362(3)(9)). OSP is further interpreted in regulations (50 CFR 216.3) as being a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. The eastern DPS of Steller sea lion is not at a minimal population level, nor is it in decline. Goodman (2006) conducted a risk evaluation for this population and concluded that if his assumptions are correct, the risk of near- or medium-term extinction for this population is very low. Working with partners, NMFS developed a PDMP that is intended to monitor sufficiently to detect population declines or an increase in threats so that management measures can be adjusted if necessary.

Comment 59: A commenter stated that aerial surveys can result in over-counts and concluded that it is likely that many sea lions are being counted multiple times.

Response: We are aware that there are sources of variability within any survey that can result in animals being missed (e.g., because they are at sea foraging) or possibly counted twice (e.g., because all sites cannot be counted on the same day and an animal may move, especially between nearby haulouts). However, we do not have evidence that aerial surveys would tend to result in over-counting of Steller sea lions in the eastern DPS. This is especially true of pups, the portion of the population on which population size estimates presented in the Status

Review are based. Count data used to estimate population trends and evaluate status are of two types: counts of pups about one month of age and counts of animals over one year of age (i.e., non-pups). While the techniques used for counts of both pups and non-pups have changed over time, and thus data collected during different periods using different techniques (e.g. on-site counts, oblique photo counts, or vertical high resolution photos) are not directly comparable (Fritz and Stinchcomb 2005; Pitcher *et al.* 2007; Kaplan *et al.* 2008; DeMaster 2009; NMFS 2008, 2010), counts of pups on rookeries conducted near the end of the birthing season are nearly complete counts of pup production. These counts can be expanded to estimate approximate total population size based on an estimated ratio of pups to non-pups in the population (Calkins and Pitcher 1982, Trites and Larkin 1996). For the period until 2002, we rely heavily on the analyses in a comprehensive peer-reviewed published paper (Pitcher *et al.* 2007) and have updated this as data are available. We are aware that some pups die and disappear before the counts are made and a few are born after the counts are conducted (Trites and Larkin 1996), and we considered this in our analysis and evaluation of trend data. We also acknowledge that the methodology results in a very general estimate of population size as several factors can affect the accuracy of the estimates (NMFS 2008). In response to this comment, we revised the section of the Status Review on population trends to make certain that the basis of our population trend conclusions is clear and any biases, assumptions, and uncertainties are transparent.

Comment 60: Multiple commenters stated that more long-term study is needed before we can be sure that Steller sea lions will sustain their populations, before we will know and understand the reasons for the lack of recovery and the range contraction in the southern part of the range, and/or before we will understand the impact of the tsunami-generated marine debris and/or other threats on the population.

Response: We disagree that more study is needed before NMFS can make a decision about the appropriate status of this species under the ESA. NMFS is required to use the best available scientific and commercial data in its decision. We have compelling evidence of sustained increases in the overall abundance of eastern DPS Steller sea lions. While their breeding range has shifted to the north, there has not been overall contraction of the breeding range. While there are residual threats and potential threats that may be emerging, such as climate change and ocean acidification, there is no evidence that these factors are likely to have negative effects that are strong enough to cause this species to decline within the foreseeable future, nor satisfy the definition of a threatened or endangered species.

Comment 61: Multiple commenters stated that the agency has not based its proposed decision on the best available science.

Response: We disagree. We reviewed our files to ensure that the Status Review and rule utilize the best available scientific and commercial data available. Where commenters suggested additional sources of information, we reviewed and incorporated such information as appropriate. Further, we submitted the Status Review through two rounds of independent peer review.

Comments on Ecosystem Considerations and Effects of the Delisting on Fish Species

Comment 62: Several commenters cited concerns about the effects of Steller sea lion predation on salmon, sturgeon, and/or the ecosystem. A commenter concluded that the delisting will be a significant step in protecting both sturgeon and salmon in the Columbia River. A commenter stated that future management of Steller sea lions must be more cognizant of their impacts on the ecosystem. This commenter stated that the current growth rate cannot be maintained indefinitely. A commenter stated that the western Washington ecosystem simply cannot support increasing populations of pinnipeds, likely to levels above their historic abundances, while meeting ESA recovery goals for Southern Resident killer whales and salmon species.

Response: The effects of Steller sea lion predation on listed salmon or on other fish species are not appropriate factors for us to include in our evaluation of whether the eastern DPS of Steller sea lion should be listed under the ESA.

Comment 63: Multiple commenters argued against the delisting for several reasons: Steller sea lions are a necessary and/or a natural part of the food chain; we need Steller sea lions in their habitat as part of that food chain; biodiversity must be retained; all animals have a place in the ecosystem; predators play an important role in maintaining the health of ecosystems; and humans must learn to live alongside other species and not eliminate them.

Response: We agree that the Steller sea lion is an important part of marine ecosystems. We note that one of the stated purposes of the ESA is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." If a species does not meet the definition of a threatened or endangered species, it is inappropriate for it to be listed under the ESA. A recovered eastern DPS of Steller sea lions will continue to be a viable part of these marine ecosystems.

Comments on Steller Sea Lion Habitat

Comment 64: The State of Alaska commented that NMFS should indicate that delisting of the eastern DPS of Steller sea lion under ESA section 4 necessarily removes the critical habitat designation for the eastern DPS.

Response: Comments regarding the critical habitat designated for the Steller sea lion at 50 CFR 226.202 are beyond the scope of this rulemaking. In any event, removing the eastern DPS from the List of Endangered and Threatened Wildlife does not remove or modify that designation as described below.

ESA section 4(a)(3) requires the Secretary (through NMFS) to designate critical habitat for listed species, to the maximum extent prudent and determinable, concurrently with the listing of a species, and gives the Secretary discretion to revise a designation from time to time as appropriate. Designations and revisions of critical habitat must be based on the best scientific data available and be informed by consideration of the economic impact, the impact on national security, and any other relevant impact of such designation or revisions. The ESA does not speak directly to the status of designated critical habitat when the agency later amends a species listing by dividing it or by delisting a portion of the population and retaining the rest. Notably, critical habitat does not lose its biological and conservation relevance to the still-listed species simply because the species listing is amended. Moreover, carrying forward an existing critical habitat designation can enhance the protection provided to the still-listed species because the carried-forward designation protects habitat features essential to the species' recovery from adverse modification or destruction in section 7 consultations. Given that Congress has not spoken directly to this issue in the statute, the benefits of designated critical habitat, the ESA's broad purpose to conserve the ecosystems upon which endangered and threatened species depend, and taking a reasonable precautionary approach, we construe the ESA to provide in these circumstances for keeping existing

critical habitat designation in place as a transitional matter until the designation is amended through a further rulemaking.

For Steller sea lions, the critical habitat designated in 1993 (58 FR 45269; August 27, 1993) continued to be valid following the 1997 rule dividing the listing into the eastern and western DPSs (62 FR 24345; May 5, 1997). This final rule does not revisit the codified critical habitat designation, which remains in place following the delisting of the eastern DPS as a transitional matter for the listed, endangered western DPS, as the designated critical habitat supports the western DPS's important biological functions (e.g., feeding and resting). This approach is consistent with the critical habitat designated for northern right whales in 1994 remaining in place following the 2008 division of the listing into two separate species, the North Atlantic and North Pacific right whales (75 FR 61691; October 6, 2010).

NMFS will undertake a separate rulemaking to consider amendment to the existing critical habitat designation that takes into account any new and pertinent sources of information since the 1993 designation, including amending the critical habitat designation as appropriate to reflect the delisting of the eastern DPS in this final rule. In the interim, during ESA section 7 consultations for federal actions that may affect currently designated Steller sea lion critical habitat, NMFS will address effects to such habitat in terms of effects to those physical and biological features essential to the conservation of the western DPS, and not the delisted eastern DPS.

Comment 65: The NPS at Glacier Bay National Park provided information about recently established haulout sites that are used by Steller sea lions but that are not included on Figure 3.1 in the draft Status Review. Several of these sites have been previously identified and documented in the scientific literature.

Response: We included this information in the revised Status Review.

Comments on Extinction

Comment 66: A commenter stated that NMFS's extinction risk analysis is based on assumptions that will no longer be valid once the population is delisted.

Response: The conclusions of the extinction risk evaluation undertaken by Goodman (2006) were based on whether his working hypothesis was, and continues to be, true. Elements of this working hypothesis were that: (1) The population is not sensitive to ongoing regime-frequency environmental variation; (2) the depressed, but steady and positive, growth rate north of California is owing to a combination of ecosystem modification and possible incidental take that is stable and sustainable; (3) the carrying capacity is not less than 46,000 total individuals; and (4) the lack of recovery of the California portion of the population is owing to a range contraction responding to the warming trend of the past several decades. Goodman (2006) further stated that "we could judge this population to be at low risk provided management maintains the current level of protection, keeps human impact at no more than its present level, and monitors to make sure that evidence contrary to the hypothesis complex will be detected and the risk classification and management will be revised as indicated." With regard to Goodman's (2006) caveats that may change immediately upon delisting, the primary issues are whether or not management maintains the current level of protection and keeps human impact at no more than its present level, whether monitoring and management is sufficient post-delisting to detect evidence indicating that the hypothesis complex is not true, and to respond appropriately if such evidence is obtained. These points are inter-related. As discussed in the section regarding the adequacy of existing regulations (Factor D), the eastern DPS will continue to be protected under the MMPA and other laws. The MMPA provides some of the same protections as the ESA. The underlying premise of applying protections under the ESA is that a threatened or endangered species requires greater protection than a recovered species or other species that does not meet the definition of threatened or endangered. Thus, the eastern DPS should not require as great a degree of protection post-delisting as it did when it was threatened. NMFS has taken the caveats in Goodman's (2006) conclusions into consideration in our delisting decision and the formulation of the PDMP.

Comments on the Post-Delisting Monitoring Plan

Comment 67: A commenter stated that the draft PDMP provides no assurance that more will be done besides monitoring the number of animals killed illegally or as part of lethal management programs.

Response: NMFS disagrees with this comment. The PDMP, if fully implemented, will enable NMFS to verify that the species remains secure from the risk of extinction after the protections of the ESA are removed. Following USFWS and NMFS Joint PDMP Guidance (USFWS and NMFS 2008), we designed monitoring to determine if the status of the species begins to change or deteriorate, and if a substantial decline in the species (numbers of individuals or populations) or an increase in threats is detected, NMFS can take measures to halt the decline or reduce the threat(s) so that re-listing the eastern DPS as a threatened or endangered species is not needed. While the ESA requires not less than five years of monitoring, NMFS, following the input of the Recovery Team, developed a PDMP for a period of at least ten years. NMFS will work with multiple partners post-delisting on the implementation of the plan.

Comment 68: A commenter expressed concern about the level of entanglement-related mortality in tribal fisheries and the lack of associated data since tribes began refusing in the 1990s to carry federal observers. Another comment stated that it is not clear from the draft PDMP whether, or how, NMFS plans to remedy the lack of monitoring of fishery-related deaths of sea lions from the DPS in Canada, Alaska, or the various tribal gillnet fisheries in Oregon and Washington.

Response: As noted in the draft Status Review, researchers collect systematic data related to the incidence and types of entanglement of Steller sea lions in some parts of the range. Treaty Indian fisheries in Oregon and Washington are conducted in freshwater rivers, coastal estuaries, and in the Puget Sound region under the authority of Indian treaties; therefore, the MMPA's section 118 requirements, including observer monitoring, do not apply (60 FR 45086; August 30, 1995, and 74 FR 58859; November 16, 2009). If any marine mammal bycatch associated with tribal fisheries were to present a biological concern for applicable stocks, NMFS would consider invoking the treaty-rights principle of "conservation necessity" to protect marine mammals (74 FR 58859; November 16, 2009). Additionally, NMFS regularly considers the need to monitor incidental take of various fisheries, including those within the range of the eastern DPS. For example, in 2013 NMFS will implement a second year of observing marine mammal (including Steller sea lion) take in the southeast Alaska salmon gillnet fishery. NMFS does not have jurisdiction to monitor fishery-related serious injury or mortality in Canada.

Comment 69: A commenter stated that monitoring of the Steller sea lion-human interactions in ports, harbors, and inland waterways does not address any

of the listing factors, is discussed in the PDMP at a level disproportionate to the level of concern about the issue, and could be used to support taking lethal management action.

Response: We reviewed the relevant section of the PDMP and revised it because this is not expected to be a significant threat for Steller sea lions.

Comment 70: A commenter noted that while the monitoring plan appears to count on the continued collection of stranding data, NOAA has decided not to include funding for the John H. Prescott Marine Mammal Health grant program for the monitoring of stranding. The commenter noted that without this funding support, the coverage of stranding response will drastically reduce as will the ability of researchers to fund histopathology and other analyses to determine the cause of Steller sea lion deaths. The commenter encouraged NOAA to continue funding stranding response.

Response: We understand the commenter's concern regarding the uncertainty in the availability of funding in future years for stranding programs. However, Prescott funding is not the only source of funding for stranding programs available to us. While we cannot predict future funding levels, we understand the high value of stranding networks to our ability to detect increases in threats over time to this DPS, and we will endeavor to fund stranding programs to the extent possible consistent with available budgetary resources.

Comment 71: A commenter suggested that NOAA develop a data-sharing memorandum of agreement for data collected under the PDMP to protect researchers' work from being published by others.

Response: In response to this comment, we added a sentence to the PDMP that acknowledges the sensitivity of unpublished data.

Comment 72: A commenter expressed concern about the interpretation of the proposed response trigger in the PDMP. The commenter noted that the eastern DPS may be approaching carrying capacity for the ecosystem, and we do not know the dynamics of how the population will interact when it is at or near carrying capacity.

Response: We agree that NMFS will need to evaluate carefully any future change in population trend or recovery rate. However, it is important to include response triggers in PDMPs so that it is clear when the agency needs to increase the depth of its evaluation, obtain additional information, or take protective management action to reduce a threat. In response to this comment, we added language to the PDMP to clarify what action(s) the response triggers will prompt and to remind managers to evaluate potential causes of any population change, including changes that may result from carrying capacity being reached or exceeded.

Comment 73: The State of Alaska endorsed the proposed PDMP to ensure that the current increasing population trend continues. It stated that refinements to the PDMP could maximize efficiencies while reducing sampling uncertainties and that they seek to ensure that monitoring efforts remain adequate to detect population trends and any emerging threats to the eastern DPS while ensuring support for continued recovery efforts for the western DPS. The State of Alaska suggested that proposed monitoring to identify transboundary movements between the eastern DPS and the western DPS be refined to conduct several replicate surveys between Icy Strait and Prince William Sound during May and June to enhance count calibration and the ability to identify inter-stock movement and effects at the population level. It noted that sea lion counts in southeast Alaska and Prince William Sound can be highly variable. It noted that replicate aerial surveys would augment the tracking of non-pup trends, which is also affected by high variability in day-to-day counts. The State of Alaska also suggested refinements to the continuation of the resight program related to the monitoring of vital rates. It recommended that no new cohort branding should occur in southeast Alaska unless there is evidence of a population decline, in which case vital rates would be required in order to better understand the mechanism behind the decline. It stated that the reproductive rate portion of the resight program should continue until 2015 instead of 2021, noting that reproductive rate surveys are particularly intensive and expensive. It stated that their best estimate at present is that data through 2015 will be sufficient to run their current reproductive rate analysis to completion and that a reduced level of surveys beyond this point may be adequate to maintain a less precise estimate of reproductive rate. It stated that continued, less-intense monitoring for survival, movement, and entanglement/gear ingestion rates would be productive beyond 2015 and would free up resources for surveys in regions of greater concern.

Response: We appreciate the endorsement of the PDMP by the State of Alaska. In consultation with partners, including the State of Alaska, and in response to public comment, we have revised the PDMP. We agree with the comments regarding replicate surveys to monitor transboundary movements and to enhance count calibration. We added a brief section to the PDMP to include the potential for replicate surveys in at least one monitoring year. However, throughout the PDMP period, vital rates work may be necessary to evaluate the potential cause(s) of any downward trend in abundance.

Comment 74: The State of Alaska suggested that NMFS should clarify whether aerial surveys will be conducted every four years or every two years in furtherance of the sampling regime to monitor trends in abundance.

Response: We clarified in the PDMP that range-wide aerial surveys of the eastern DPS should be conducted every 4 years, with more frequent surveys in southeast Alaska.

Comment 75: The NPS at Glacier Bay National Park commented they agree with NMFS that monitoring of the eastern DPS should continue as outlined in the draft PDMP and should include assessment of population trends (pups and non-pups) at regular intervals via aerial surveys, continued estimation of age-specific survival and reproductive rates of marked individual Steller sea lions, and possibly a more focused effort to monitor the influence of cross-boundary movements by Steller sea lions on population trends near the eastern/western DPS boundary.

Response: We agree and have made minor revisions to the plan to include the possibility of replicate surveys to track transboundary movements and associated population trends. The PDMP also includes monitoring to continue to assess how movement across the western-eastern DPS boundary may be affecting non-pup counts in each DPS.

Comment 76: Several commenters recommended that PDMP include disease monitoring. The NPS at Glacier Bay National Park recommended that the Alaska Marine Mammal Stranding Network continue to respond to stranded Steller sea lions throughout the eastern DPS, with particular emphasis on monitoring (1) for the presence of infectious disease agents and potentially novel pathogens and (2) for unusual mortality events. The State of Alaska recommended that health, genetics, and disease sampling be made part of a directed research program and said that monitoring should not rely on opportunistic examination of stranded individuals. The USFWS at Farallon Islands Wildlife Refuge also stated that updated studies on disease are needed.

A commenter stated that such sampling should avoid unnecessary disturbances during the breeding season.

Response: We agree with these comments, and we have revised the PDMP to include disease monitoring as a regular, not incidental, component of the plan.

Comment 77: The USFWS at Farallon Islands Wildlife Refuge stated that updated studies on contaminants and prey use are needed, as are studies to understand the impacts of these factors on sea lion population trends. They believe that such studies will be important to better understand the status, and to predict future trends, of the eastern DPS, including the central California portion and the northward range contraction.

Response: We agree that contaminant studies are an important component of the PDMP as are studies to understand the impacts of contaminants on Steller sea lions, especially in the southern part of the range where recovery has not occurred. In response to this comment, we revised the PDMP to indicate that such monitoring should be a focused, not incidental, component of the plan; however, the level of such monitoring will be dependent on funding availability. We also included language in the PDMP to clarify that we intend to work with monitoring partners and contaminant experts to identify the contaminants of highest priority for monitoring for this DPS.

Comment 78: The NPS at Glacier Bay National Park stated that post-delisting monitoring should include documentation of human-related sources of mortality such as entanglements, shootings, and fishery interactions with Steller sea lions. They stated that periodic reviews of all records of Steller sea lion mortalities would be advisable to identify any trends in disease agents or other causes of death that may warrant management attention. The State of Alaska also commented on the need for monitoring of entanglement rates as part of the regular brand-resight program. They strongly recommended that monitoring entanglements and fishery gear interactions continue as standard surveys and not rely completely upon incidental reports and stranding network data. They cautioned against lumping monitoring of "entanglement" with monitoring of "fishery gear interaction" because entanglements (e.g., packing bands or line around the neck) represent passive interactions with marine debris, whereas gear interactions (e.g., ingested hooks) represent direct interactions with fisheries. They believe that grouping these two effects together would artificially inflate the perceived effects of both and complicate efforts to reduce entanglements.

Response: We agree with these comments. We have monitoring to assess potential threats from entanglement in marine debris and from incidental takes in fisheries as separate bullets in the PDMP. The two categories interact and overlap.

Comment 79: The State of Alaska stated that while monitoring for degradation of terrestrial and marine habitats is a proposed objective of this plan, there are no specific activities proposed in the draft PDMP to accomplish this objective.

Response: In response to this comment we modified the PDMP to include activities that will help us monitor for degradation of terrestrial and marine habitats.

Comment 80: The State of Alaska commented that NMFS should take steps to improve the clarity, consistency, and accuracy of its communication with the public regarding regulation of sea lions. They stated that effective protection of the resource depends on such clarity, and confusion about continuing regulations under the MMPA may increase when the public learns that the eastern DPS has been delisted under the ESA. They suggested that simple and obvious guidelines be presented. They stated that coordination among management and research entities should also be improved to ensure that researchers are given adequate time to provide information that will better inform management actions.

Response: We agree that it is important to clearly communicate with the public on laws and regulations regarding Steller sea lions. NMFS and its partners have undertaken numerous outreach activities to improve the clarity of such communications. With regard to coordination among managers and researchers, we agree that researchers should have adequate time to develop research results.

Comment 81: Various entities commented on their willingness and/or desire to be involved in implementing the PDMP. The USFWS at Farallon Islands Wildlife Refuge hopes to be included in any future monitoring efforts for Steller sea lions sponsored by NOAA. The NPS at Point Reyes National Seashore stated that they will continue to monitor the species at Point Reyes and provide NMFS with data as needed. The NPS at Glacier Bay National Park stated that they will continue to collaborate with NMFS and the Alaska Department of Fish and Game (ADF&G) to provide observations of marked Steller sea lions that occur in the park and to assist with the Alaska Marine Mammal Stranding network. The State of Alaska stated that ADF&G expects to contribute substantially to the population monitoring effort, and anticipates continuing to work with NMFS in finalizing and implementing the PDMP. The State of Alaska requested that NMFS cooperate with the State to the maximum extent practicable in the monitoring efforts and the finalizing of the PDMP.

Response: We appreciate these comments and offers to participate in implementing the PDMP. We revised our list of partners in the PDMP accordingly. We met with the State of Alaska and sought their input on finalizing the PDMP, especially those parts of the PDMP that refer to monitoring within Alaska. Under the ESA, NMFS retains overall responsibility for ensuring that, post-delisting, sufficient monitoring is undertaken to verify that the recovered species remains secure from risk of extinction after the ESA protections are no longer are in force.

Comments on the Effects of Delisting the Eastern DPS on the Western DPS

Comment 82: Hundreds of commenters expressed their concern about the effects of the proposed delisting on both the eastern DPS and the western DPS, stating that the action could or would jeopardize or harm the eastern DPS, as well as jeopardize or further endanger the western Steller sea lions that share the range of the eastern DPS. A commenter stated that, since trends strongly suggest that the eastern DPS and the western DPS are shifting towards each other (citing Pitcher *et al.* 2007 and Mathews *et al.* 2011), and in light of recent evidence that Steller sea lions from both DPSs are living at the same rookeries in southeast Alaska, within the territory of the eastern DPS (citing Gelatt *et al.* 2007), it is irresponsible to delist the eastern DPS and effectively remove ESA protections for western DPS sea lions living east of 144 °W longitude. A commenter stated that the draft Status Review fails to address this threat adequately. This commenter stated that the MMPA cannot protect against this threat because it authorizes take without providing a requirement or a means to discriminate between the eastern and western populations. Another commenter concluded NMFS should preserve ESA section 9 prohibitions on lethal take for all Steller sea lions to ensure that western DPS sea lions are protected against threats such as

intentional or unintentional take that may occur as a result of lifting ESA protections from eastern DPS Steller sea lions.

Response: We share the concern regarding the potential effects of delisting the eastern DPS on animals from the western DPS. Jemison *et al.* (2013) documented the regular movement of Steller sea lions from both the eastern DPS and western DPS across the defined DPS boundary. It is clear that individuals originating from some parts of the western DPS, including members of both sexes, utilize habitat east of 144 °W longitude for a variety of reasons.

Jemison *et al.* (2013) analyzed sea lions branded as pups in each DPS from 2000–2010 to estimate probabilities of a sea lion born in one DPS being seen within the range of the other DPS. They found that males from both populations regularly traveled across the DPS boundary; that western DPS females sometimes travel east of 144 °W longitude, but eastern DPS females rarely traveled west of 144 °W longitude; and, that some western DPS females have permanently emigrated to the east, reproducing at two established rookeries east of 144 °W longitude. They report that western DPS animals began moving east in the 1990s following steep population declines in the central Gulf of Alaska. They conclude that it is unclear whether eastward movement across the DPS boundary is due to less optimal conditions in the west or a reflection of favorable conditions in the east.

Despite the regular movement of western DPS animals from some parts of the western DPS to areas east of 144 °W longitude, data indicate that the probability of occurrence of a western DPS animal east of this demarcation declines with distance from the boundary, that it is highest in southeast Alaska, and that at some distance from the western/eastern DPS boundary the probability of occurrence of a western DPS animal becomes negligible. Jemison *et al.* (2013) reported that over 85% of all western DPS Steller sea lions observed east of the boundary were at locations in the northern region of southeast Alaska.

We disagree that delisting the eastern DPS effectively removes protections from endangered western DPS animals occurring east of east of 144 °W longitude. Take of all Steller sea lions occurring east of east of 144 °W longitude will remain prohibited under the MMPA, and take of western DPS Steller sea lions is also prohibited under the ESA regardless of where the animal is found. Following publication of this final rule, NMFS will separately consider whether additional protection is needed for western DPS Steller sea lions in those parts of their range east of 144 °W longitude.

Summary of Peer Review Process

In accordance with our Interagency Cooperative Policy on Peer Review (59 FR 34270; July 1, 1994), we requested expert review of drafts of the Status Review, the PDMP, and the proposed rule. This policy requires NMFS to solicit independent expert review from at least three qualified specialists. NMFS solicited such expert reviews from four non-federal scientists with expertise in population ecology and management of eastern DPS Steller sea lions. Input from this peer review of the earlier draft of the Status Review was incorporated into the version of the draft Status Review that was released for public comment. Further, during the public comment period on the proposed rule, NMFS solicited peer review of these documents from seven experts: two from academia, two from a Canadian federal resource agency, two who had relevant expertise and were from other offices within NOAA, and a former state biologist with expertise on Steller sea lions. Four of these seven were the same as the people who reviewed the draft status review prior to its release. One of these four (an academic reviewer) notified us that he was not available, and the two federal reviewers did not respond. Thus, on the draft status review released for public comment, we received comments from four reviewers, three of whom have expertise on Steller sea lions (and who had reviewed an earlier draft of the document), and the fourth who has particular expertise on potential climate change effects. We have considered all of the peer review comments received, summarized the content of this expert input below, and where applicable, responded to the comments below.

Summary of Peer Reviewer Comments

All peer reviewers agreed with NMFS's proposal to delist the eastern DPS of Steller sea lion. Of the four peer reviewers who reviewed the released versions of the documents, Peer Reviewer 1 concluded that the draft Status Review provides a thorough review of the background, biology, available data, and likely threats to the eastern DPS. Peer Reviewer 1 stated that the proposed rule provides a thorough and efficient review of the status of the eastern DPS and whether the DPS qualifies for removal from the ESA list of threatened species. Peer Reviewer 2 stated that all of the relevant literature and assessment documents are referenced in the draft Status Review and that, overall, the status review is thorough and well-written. Peer Reviewer 2 expressed full agreement with all of the key conclusions of the proposed rule and the draft Status Review and recommended that this DPS be delisted. Peer Reviewer 3 concluded that the proposed rule and draft Status Review make a compelling case that the eastern DPS is not currently at risk and should be delisted. Peer Reviewer 4 stated that the draft Status Review does an excellent job of summarizing current knowledge about population delineations, basic biology, and population assessment of Steller sea lions relative to evaluating the delisting criteria established by the Recovery Team. Peer Reviewer 4 concluded that the draft Status Review presents clear factual information and has drawn appropriate conclusions that are well supported by current knowledge.

Peer Reviewer Comment on Status: Peer Reviewer 3 suggested that the proposed rule and draft Status Review be revised to allow for the possibility that the eastern DPS was never at risk. However, this peer reviewer stated that he/she did not think a retrospective analysis of the 1997 status is necessary nor should it be a priority.

Response: NMFS does not agree that the status review should be revised to allow for the possibility that this species was never threatened. The ESA listing of the Steller sea lion as a single species occurred prior to the recognition of western and eastern DPSs of Steller sea lions. The original listing followed widespread intentional take throughout parts of the range of what is now the eastern DPS, as well as other actions that led to the considerable reduction in population size and loss of rookeries. At the time of the recognition of separate DPSs with differing listing statuses, data were insufficient to determine that factors causing declines in the western DPS or a lack of recovery in the southern part of the eastern DPS would not spread to other parts of the range of the eastern DPS. Hence, because the eastern DPS was at risk of becoming endangered within the foreseeable future, listing of the eastern DPS under the ESA remained appropriate. This allowed us to have a longer period of sustained increase over which to gain confidence that the growth of the eastern DPS was not temporary and was not likely to reverse after a short period. The protections afforded by the ESA likely facilitated the recovery of the eastern DPS.

Peer Reviewer Comment on Habitat: Regarding section 3.2.1 of the Status

Review (NMFS 2013a), Peer Reviewer 2 recommended that NMFS add that, in the region between Cape St. Elias and Cross Sound, there are few areas with rocky shorelines and no offshore islands that are preferred habitats for Steller sea lions hauling out and pupping/breeding. Thus, there is habitat discontinuity between these locations.

Response: We modified section 3.2.1 of the Status Review to include this information.

Peer Reviewer Comments on the PDMP: Peer Reviewer 4 believes that consideration should be given to broadening PDMP partnerships by including academic and other non-government organizations with Steller sea lion research expertise as Regional Collaborators.

Response: We agree and have broadened our list of partnerships by including academic and other non-government organizations with Steller sea lion research expertise as Regional Collaborators.

Conclusions and Listing Determination

Based on information in the Recovery Plan and review of new information discussed in the Status Review, including information received from public and peer reviewer comments, we find the following:

- The biological (demographic) criterion for delisting identified in the Recovery Plan has been met.
- None of the residual or emerging potential threats evaluated under the five ESA section 4(a)(1) factors, individually or cumulatively, is likely to result in the species becoming in danger of extinction within the foreseeable future throughout all or a significant portion of the range of the DPS.
- NMFS has taken actions to address the ESA Listing Factor Criteria set forth in the Recovery Plan.
- Following delisting of the eastern DPS, the MMPA and other laws and regulations, if effectively implemented, should promote the continued recovery of the eastern DPS of Steller sea lions such that it is not likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Therefore, NMFS finds that removal of the eastern DPS of the Steller sea lion from the list of threatened species is warranted because the DPS no longer meets the definition of a threatened species. We intend to implement the PDMP for ten years beyond delisting to ensure that recovery continues.

Post-Delisting Monitoring Plan (PDMP)

NMFS developed a PDMP to govern monitoring following delisting. As directed in our PDMP guidance (USFWS and NMFS 2008), the primary goal of this monitoring is to ensure that the status of the eastern DPS ". . . does not deteriorate, and if a substantial decline in the species, . . . or an increase in threats is detected, to take measures to halt the decline so that re-proposing it as a threatened or endangered species is not needed." If a population decline or an increase in threats is detected, NMFS will take measures in collaboration with the States and other partners to prevent the species from becoming threatened again. The draft PDMP was included as an appendix to the draft Status Review, was released for public comment, and was revised in consideration of that comment.

The PDMP has three primary goals:

- Monitor the population to detect changes in trends in pup production and adult/juvenile (non-pup) counts and vital rates (survival and birth rates), and to continue to assess how movement across the western-eastern DPS boundary may be affecting non-pup counts in each DPS.
- Monitor threats that potentially could affect the sustainability of the recovery of the eastern DPS.
- Determine if there is a northward extension of the patterns observed in southern California where rookeries were abandoned, or in parts of central California, such as the Farallon Islands, where population increase either did not occur or occurred only weakly, and hence where population density is low or becoming lower; if the breeding and feeding ranges of this species are continuing to shift northward; and if range contraction is occurring.

The PDMP also provides response triggers to prompt additional evaluation and appropriate response. If necessary, NMFS could increase the sensitivity of status and trend monitoring; design research to determine causes of changes in population trend or declines in pup production or vital rates; work with States, tribes, or other entities to exercise their regulatory authorities to alleviate known or suspected threats; utilize the MMPA to protect the species and/or its habitat; extend the monitoring period; re-evaluate the significance of threats to the eastern DPS; or evaluate re-listing the eastern DPS of Steller sea lion under the ESA.

Effects of the Delisting

This final rule will eliminate the protection afforded to the eastern DPS of Steller sea lions under the ESA. It will not affect the ESA status of the endangered western DPS of Steller sea lions. All Steller sea lions will continue to receive protections under the MMPA.

Due to this final rule, Federal agencies will no longer be required to consult with NMFS under section 7 of the ESA in the event activities they authorize, fund, or carry out may affect the eastern DPS of Steller sea lions. This rule does not remove or otherwise affect the ongoing requirement for Federal agencies, pursuant to section 7 of the ESA, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of the western DPS of Steller sea lions or result in the destruction or adverse modification of designated critical habitat.

Critical habitat for the Steller sea lion remains in effect for the listed, endangered western DPS, as the designated critical habitat continues to support the western DPS's important biological functions (e.g., feeding and resting). NMFS will re-examine in a separate rulemaking the existing critical habitat designation to consider any new and pertinent sources of information, including the delisting of the eastern DPS. In the interim, during ESA section 7 consultations for federal actions that may affect currently designated Steller sea lion critical habitat, NMFS will address effects to such habitat in terms of effects to those physical and biological features essential to the conservation of the western DPS.

The only regulatory changes resulting from this final rule that are germane to the endangered western DPS of Steller sea lions are the removal of the prohibition on the discharge of firearms at or within 100 yards of a Steller sea lion east of 144 °W, and the recodification of protections and exemptions for the western DPS currently within 50 CFR 223.202 to 50 CFR 224.103.

ESA section 9 prohibitions apply to endangered species by operation of law and may be extended to threatened species by regulation under section 4(d) of the ESA. The section 9 prohibitions for eastern DPS animals are removed with this final rule but section 9 prohibitions for western DPS animals continue to apply. When we recognized two DPSs of Steller sea lions, listed the western DPS as endangered, and listed the eastern DPS as threatened, we extended the section 9 prohibitions to the eastern DPS (62 FR 24345; May 5, 1997). Following publication of this final rule, NMFS will separately consider whether additional protection is needed for western DPS Steller sea lions in those parts of their range east of 144 °W. longitude.

Notwithstanding the deletion of 50 CFR 223.202 and the removal of the prohibition against the discharge of

firearms at or within 100 yards of a Steller sea lion east of 144 °W, the take of all Steller sea lions, including take by harassment, will continue to be prohibited under the MMPA, unless specifically authorized by NMFS or exempted from the MMPA's moratorium on take.

A species or population stock that is listed as an endangered species or a threatened species under the ESA is considered "depleted" and a "strategic stock" under the MMPA. Thus, the delisting of the eastern DPS of Steller sea lion under the ESA will likely lead to two modifications to classifications of the eastern DPS of Steller sea lion under the MMPA: from its current classification as a "strategic stock" and as a "depleted" species to a new classification as a "non-strategic stock" and/or as not depleted. In consultation with one or more of three regional Scientific Review Groups, and following public review and comment, NMFS prepares annual marine mammal stock assessment reports. The stock assessments reports for "strategic stocks" are reviewed annually whereas those for non-strategic stocks are reviewed every three years, or when new information becomes available. Thus, if the eastern DPS (eastern "stock" under the MMPA) is reclassified as a non-strategic stock, the review of its stock assessment report may become less frequent. NMFS will consider redesignating the eastern stock of Steller sea lions as non-strategic and not depleted under the MMPA following review by the Alaska Scientific Review Group in 2014.

Description of Regulatory Changes

This final rule removes the eastern DPS of Steller sea lions from the list of threatened species in 50 CFR 223.102.

Section 223.202 established various protective measures for threatened eastern DPS Steller sea lions, including a specific prohibition on discharging a firearm at or within 100 yards of a Steller sea lion, a prohibition on vessel transit within 3 nautical miles of specific Steller sea lion rookery sites, and a list of certain exemptions to some of those same protections. We are deleting 50 CFR 223.202, and we are recodifying these protections and exemptions for the western DPS as appropriate within 50 CFR 224.103.

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA de-listing actions. (See NOAA Administrative Order 216–6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analyses required by the Regulatory Flexibility Act are not applicable to the de-listing process. In addition, this rule is exempt from review under E.O. 12866. This final rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in situations where a regulation will preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule.

E.O. 13175, Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

NMFS has coordinated with Alaska Native communities regarding eastern DPS of Steller sea lion management issues through the Sea Otter and Steller Sea Lion Commission (TASSC). NMFS has briefed TASSC on this delisting action at TASSC annual meetings and provided updates regarding the timeline for the eastern DPS of Steller sea lion status review. Prior to the release of the proposed rule, NMFS was in also in contact with the Makah Tribe. Following publication of the proposed rule, we notified the Columbia River Inter-Tribal Fish Commission and the Makah Tribe. At various stages of the process from the notice of initiation of the 5-year review through the publication of the proposed rule, NMFS received comments, information, and/or other input from the Columbia River Inter-Tribal Fish Commission, the Makah Tribe, and the Northwest Indian Fisheries Commission. NMFS considered all of the comments received from Alaska Native organizations and Pacific Northwest tribal organizations at these various stages. We have addressed those comments in this final rule. NMFS did not receive any formal requests to consult on the proposed action.

References Cited

A complete list of all references cited in this rulemaking can be found on our Web site at *http://alaskafisheries.noaa.gov* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Endangered marine and anadromous species.

Dated: October 21, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 223.102 [Amended]

■ 2. In § 223.102, the table is amended by removing and reserving paragraph (a)(2).

§ 223.202 [Removed]

■ 3. Section 223.202 is removed.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 4. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 5. In § 224.103, revise paragraph (d) to read as follows:

§ 224.103 Special prohibitions for endangered marine mammals.

* * * * *

(d) *Special prohibitions relating to endangered Steller sea lion protection.*—(1) *General Prohibitions.* The following regulatory provisions shall apply to the western population of Steller sea lions:

(i) *No discharge of firearms.* Except as provided in paragraph (d)(2) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion west of 144 °W longitude. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(ii) *No approach in buffer areas.* Except as provided in paragraph (d)(2) of this section:

(A) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section;

(B) No person may approach on land not privately owned within one-half statutory mile (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section, whichever is greater, except on Marmot Island; and

(C) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (d)(1)(iii) of this section, whichever is greater.

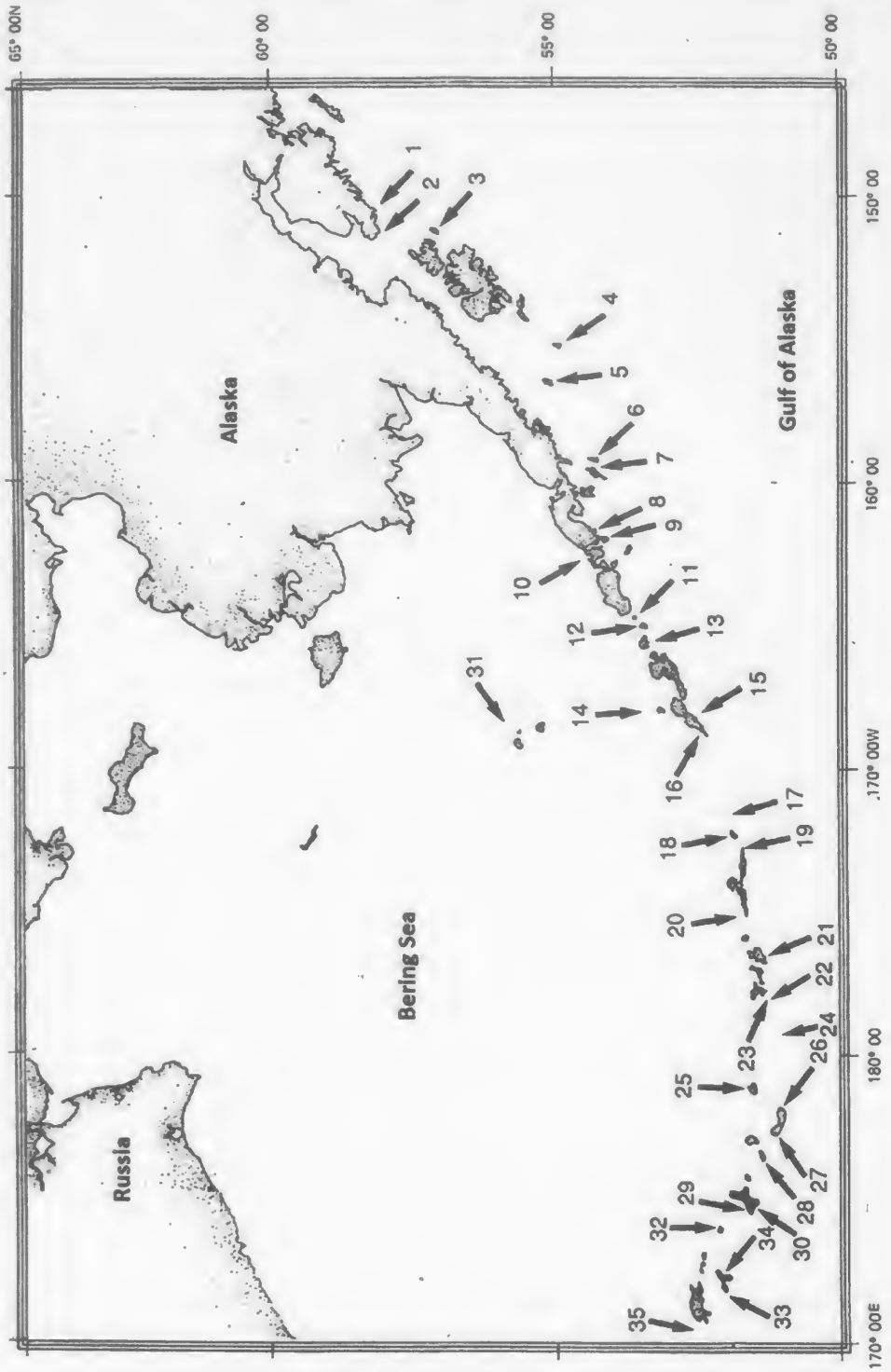
(iii) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

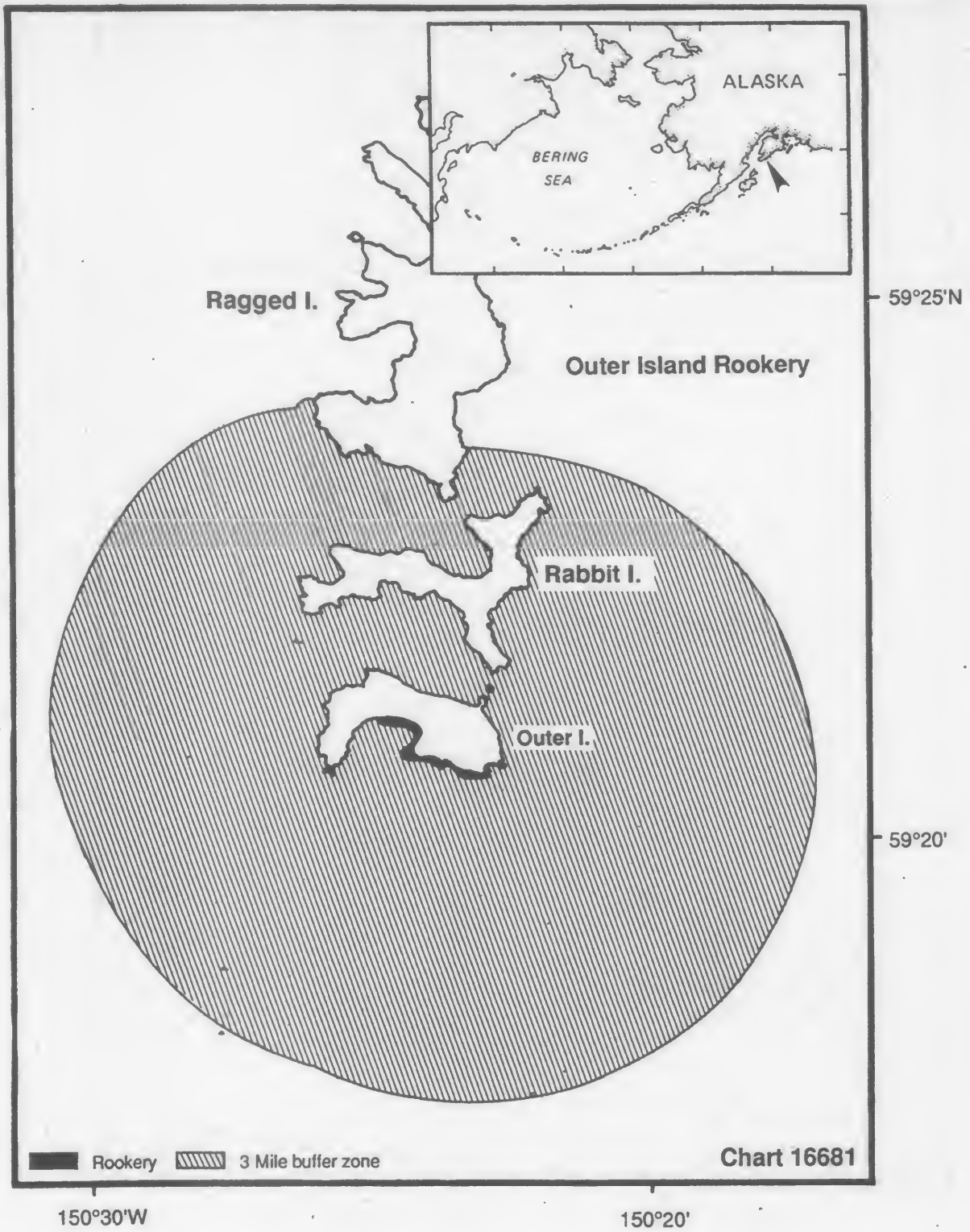
TABLE 1 TO § 224.103—LISTED STELLER SEA LION ROOKERY SITES [1]

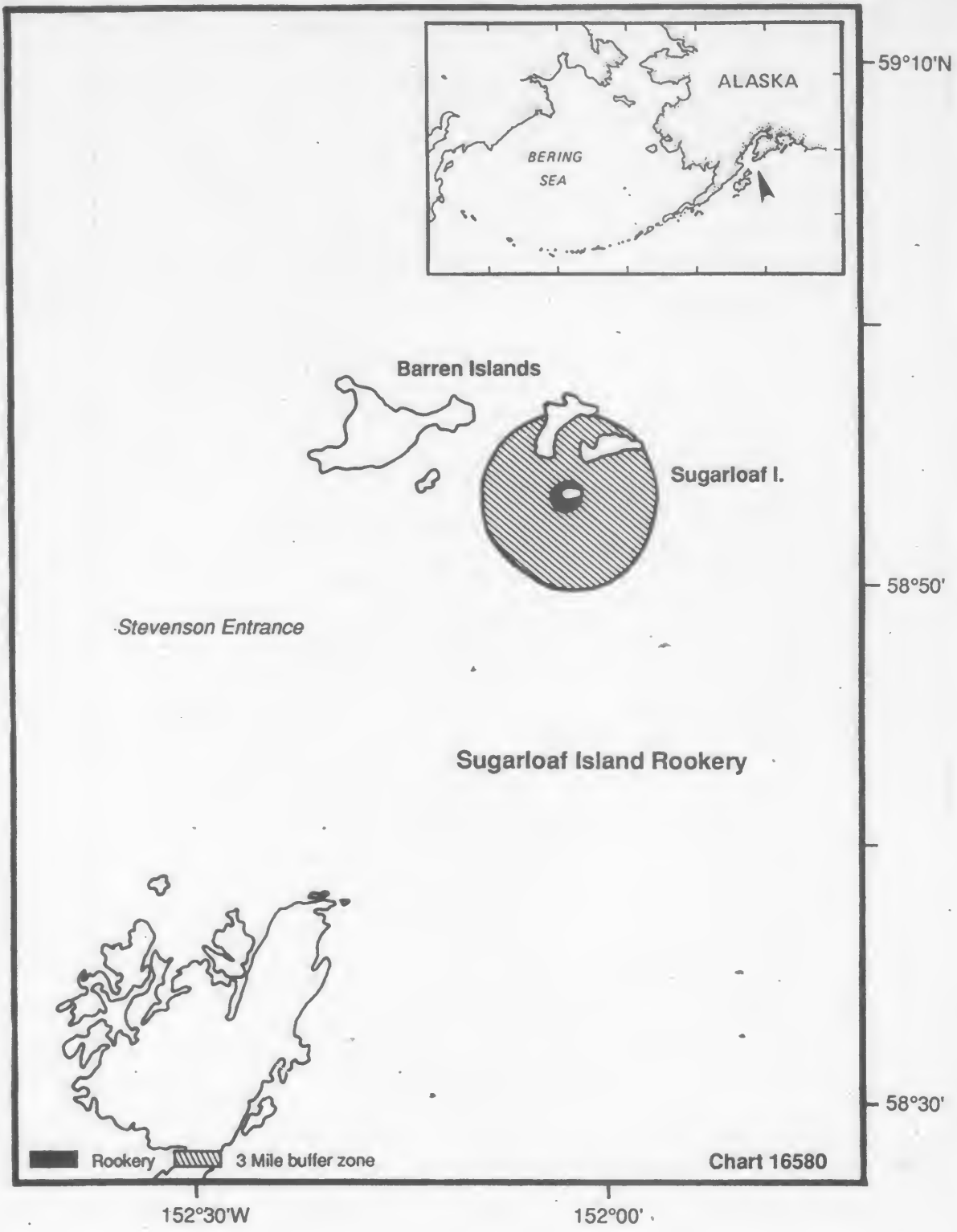
Island	From		To		NOAA Chart	Notes
	Lat.	Long.	Lat.	Long.		
1. Outer I.	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W	16681	S quadrant.
2. Sugarloaf I.	58°53.0 N	152°02.0 W			16580	Whole island.
3. Marmot I.	58°14.5 N	151°47.5 W	58°10.0 N	151°51.0 W	16580	SE quadrant.
4. Chirikof I.	55°46.5 N	155°39.5 W	55°46.5 N	155°43.0 W	16580	S quadrant.
5. Chowiet I.	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W	16013	S quadrant.
6. Atkins I.	55°03.5 N	159°18.5 W			16540	Whole island.
7. Chernabura I.	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
8. Pinnacle Rock	54°46.0 N	161°46.0 W			16540	Whole island.
9. Clubbing Rks (N)	54°43.0 N	162°26.5 W			16540	Whole island.
Clubbing Rks (S)	54°42.0 N	162°26.5 W			16540	Whole Island.
10. Sea Lion Rks	55°28.0 N	163°12.0 W			16520	Whole island.
11. Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
12. Akun I.	54°18.0 N	165°32.5 W	54°18.0 N	165°31.5 W	16547	Billings Head Bight.
13. Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan.
14. Bogoslof I.	53°56.0 N	168°02.0 W			16500	Whole island.
15. Ogchul I.	53°00.0 N	168°24.0 W			16500	Whole island.
16. Adugak I.	52°55.0 N	169°10.5 W			16500	Whole island.
17. Yunaska I.	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
18. Seguam I.	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
19. Agligadak I.	52°06.5 N	172°54.0 W			16480	Whole island.
20. Kasatochi I.	52°10.0 N	175°31.5 W	52°10.5 N	175°29.0 W	16480	N half of island.
21. Adak I.	51°36.5 N	176°59.0 W	51°38.0 N	176°59.5 W	16460	SW Point, Lake Point.
22. Gramp rock	51°29.0 N	178°20.5 W			16460	Whole island.
23. Tag I.	51°33.5 N	178°34.5 W			16460	Whole island.
24. Ulak I.	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25. Semisopochnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
Semisopochnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
26. Amchitka I.	51°22.5 N	179°28.0 E	51°21.5 N	179°25.0 E	16440	East Cape.
27. Amchitka I.	51°32.5 N	178°49.5 E			16440	Column Rocks.
28. Ayugadak Pt.	51°45.5 N	178°24.5 E			16440	SE coast of Rat Island.
29. Kiska I.	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E	16440	W central, Lief Cove.
30. Kiska I.	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E	16440	Cape St. Stephen.
31. Walrus I.	57°11.0 N	169°56.0 W			16380	Whole island.
32. Buldir I.	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E	16420	Se point to NW point.
33. Agattu I.	52°24.0 N	173°21.5 E			16420	Gillion Point.
34. Agattu I.	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E	16420	Cape Sabak.
35. Attu I.	52°54.5 N	172°28.5 E	52°57.5 N	172°31.5 E	16681	S Quadrant.

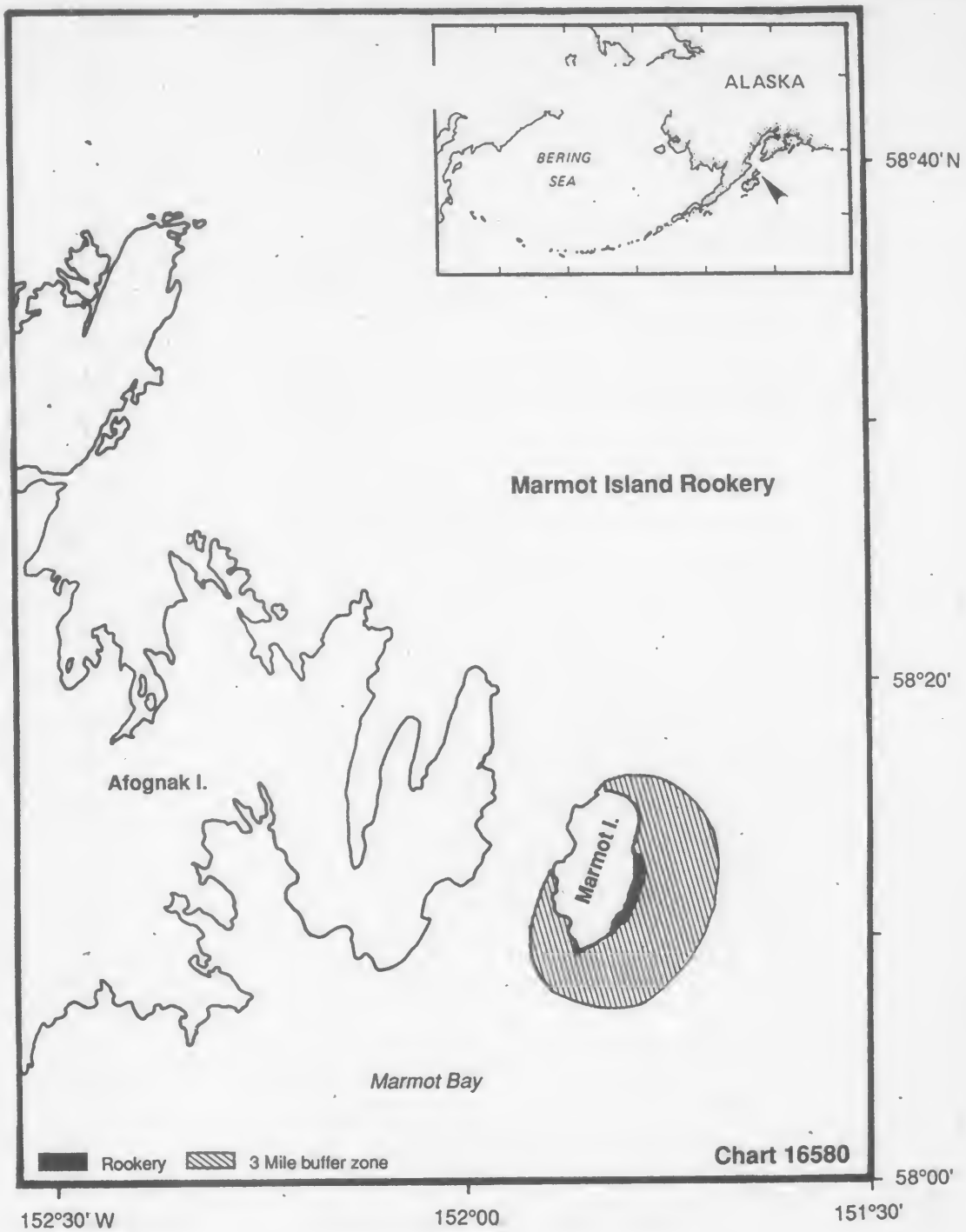
[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

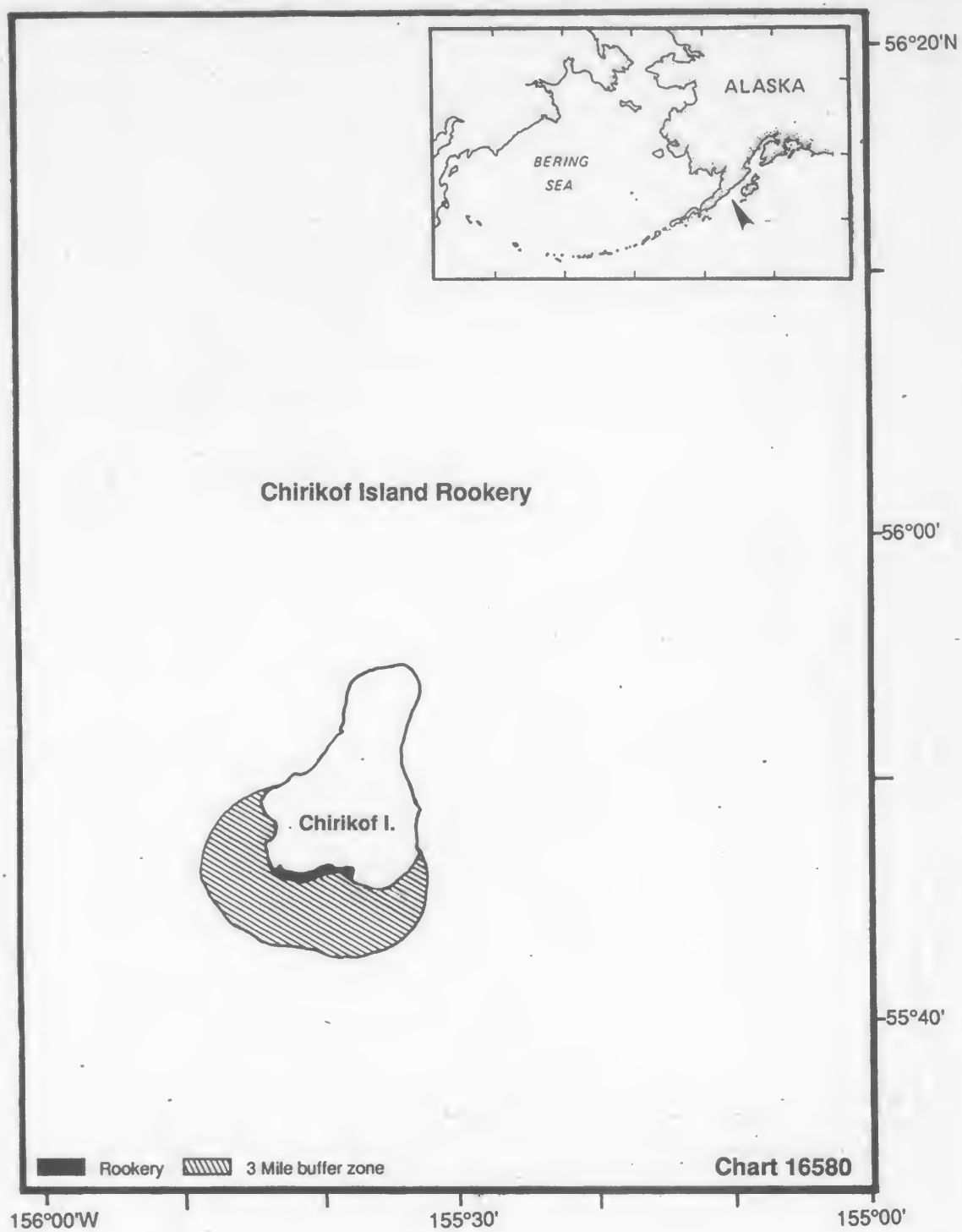
BILLING CODE 3510–22–P

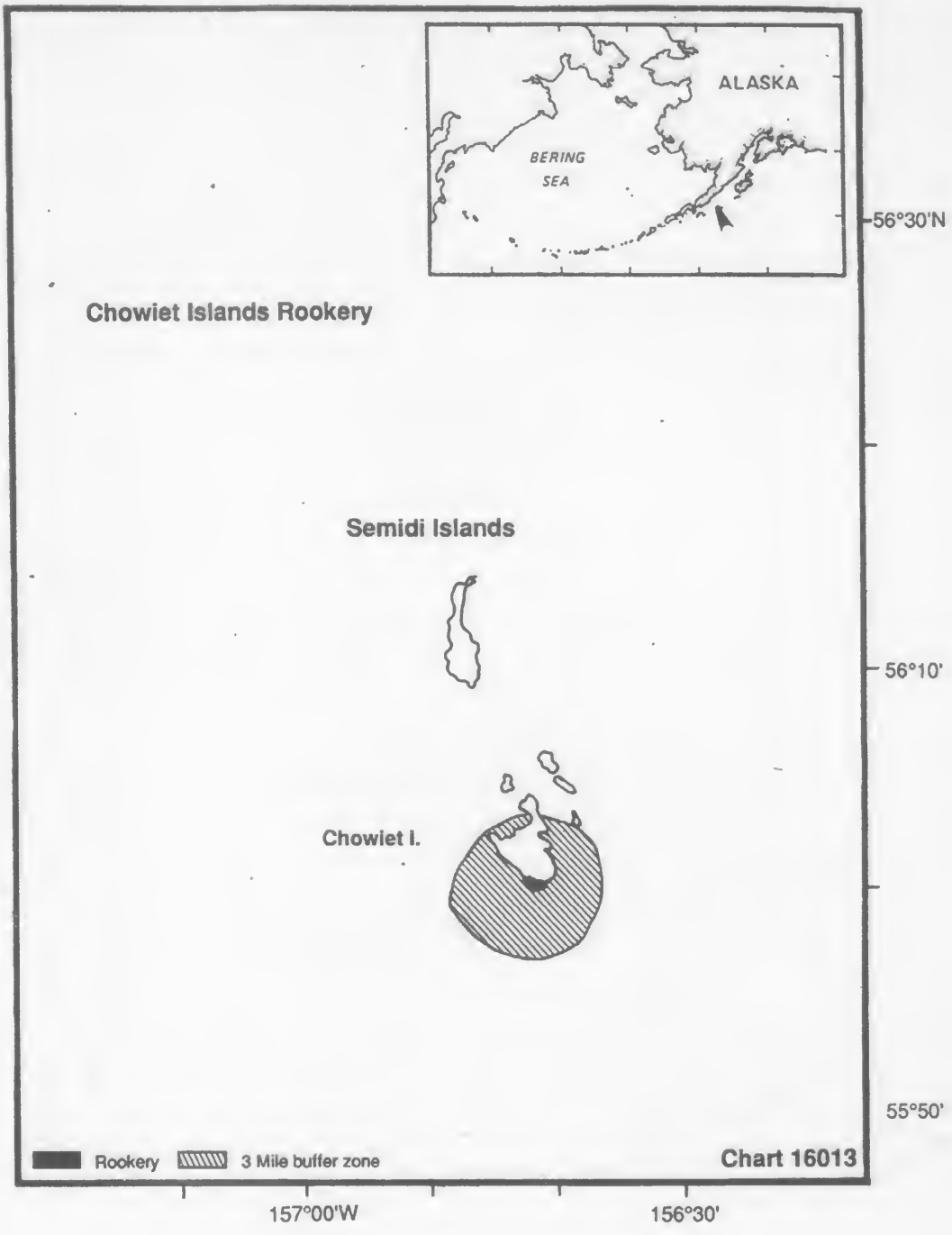

65° 00N
60° 00
55° 00
50° 00
150° 00
160° 00
170° 00W
180° 00
170° 00E
Alaska
Gulf of Alaska
Bering Sea
Russia
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

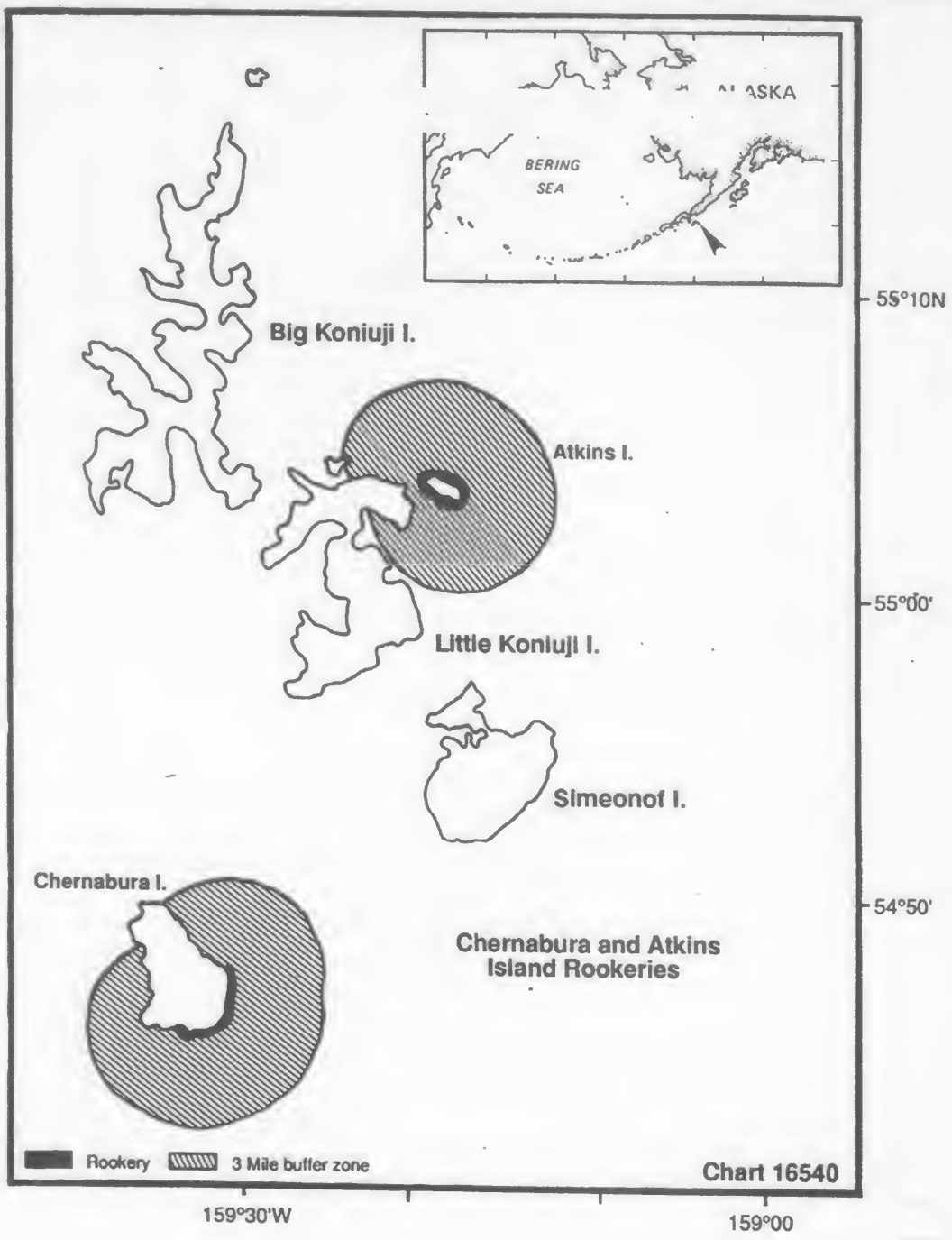

ALASKA
BERING SEA
Ragged I.
59°25'N
Outer Island Rookery
Rabbit I.
Outer I.
59°20'
Rookery
3 Mile buffer zone
Chart 16681
150°30'W
150°20'

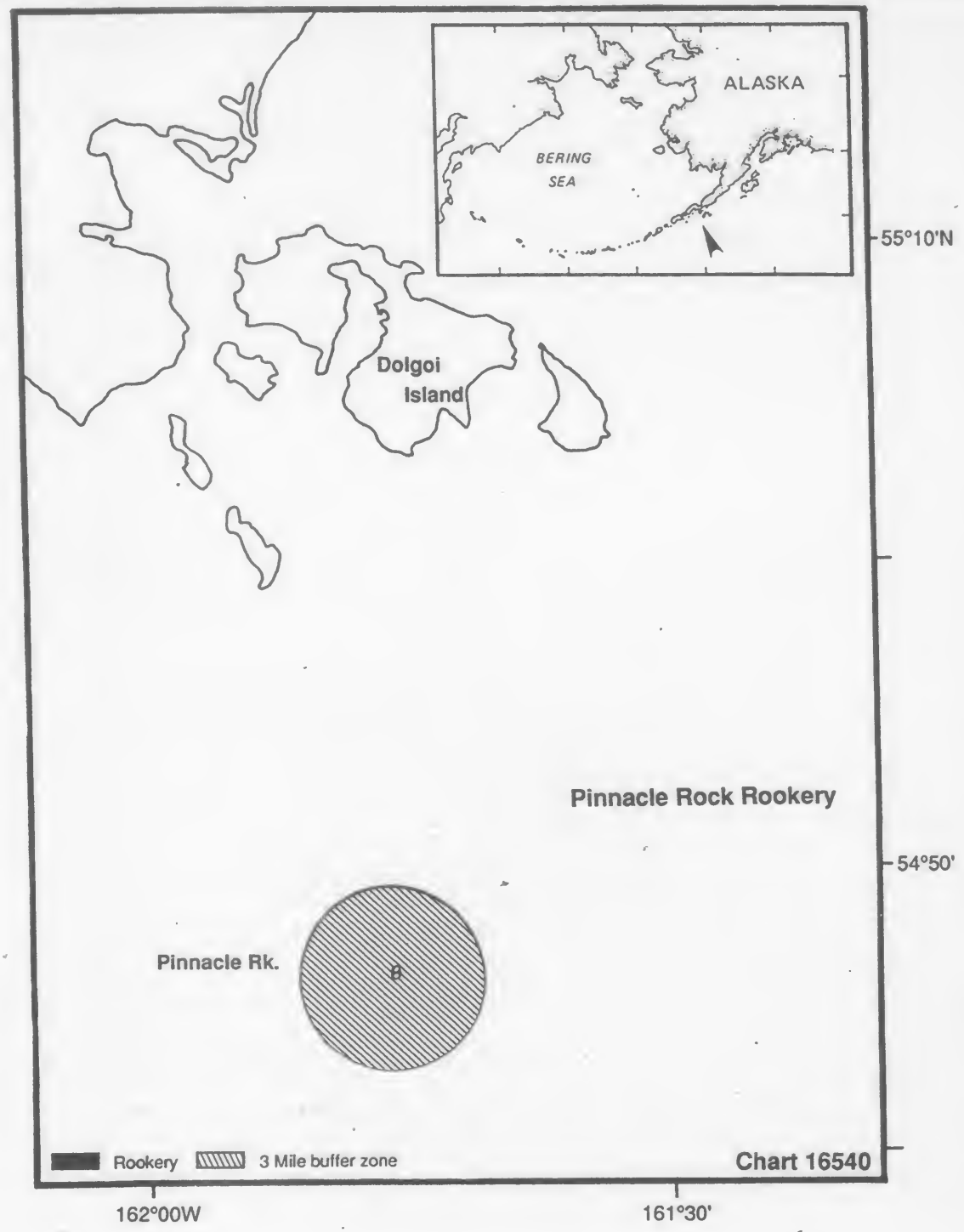

ALASKA
BERING SEA
59°10'N
Barren Islands
Sugarloaf I.
58°50'
Stevenson Entrance
Sugarloaf Island Rookery
58°30'
Rookery
3 Mile buffer zone
Chart 16580
152°30'W
152°00'

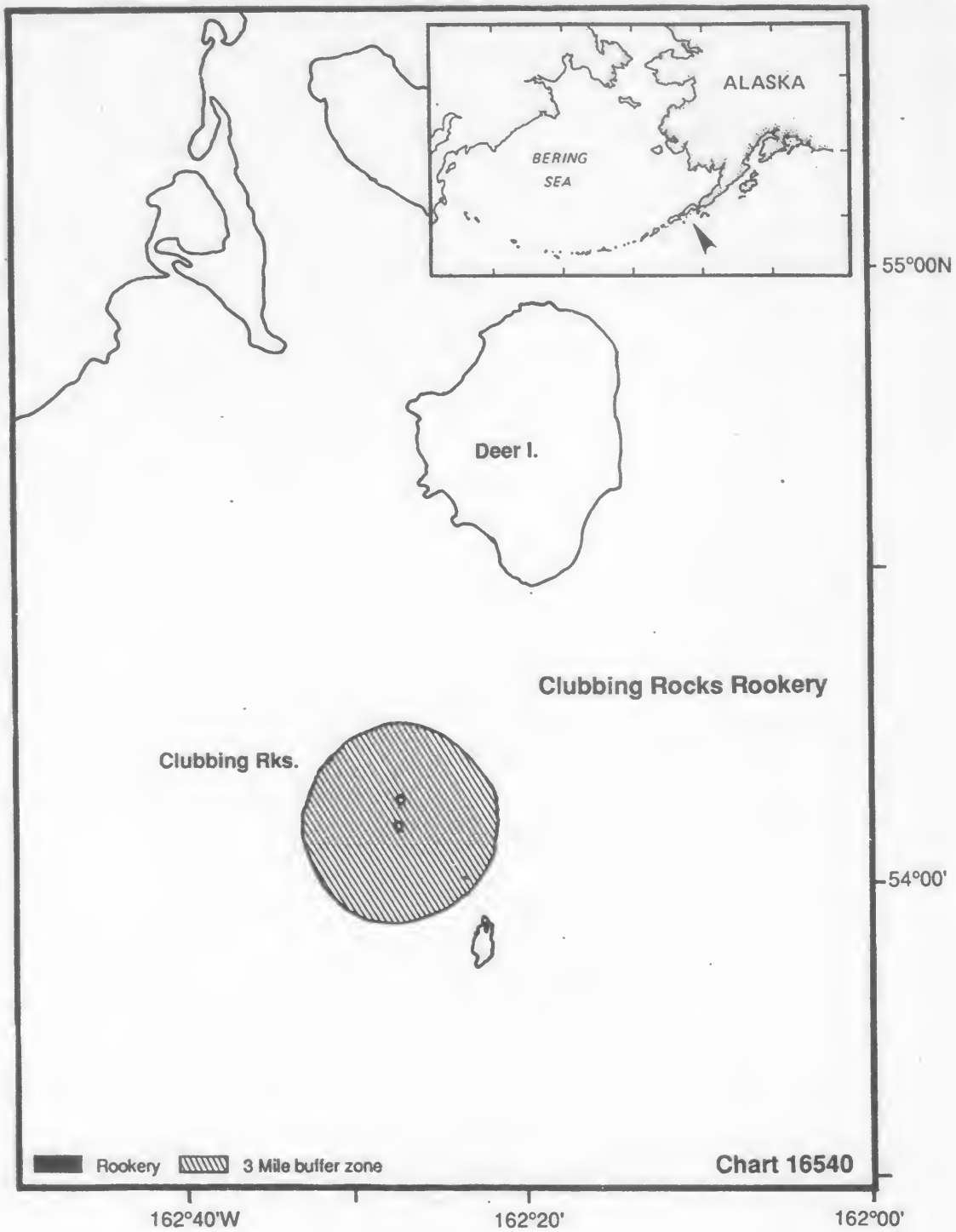

ALASKA
BERING SEA
58°40' N
Marmot Island Rookery
58°20'
Afognak I.
Marmot I.
Marmot Bay
Rookery
3 Mile buffer zone
Chart 16580
58°00'
152°30' W
152°00
151°30'

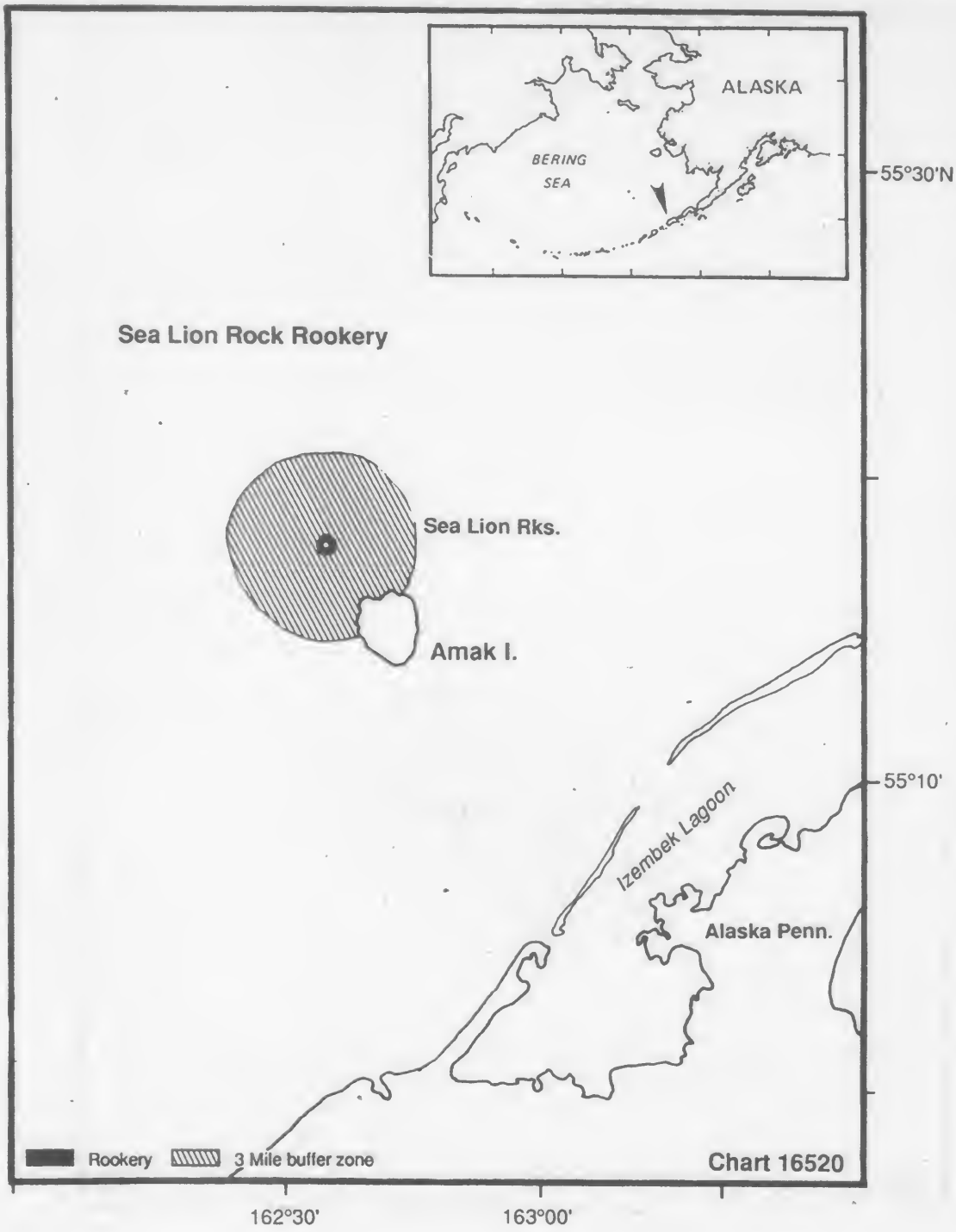

56°20'N
ALASKA
BERING
SEA
Chirikof Island Rookery
56°00'
Chirikof I.
55°40'
Rookery
3 Mile buffer zone
Chart 16580
156°00'W
155°30'
155°00'

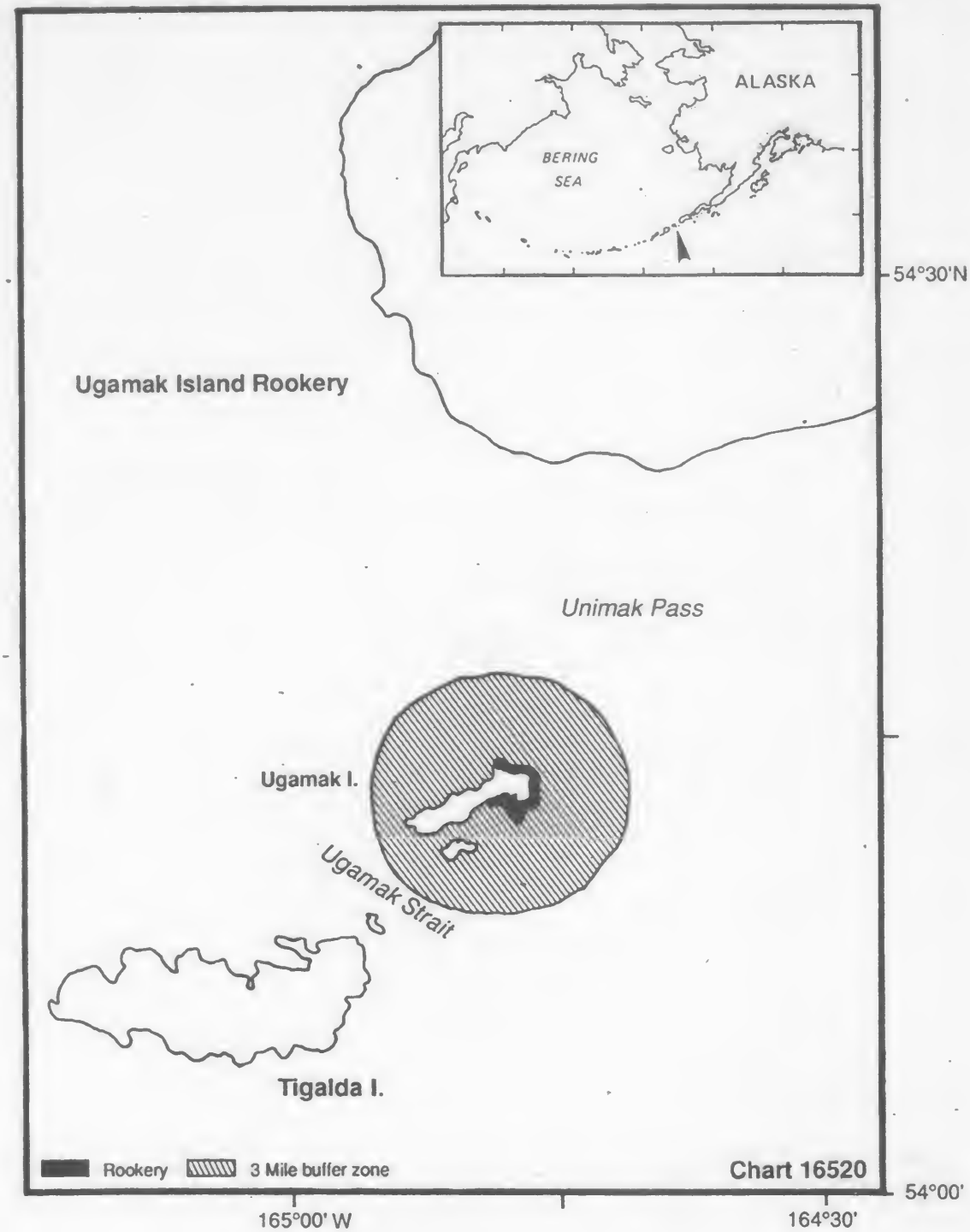

ALASKA
BERING SEA
56°30'N
Chowiet Islands Rookery
Semidi Islands
56°10'
Chowiet I.
55°50'
Rookery
3 Mile buffer zone
Chart 16013
157°00'W
156°30'

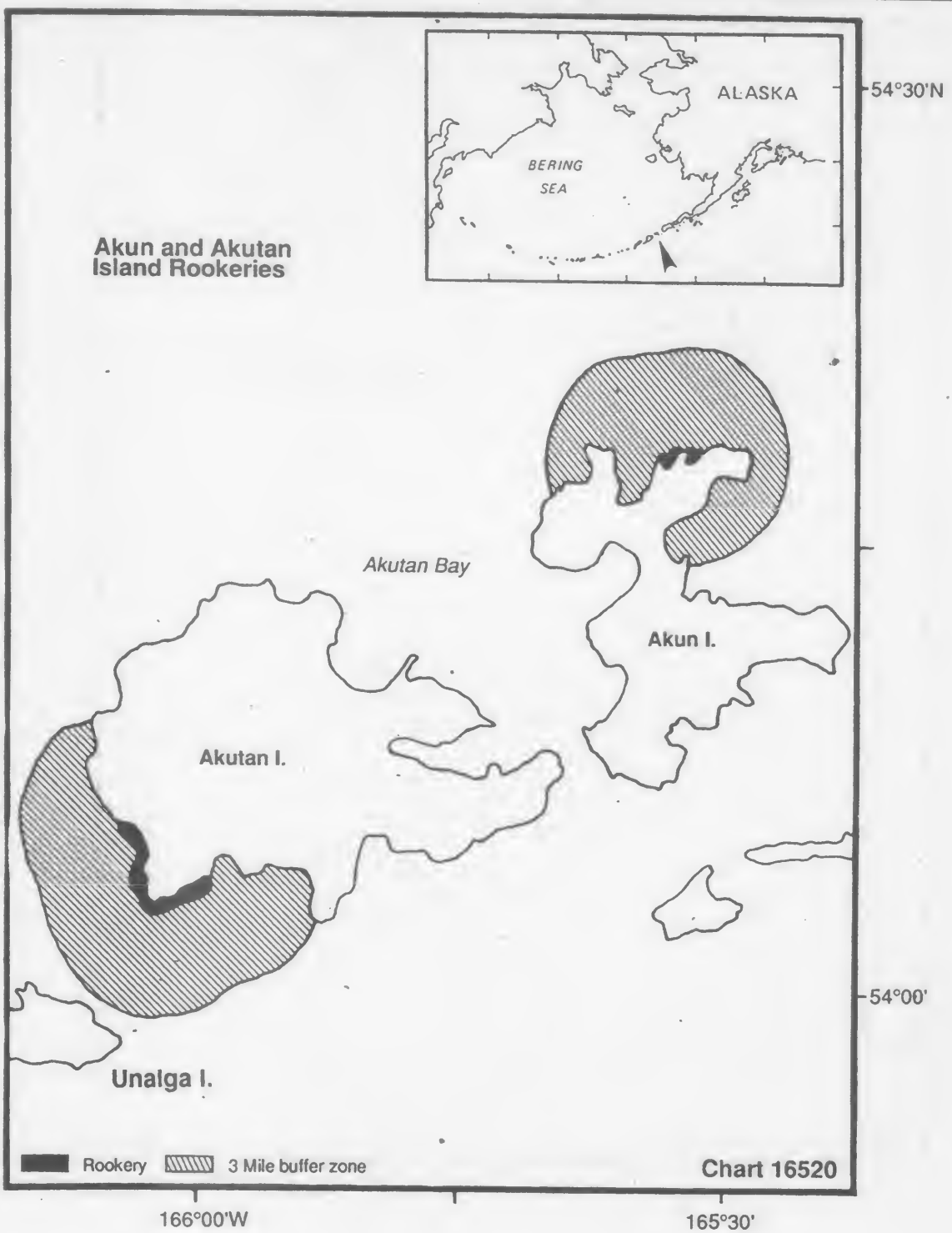

ALASKA
BERING SEA
55°10N
Big Koniuji I.
Atkins I.
55°00'
Little Koniuji I.
Simeonof I.
Chernabura I.
54°50'
Chernabura and Atkins Island Rookeries
Rookery
3 Mile buffer zone
Chart 16540
159°30'W
159°00

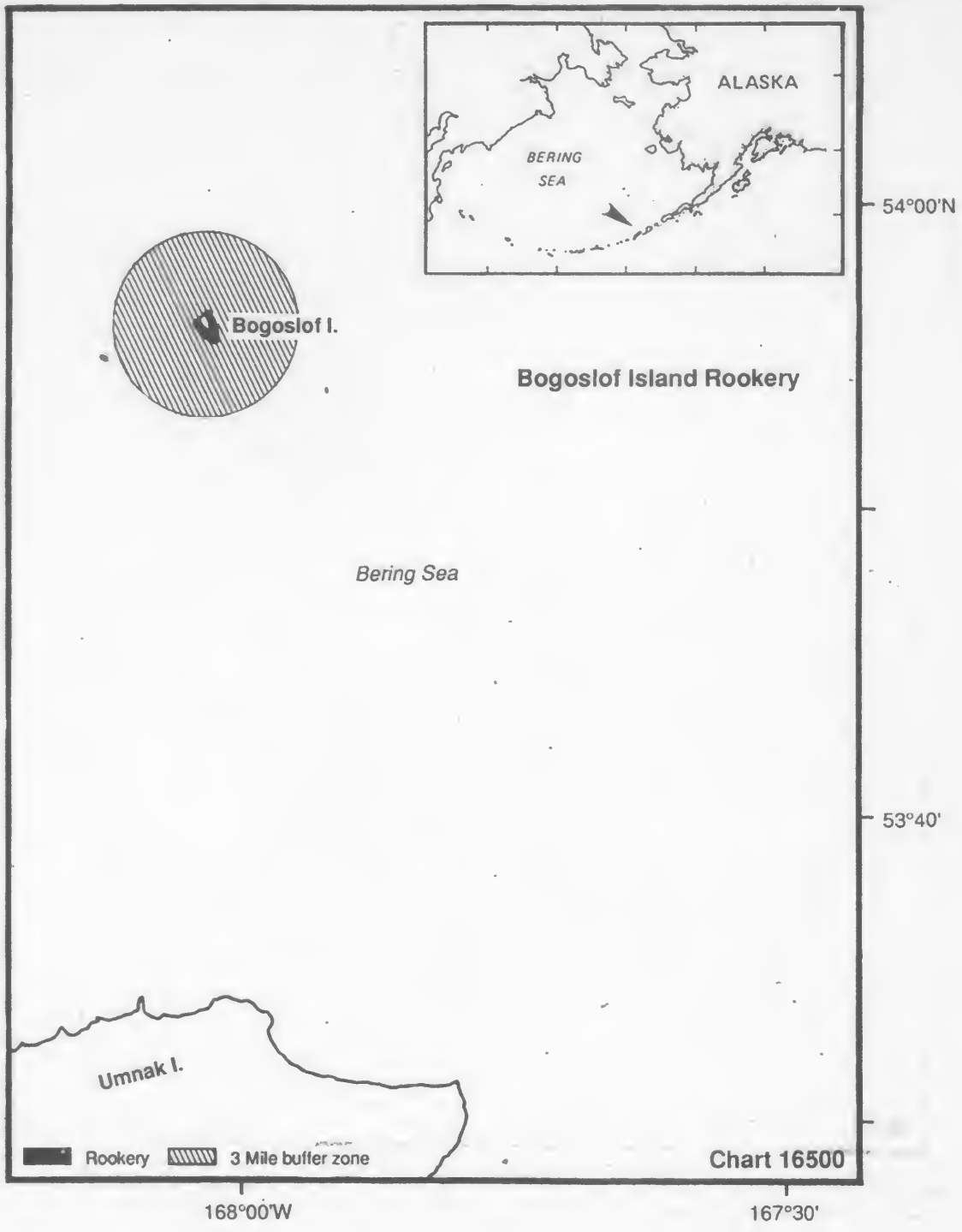

ALASKA
BERING SEA
55°10'N
Dolgoi Island
Pinnacle Rock Rookery
54°50'
Pinnacle Rk.
8
Rookery
3 Mile buffer zone
Chart 16540
162°00W
161°30'

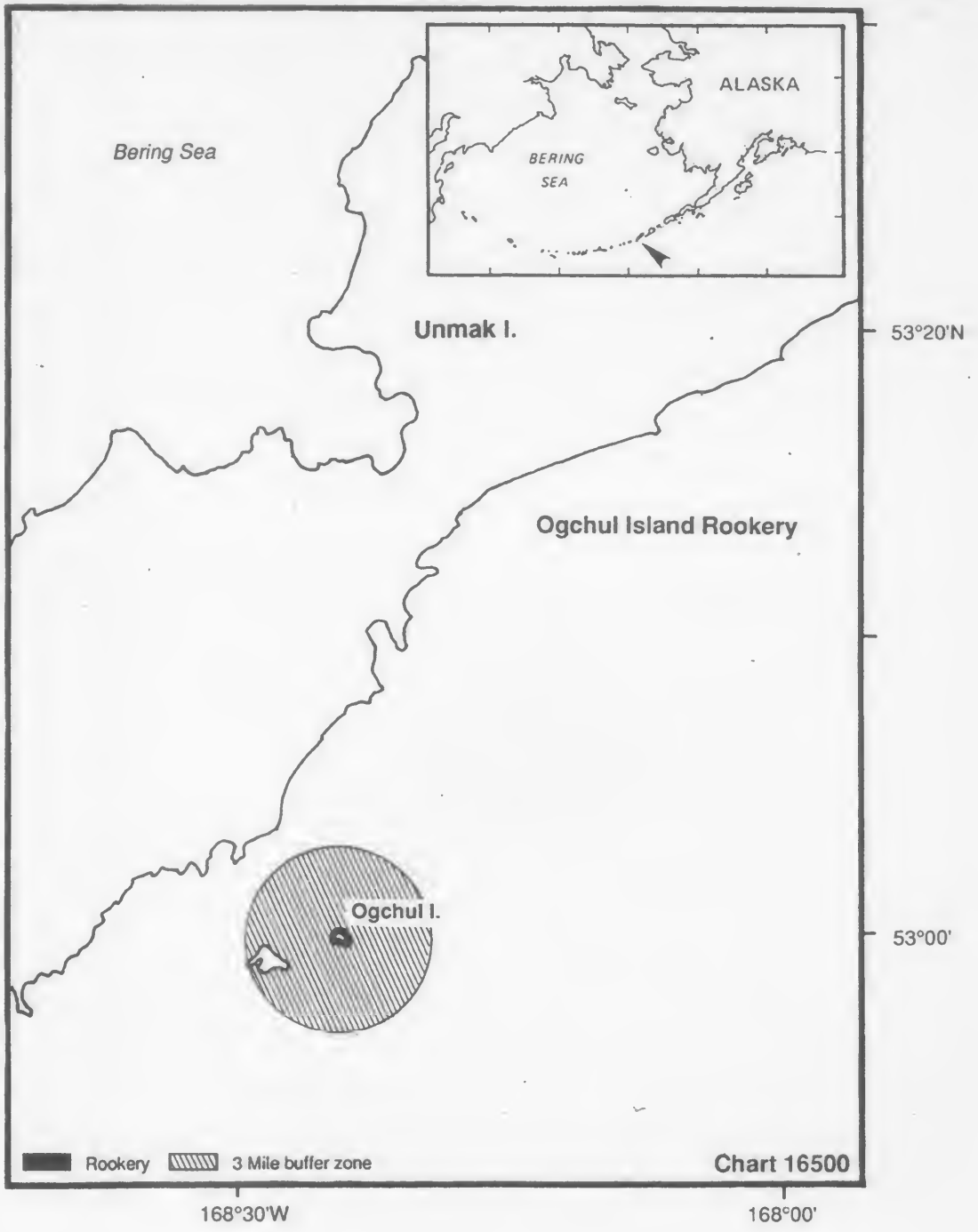

ALASKA
BERING SEA
55°00N
Deer I.
Clubbing Rocks Rookery
Clubbing Rks.
54°00'
Rookery
3 Mile buffer zone
Chart 16540
162°40'W
162°20'
162°00'

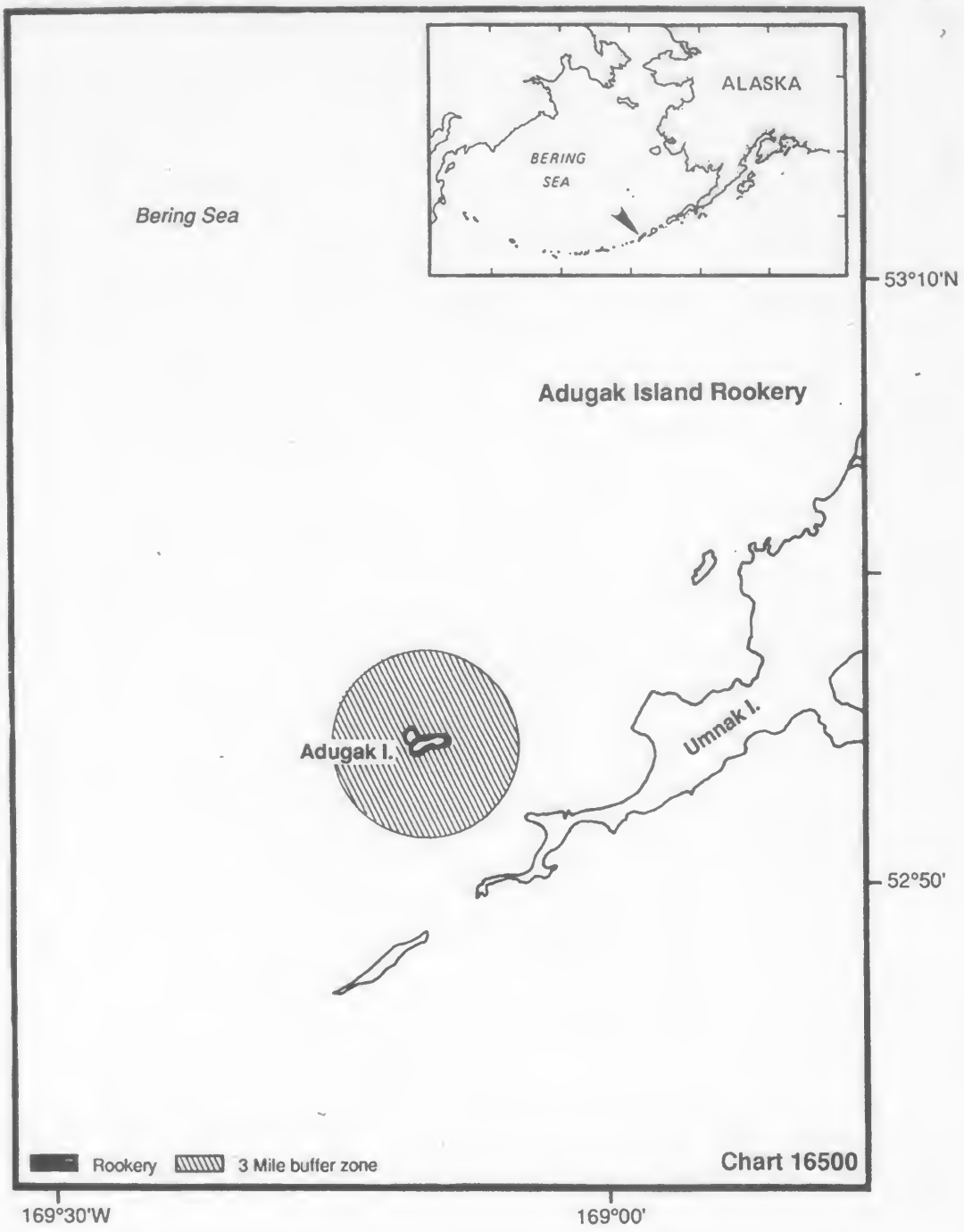

ALASKA
BERING SEA
55°30'N
Sea Lion Rock Rookery
Sea Lion Rks.
Amak I.
55°10'
Izembek Lagoon
Alaska Penn.
Rookery
3 Mile buffer zone
Chart 16520
162°30'
163°00'

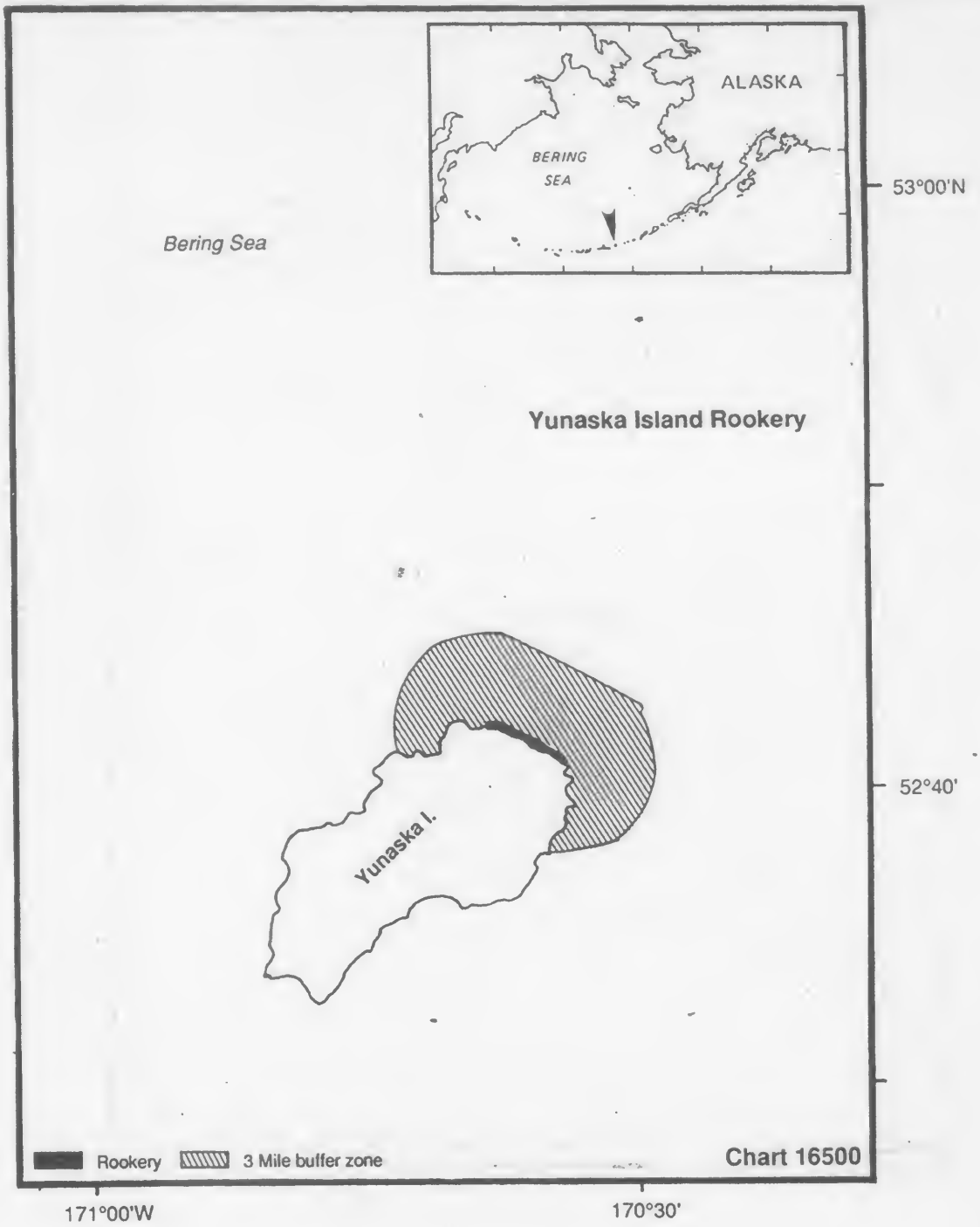

ALASKA
BERING SEA
54°30'N
Ugamak Island Rookery
Unimak Pass
Ugamak I.
Ugamak Strait
Tigalda I.
Rookery
3 Mile buffer zone
Chart 16520
54°00'
165°00' W
164°30'

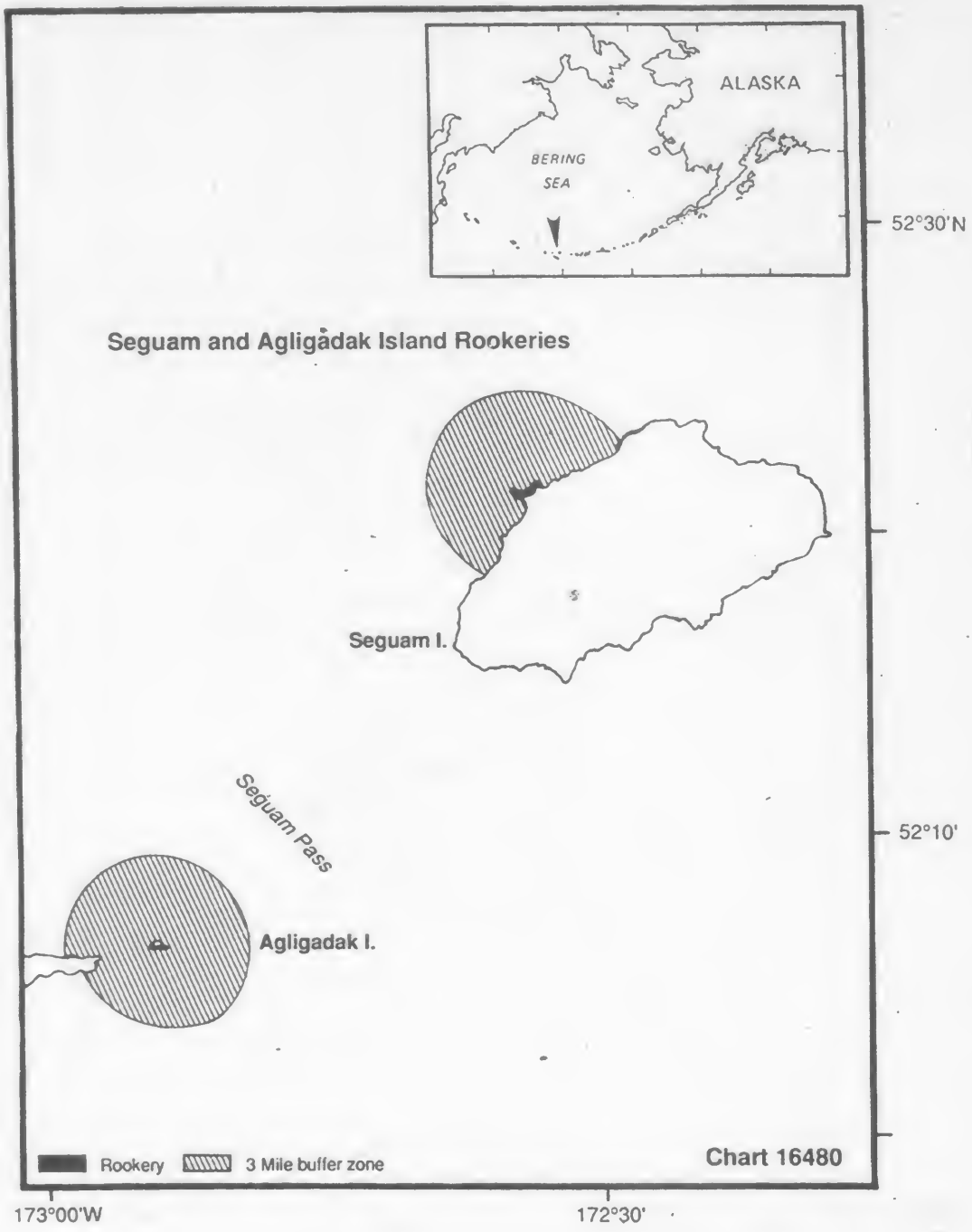

Akun and Akutan
Island Rookeries
ALASKA
BERING
SEA
54°30'N
Akutan Bay
Akun I.
Akutan I.
54°00'
Unalga I.
Rookery
3 Mile buffer zone
Chart 16520
166°00'W
165°30'

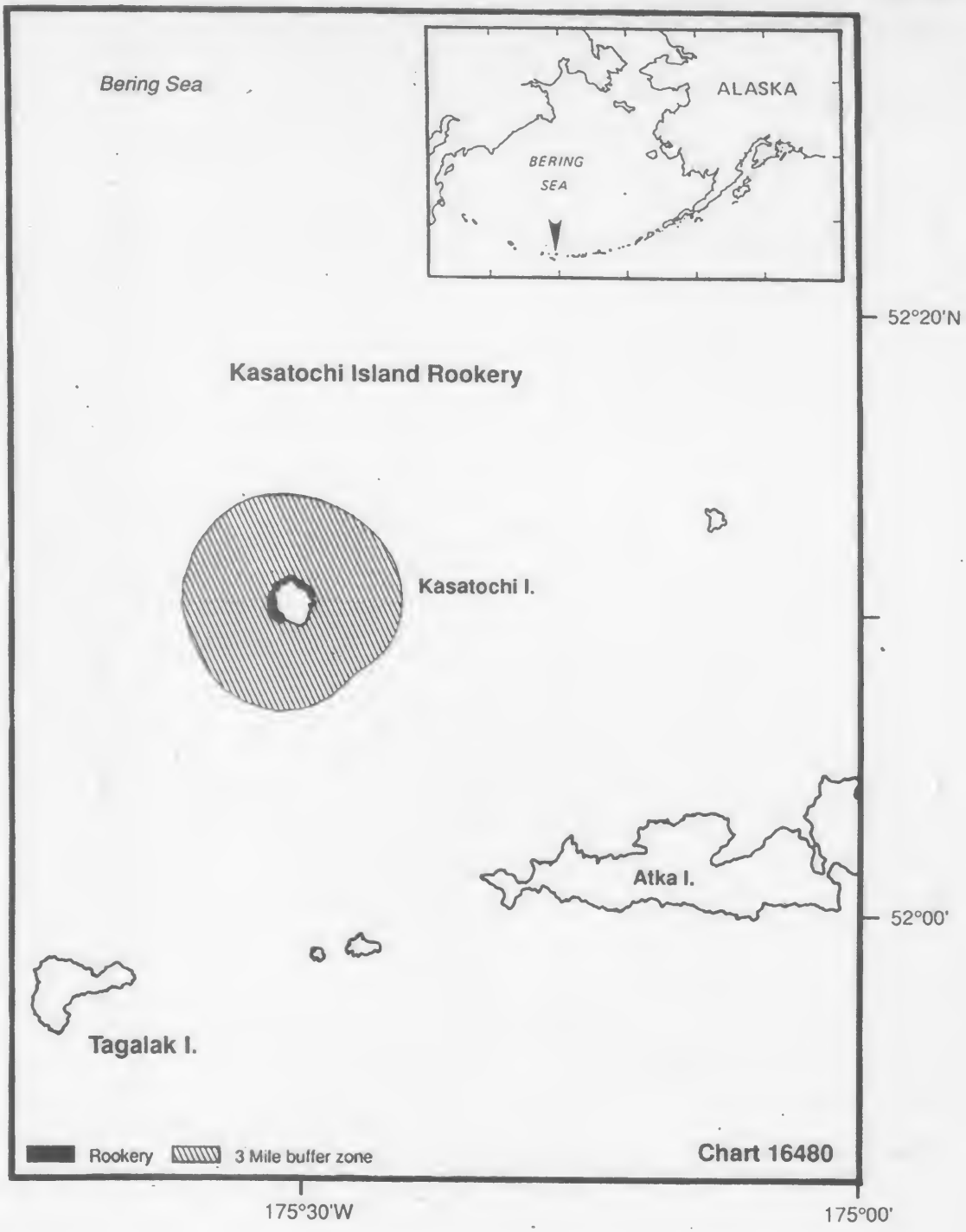

ALASKA
BERING SEA
54°00'N
Bogoslof I.
Bogoslof Island Rookery
Bering Sea
53°40'
Umnak I.
Rookery
3 Mile buffer zone
Chart 16500
168°00'W
167°30'

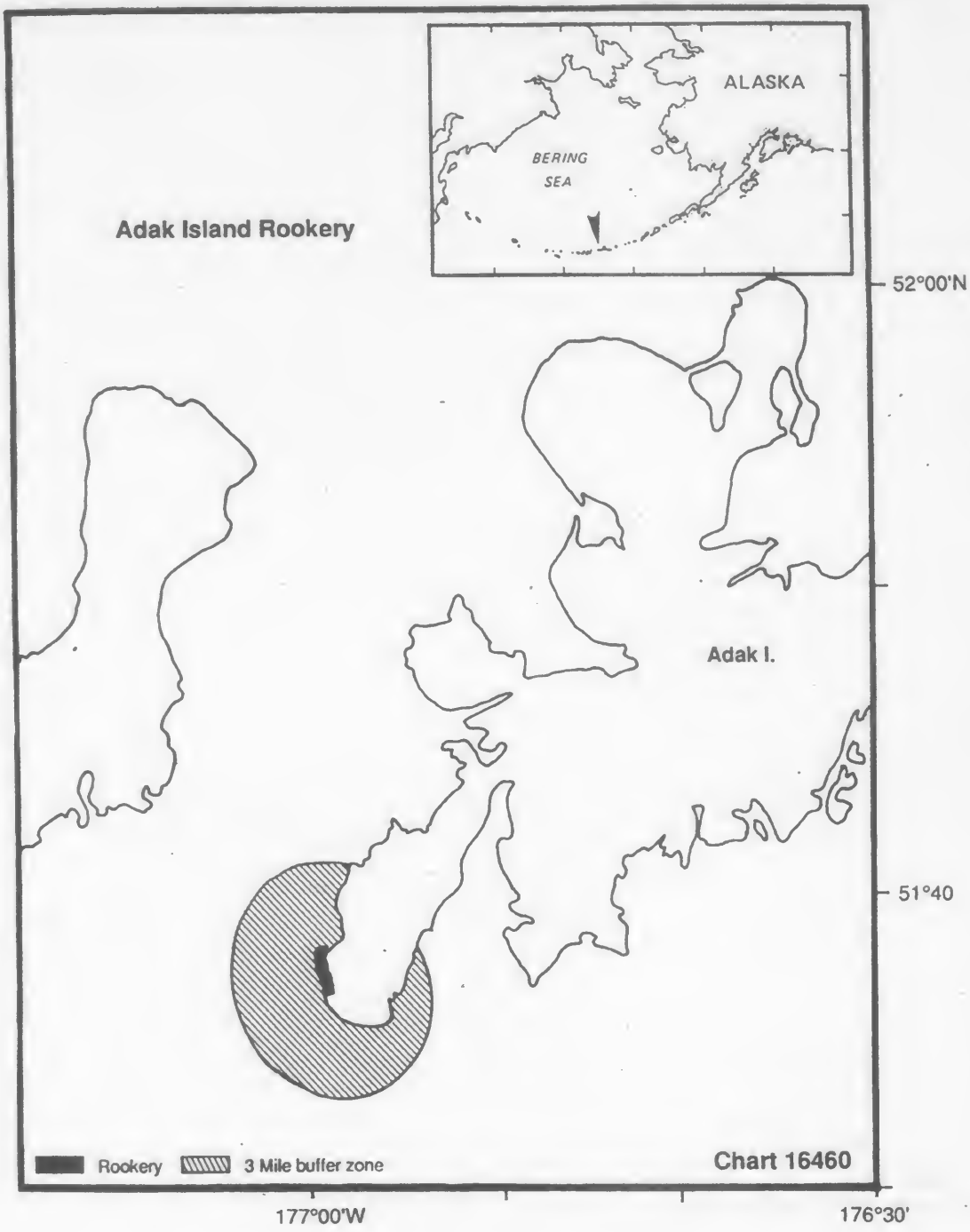

ALASKA
BERING SEA
Bering Sea
Unmak I.
Ogchul Island Rookery
Ogchul I.
53°20'N
53°00'
Rookery
3 Mile buffer zone
Chart 16500
168°30'W
168°00'

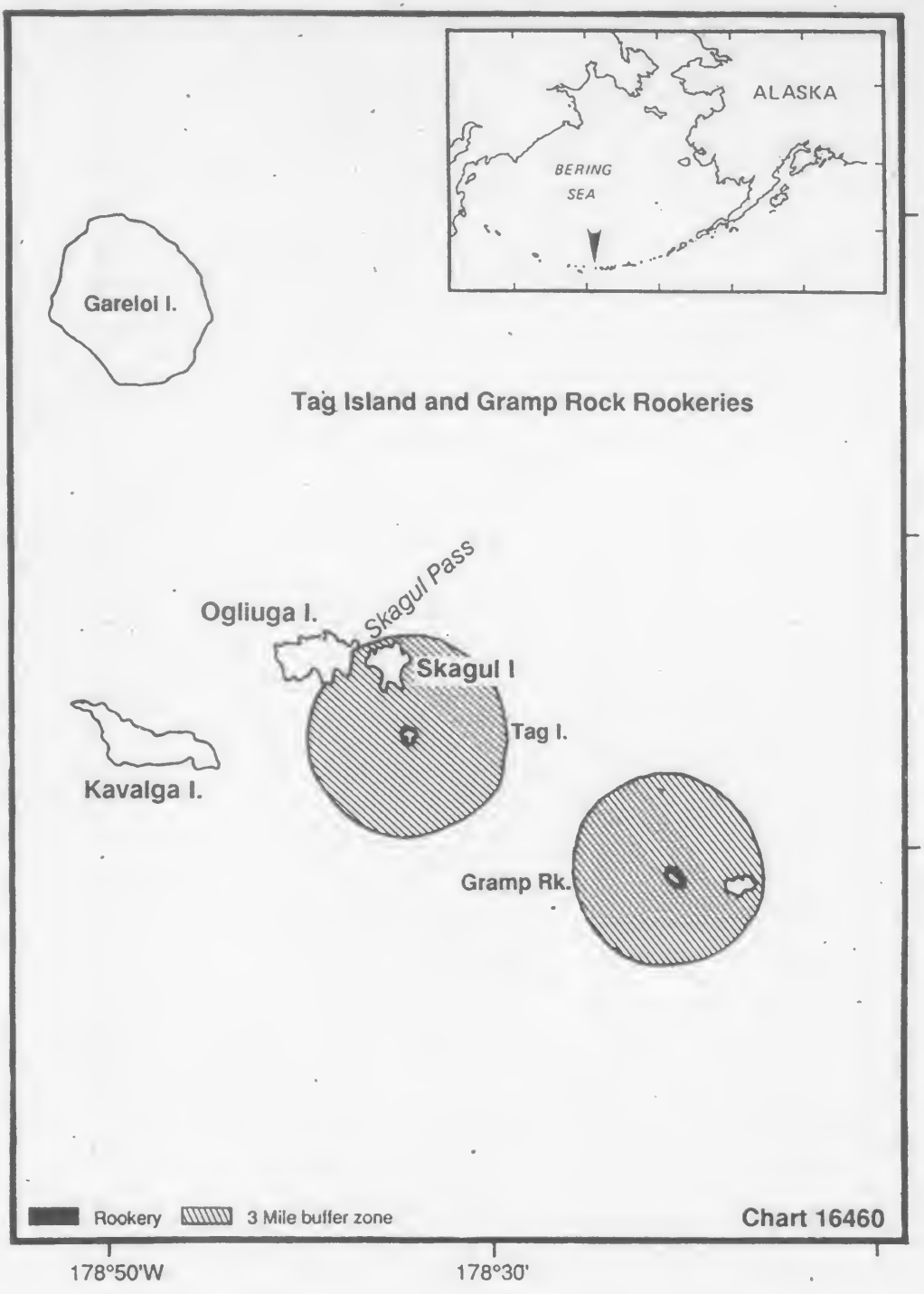

ALASKA
BERING SEA
Bering Sea
53°10'N
Adugak Island Rookery
Adugak I.
Umnak I.
52°50'
Rookery
3 Mile buffer zone
Chart 16500
169°30'W
169°00'

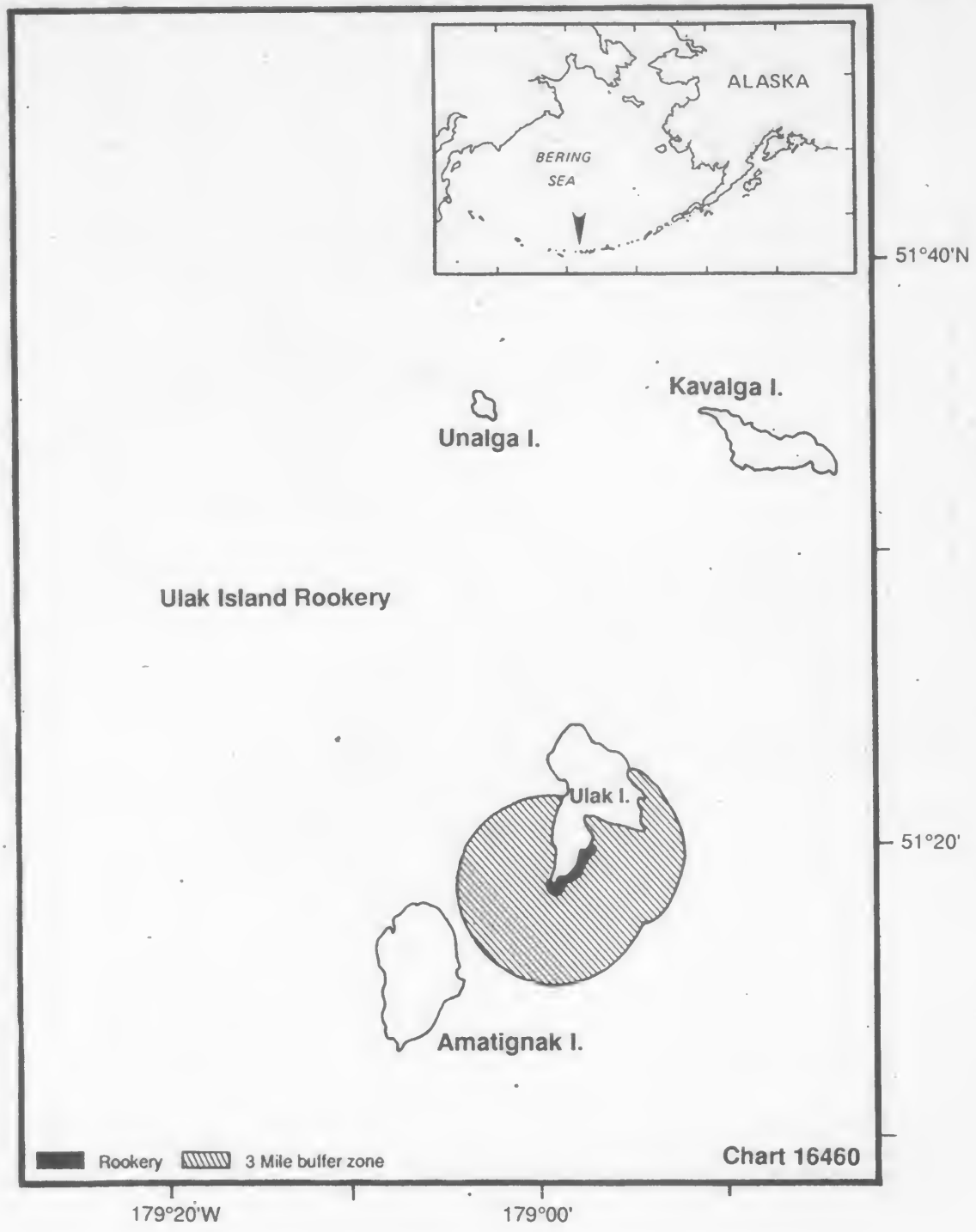

ALASKA
BERING SEA
Bering Sea
53°00'N
Yunaska Island Rookery
Yunaska I.
52°40'
Rookery
3 Mile buffer zone
Chart 16500
171°00'W
170°30'

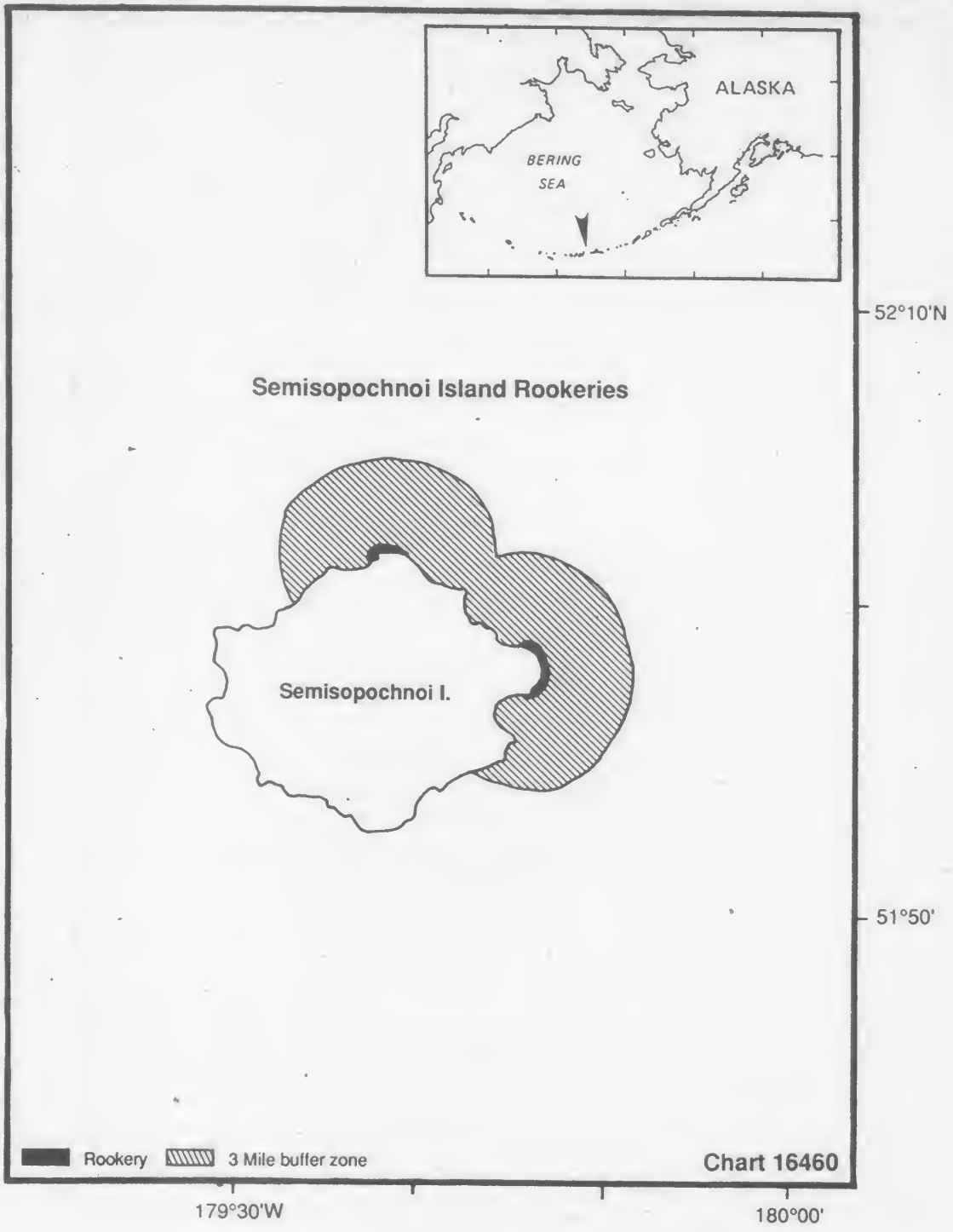

ALASKA
BERING SEA
52°30'N
Seguam and Agligadak Island Rookeries
Seguam I.
Seguam Pass
52°10'
Agligadak I.
Rookery
3 Mile buffer zone
Chart 16480
173°00'W
172°30'

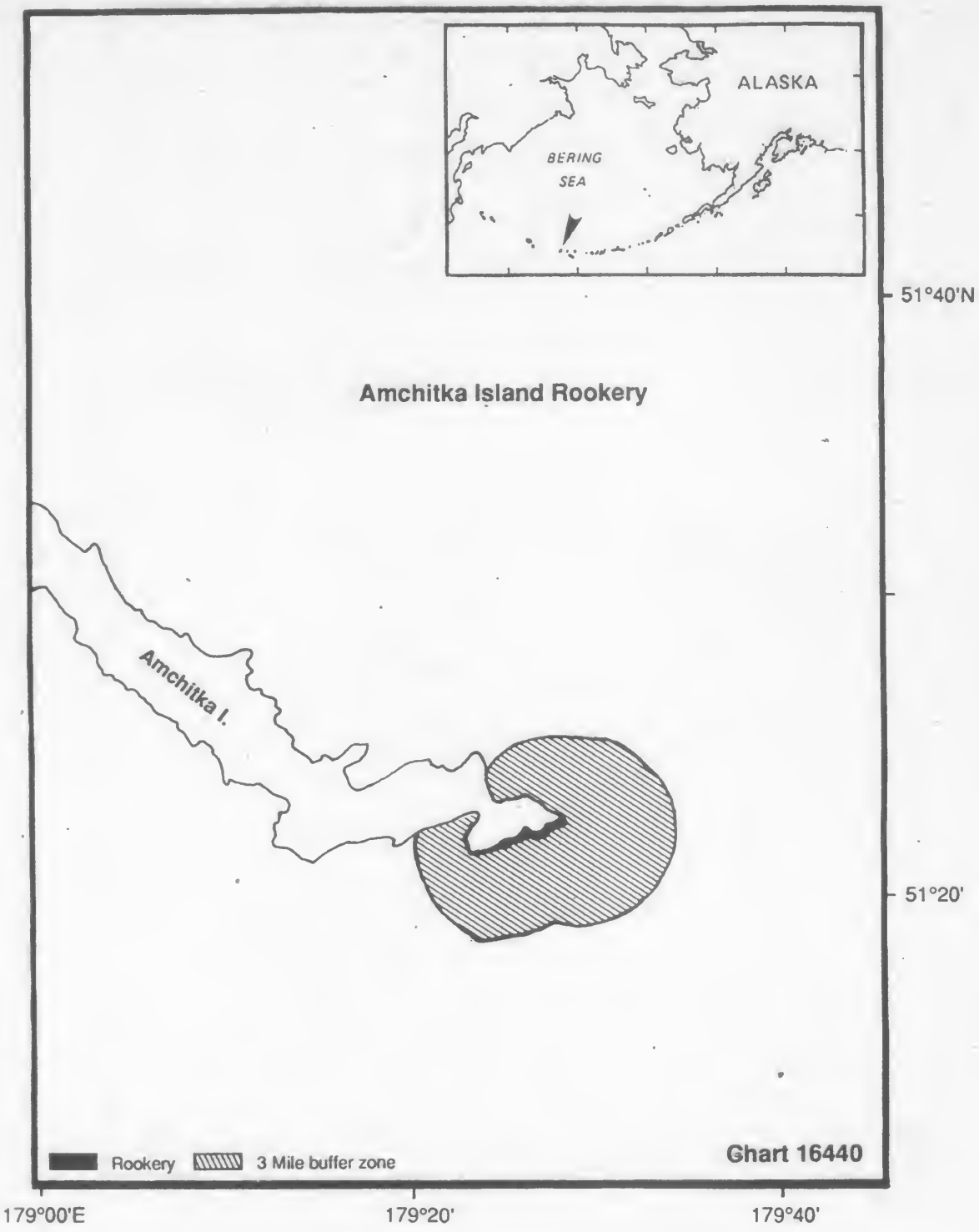

Bering Sea
ALASKA
BERING SEA
52°20'N
Kasatochi Island Rookery
Kasatochi I.
Atka I.
52°00'
Tagalak I.
Rookery
3 Mile buffer zone
Chart 16480
175°30'W
175°00'

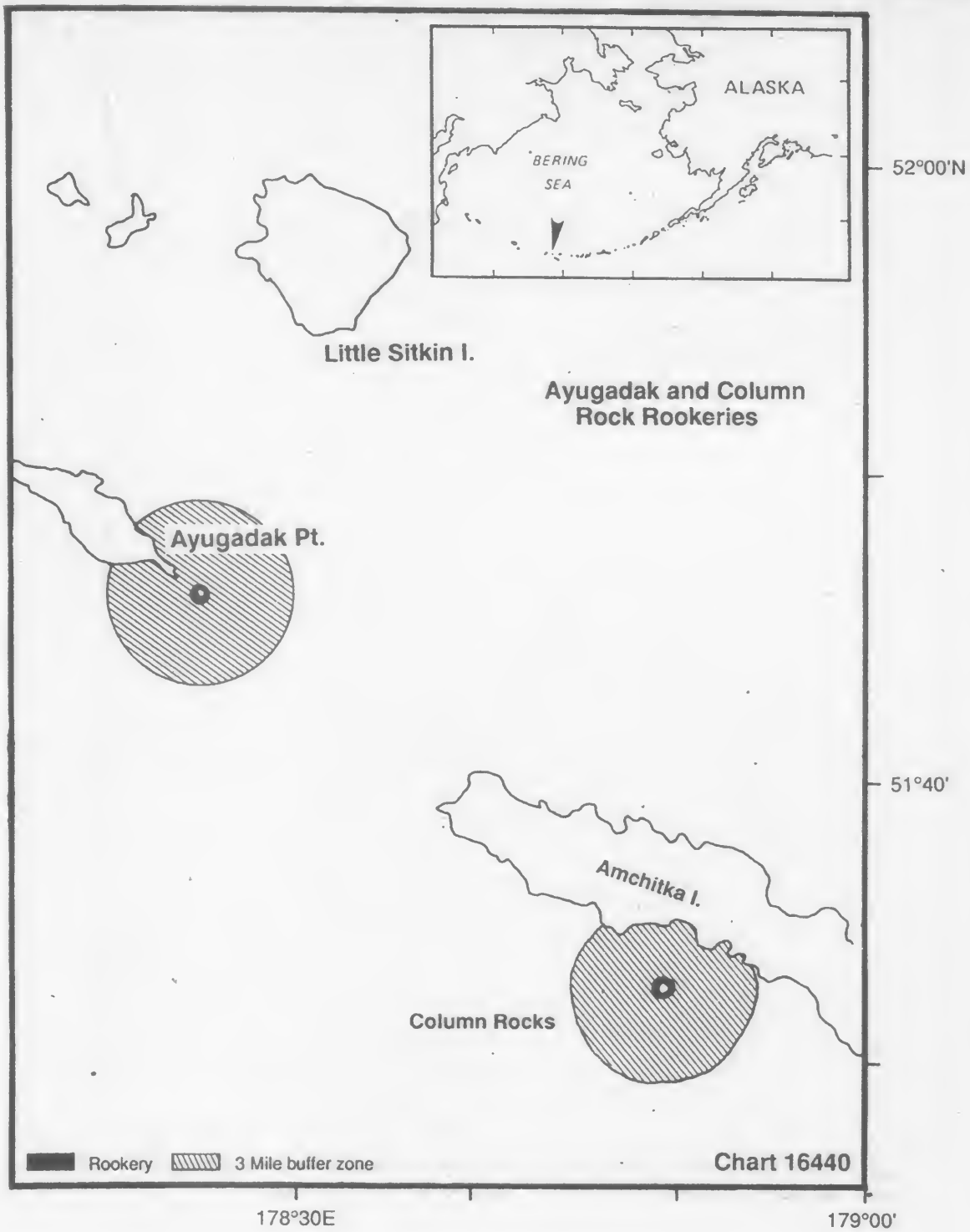

ALASKA
BERING SEA
Adak Island Rookery
52°00'N
Adak I.
51°40
Rookery
3 Mile buffer zone
Chart 16460
177°00'W
176°30'

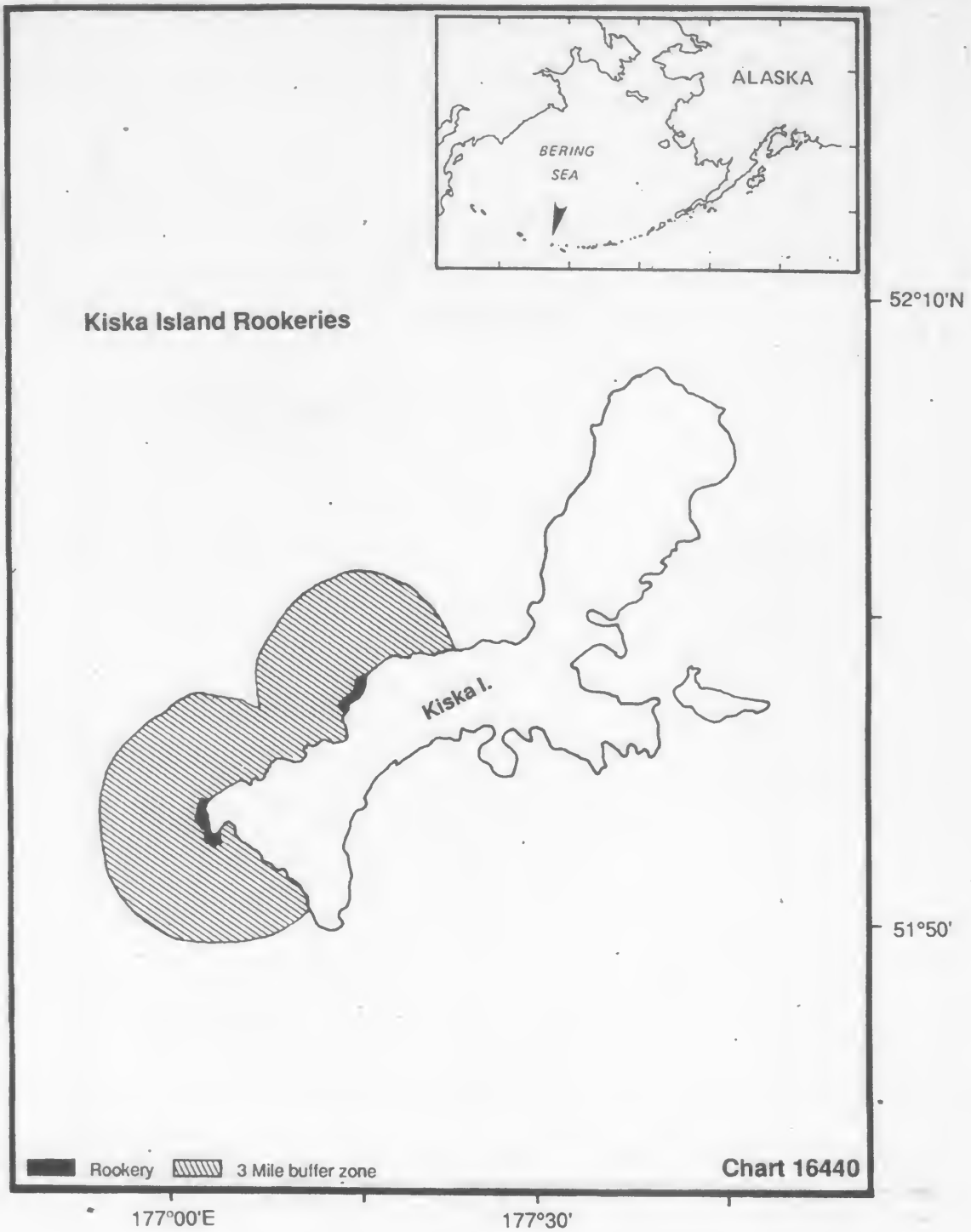

ALASKA
BERING SEA
51°50'N
Gareloi I.
Tag Island and Gramp Rock Rookeries
Ogliuga I.
Skagul Pass
Skagul I
Tag I.
Kavalga I.
51°30'
Gramp Rk.
Rookery
3 Mile buffer zone
Chart 16460
178°50'W
178°30'

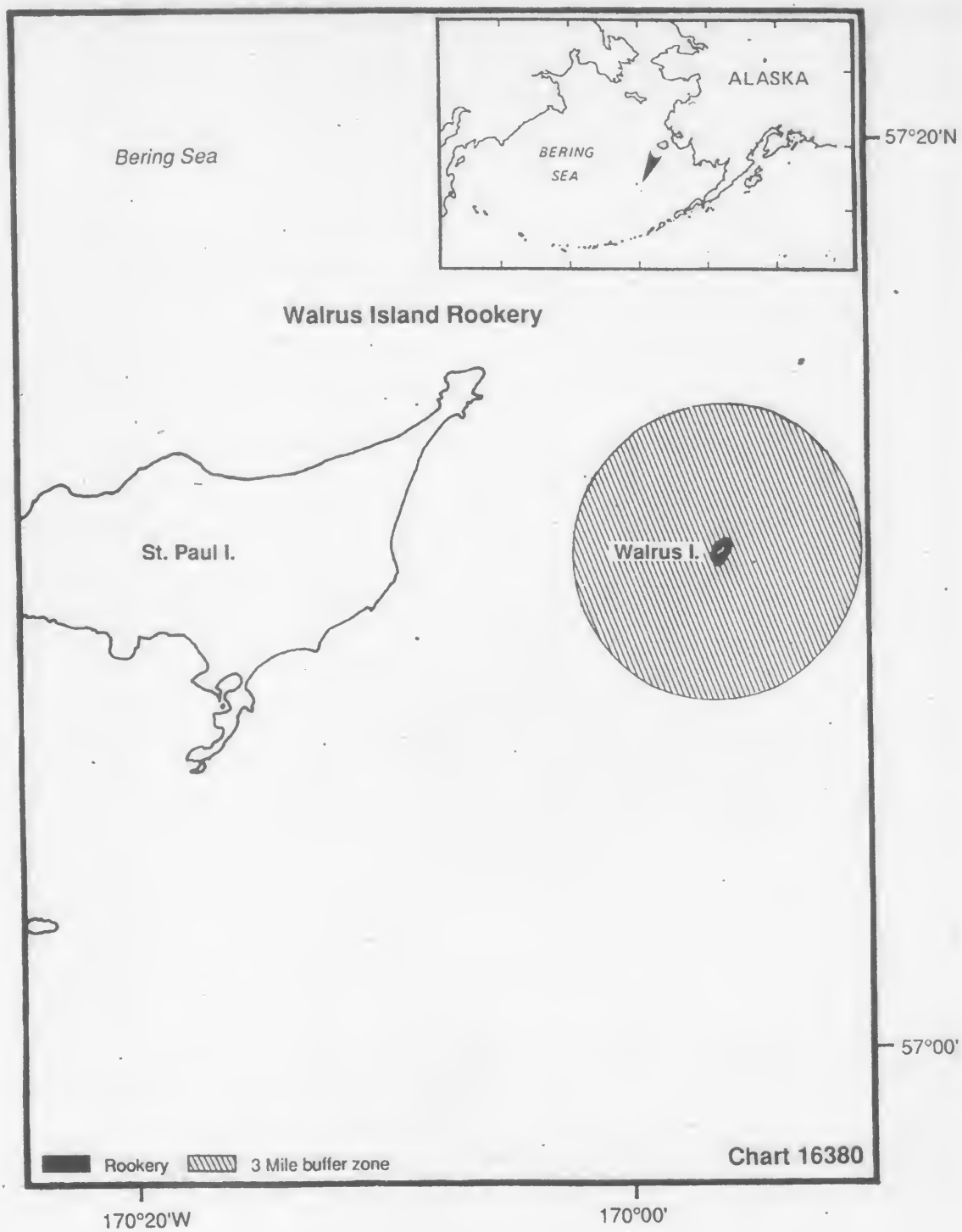

ALASKA
BERING SEA
51°40'N
Kavalga I.
Unalga I.
Ulak Island Rookery
Ulak I.
51°20'
Amatignak I.
Rookery
3 Mile buffer zone
Chart 16460
179°20'W
179°00'

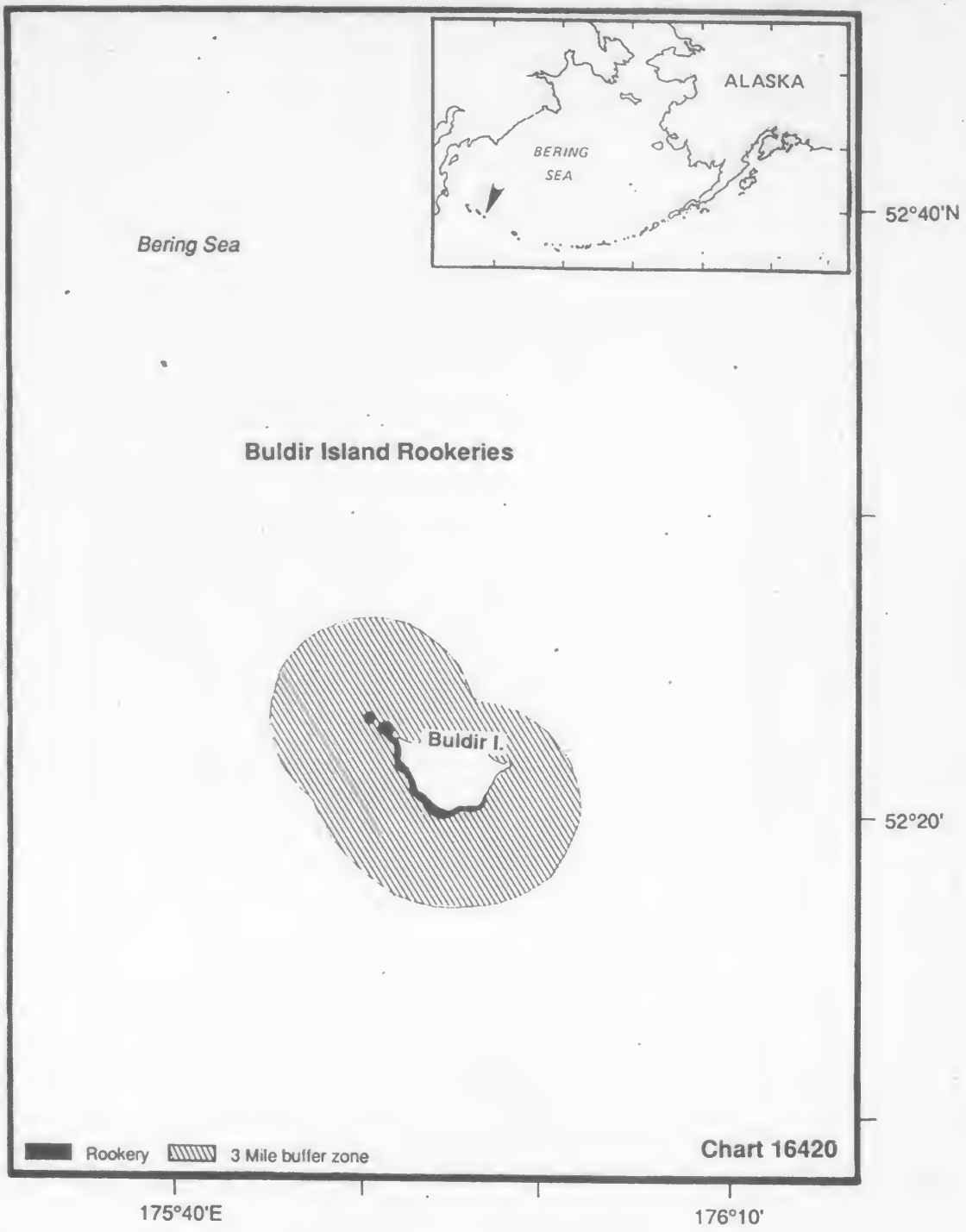

ALASKA
BERING SEA
52°10'N
Semisopochnoi Island Rookeries
Semisopochnoi I.
51°50'
Rookery
3 Mile buffer zone
Chart 16460
179°30'W
180°00'

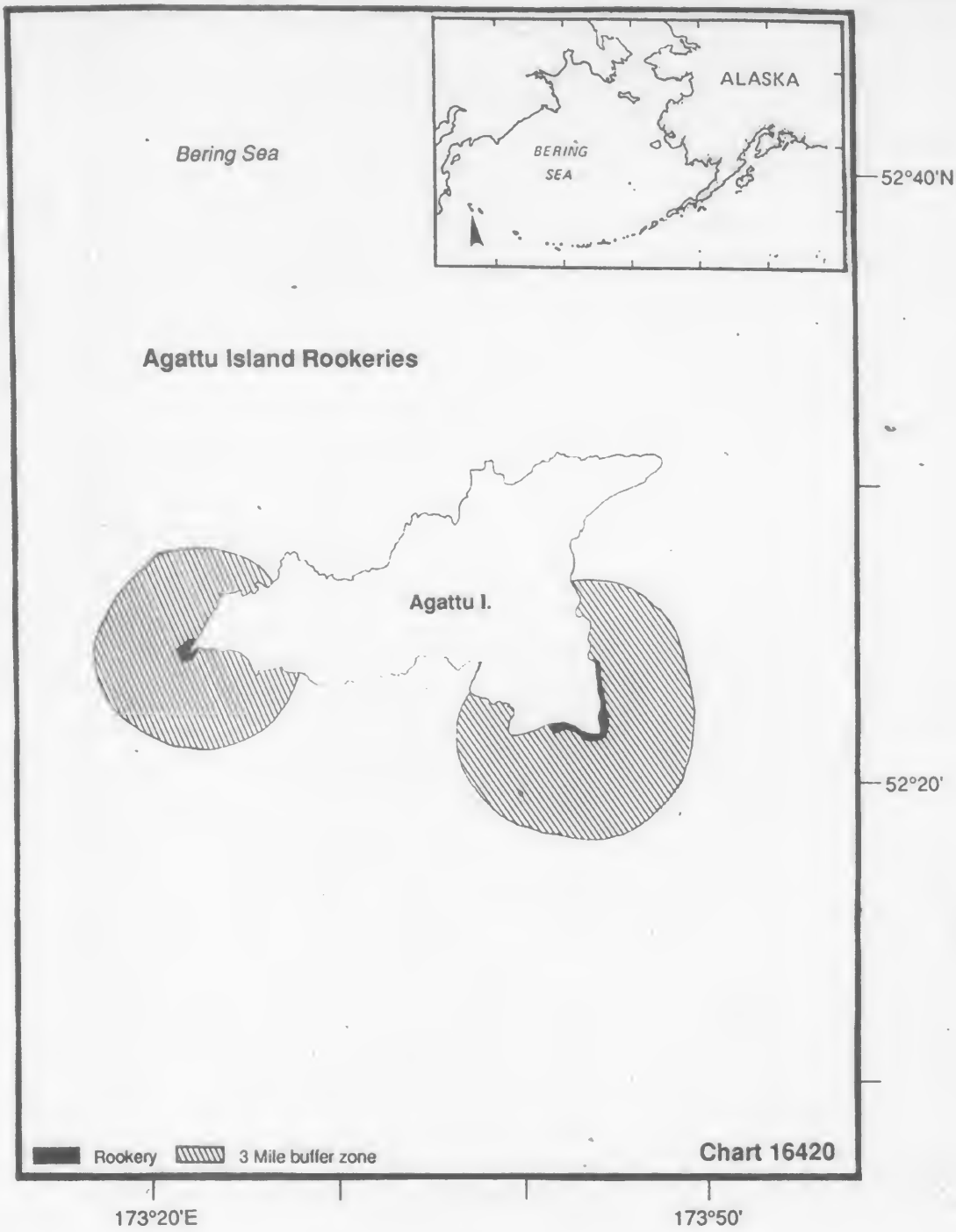

ALASKA
BERING SEA
51°40'N
Amchitka Island Rookery
Amchitka I.
51°20'
Rookery
3 Mile buffer zone
Chart 16440
179°00'E
179°20'
179°40'

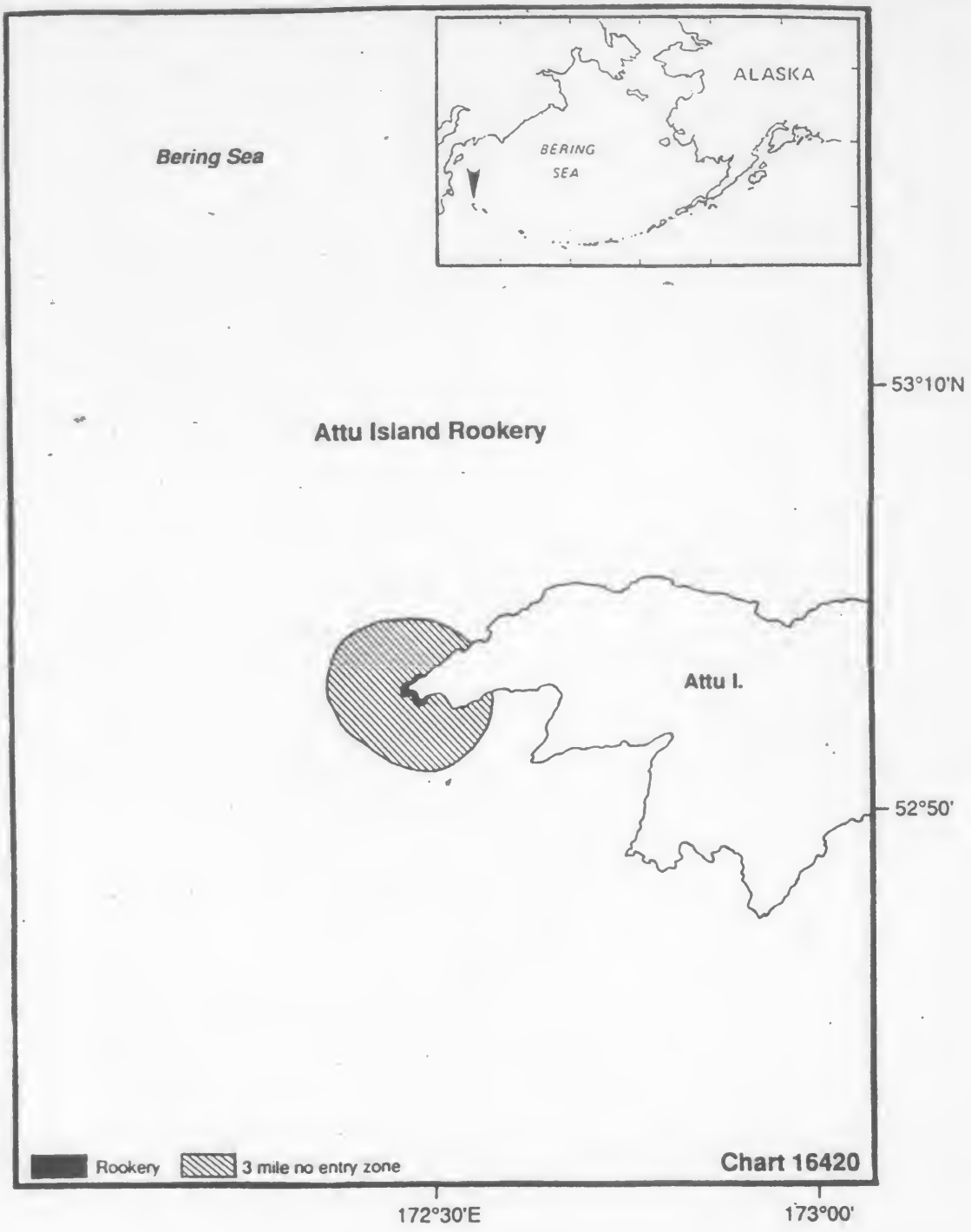

ALASKA
BERING SEA
52°00'N
Little Sitkin I.
Ayugadak and Column Rock Rookeries
Ayugadak Pt.
51°40'
Amchitka I.
Column Rocks
Rookery
3 Mile buffer zone
Chart 16440
178°30E
179°00'


ALASKA
BERING
SEA
Kiska Island Rookeries
52°10'N
Kiska I.
51°50'
Rookery
3 Mile buffer zone
Chart 16440
177°00'E
177°30'


ALASKA
BERING SEA
Bering Sea
57°20'N
Walrus Island Rookery
St. Paul I.
Walrus I.
57°00'
Rookery
3 Mile buffer zone
Chart 16380
170°20'W
170°00'


ALASKA
BERING SEA
Bering Sea
52°40'N
Buldir Island Rookeries
Buldir I.
52°20'
Rookery
3 Mile buffer zone
Chart 16420
175°40'E
176°10'


ALASKA
BERING SEA
Bering Sea
52°40'N
Agattu Island Rookeries
Agattu I.
52°20'
Rookery
3 Mile buffer zone
Chart 16420
173°20'E
173°50'



(iv) *Commercial Fishing Operations.* The incidental mortality and serious injury of endangered Steller sea lions in commercial fisheries can be authorized in compliance with sections 101(a)(5) and 118 of the Marine Mammal Protection Act.

(2) *Exceptions*—(i) *Permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (d)(1) of this section in accordance with and subject to the provisions of part 222, subpart C of this chapter—General Permit Procedures.

(ii) *Official activities.* The taking of Steller sea lions must be reported within 30 days to the Regional Administrator, Alaska Region. Paragraph (d)(1) of this section does not prohibit or restrict a

Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(A) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(B) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(iii) *Subsistence takings by Alaska natives.* Paragraph (d)(1) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(iv) *Emergency situations.* Paragraph (d)(1)(ii) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(v) *Exemptions.* Paragraph (d)(1)(ii) of this section does not apply to any activity authorized by a prior written exemption from the Regional Administrator, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the **Federal Register.** An exemption may be granted only if the activity will not have a significant adverse effect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(vi) *Navigational transit.* Paragraph (d)(1)(ii) of this section does not prohibit a vessel in transit from passing through a strait, narrows, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrows, or passageway does not indicate that the area is safe for navigation. The listed straits, narrows, or passageways include the following:

Rookery	Straits, narrow, or pass
Akutan Island	Akutan Pass between Cape Morgan and Unalga Island.
Clubbing Rocks	Between Clubbing Rocks and Cherni Island.
Outer Island	Wildcat Pass between Rabbit and Ragged Islands.

(3) *Penalties.* (i) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(ii) Any vessel used in violation of this subsection or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

* * * * *

[FR Doc. 2013–25261 Filed 11–1–13; 8:45 am]

BILLING CODE 3510–22–C

FEDERAL REGISTER

Vol. 78 Monday,
No. 213 November 4, 2013

Part IV

Department of Energy

10 CFR Parts 429, 430 and 431
Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Residential and Commercial Water Heaters; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429, 430 and 431

[Docket Number EERE–2011–BT–TP–0042]

RIN 1904–AC53

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Residential and Commercial Water Heaters

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) proposes to revise its test procedure for residential water heaters and certain commercial water heaters established under the Energy Policy and Conservation Act. This rulemaking will fulfill DOE's statutory obligation for residential and certain commercial water heaters to review its test procedure for covered products and equipment at least once every seven years. In addition, this rulemaking will satisfy DOE's statutory obligation to develop a uniform efficiency descriptor for residential and commercial water heaters. The proposed test method would apply the same efficiency descriptor to all residential and certain commercial water heaters, and it would extend coverage to eliminate certain gaps in the current residential test procedure, update the simulated-use-test draw pattern, and update the water delivery temperature requirement. DOE is also announcing a public meeting to discuss and receive comments on issues presented in this test procedure rulemaking.

DATES:

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than January 21, 2014. See section V, "Public Participation," for details.

Meeting: DOE will hold a public meeting on December 6, 2013 from 9:00 a.m. to 4:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards at the phone number above to initiate the necessary procedures. Please also note that any person wishing to bring a laptop computer into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons may also attend the public meeting via webinar. For more information, refer to section V, "Public Participation," near the end of this notice of proposed rulemaking.

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

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

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

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

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-TP-0042*. This Web page contains a link to the docket for this notice of proposed rulemaking on the site. The Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, "Public Participation," for information on how to submit comments through *www.regulations.gov*.

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

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov*.

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

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 ("EPCA" or "the Act"), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These include residential water heaters, one subject of today's notice of proposed rulemaking. (42 U.S.C. 6292(a)(4)) Title III, Part C [3] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, Sec. 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes the commercial water-heating equipment that is another subject of this rulemaking. (42 U.S.C. 6311(1)(K))

Under EPCA, energy conservation programs generally consist of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products and equipment must use as both the basis for certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted pursuant to EPCA, and for making other representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s); 42 U.S.C. 6314) Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures that DOE must follow when prescribing or amending test procedures for residential water heaters. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

For commercial water heaters, EPCA requires that if the test procedure referenced in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 is updated, DOE must update its test procedure to be consistent with the amended test procedure in ASHRAE Standard 90.1, "Energy Standard for Buildings Except Low-Rise Residential Buildings," unless DOE determines by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure is not reasonably designed to produce test results which reflect the energy efficiency, energy use, or estimated operating costs of that type of ASHRAE equipment during a representative average use cycle. In addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4))

In any rulemaking to amend a test procedure, DOE must determine the extent to which the proposed test procedure would alter the product's measured energy efficiency. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

Further, the Energy Independence and Security Act of 2007 (EISA 2007) amended EPCA to require that at least once every 7 years, DOE must review test procedures for all covered products and either amend test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6293(b)(3) for residential products or 42 U.S.C. 6314(a)(2)-(3) for commercial equipment) or publish notice in the **Federal Register** of any determination not to amend a test procedure. (42 U.S.C. 6293(b)(1)(A); 42 U.S.C. 6314(a)(1)(A)) Under this requirement, DOE must review the test procedures for residential water heaters not later than December 19, 2014 (*i.e.*, 7 years after the enactment of EISA 2007), and DOE must review the test procedures for commercial water heaters not later than May 16, 2019 (*i.e.*, 7 years after the last final rule for commercial water heater test procedures [4]). Thus, the final rule resulting from this rulemaking will satisfy the requirement to review the test procedures for residential and certain commercial water heaters every seven years.

DOE's test procedure for residential water heaters is found in the Code of Federal Regulations (CFR) at 10 CFR 430.23(e) and 10 CFR part 430, subpart B, appendix E. The test procedure includes provisions for determining the energy efficiency (energy factor (EF)), as well as the annual energy consumption of these products. DOE's test procedure for commercial water heaters is found at 10 CFR 431.106; that test procedure incorporates by reference American National Standards Institute (ANSI) Z21.10.3, *Gas Water Heaters—Volume III, Storage Water Heaters With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous*, and provides a method for determining the thermal efficiency and standby loss of this equipment.

In addition to the test procedure review provision discussed above, EISA 2007 also amended EPCA to require DOE to amend its test procedures for all covered residential products to include measurement of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Consequently, DOE recently completed a rulemaking to

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

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

[4] On May 16, 2012, DOE published a final rule in the **Federal Register** amending the test procedures for commercial water heaters. 77 FR 28928.

consider amending its test procedure for residential water heaters to include provisions for measuring the standby mode and off mode energy consumption of those products. Pursuant to the requirements of EPCA, DOE published a notice of proposed rulemaking (NOPR) in the **Federal Register** on August 30, 2010, for three different residential heating products (water heaters, pool heaters, and direct heating equipment) related to standby mode and off mode energy consumption, but the NOPR proposed no amendments to the DOE test procedure for residential water heaters because DOE tentatively concluded that standby mode and off mode energy consumption was already accounted for in the existing DOE test method.[5] 75 FR 52892, 52895. Subsequently, DOE published a final rule in the **Federal Register** on December 17, 2012, which affirmed its conclusion that no changes were needed to the existing test procedure for residential water heaters. 77 FR 74559, 74561–74562. However, that rulemaking was limited to consideration of test procedure amendments to address the above-referenced standby mode and off mode requirements: it did not address several other potential issues in DOE's existing test procedure for residential water heaters. DOE addresses these issues in today's NOPR.

On October 12, 2011, DOE published in the **Federal Register** a request for information (RFI) that identified and requested comment on a number of issues regarding the test procedures for residential water heaters. 76 FR 63211. DOE accepted comments and information on the RFI until November 28, 2011, and considered all feedback received when developing the proposals contained in this notice. Each of the issues raised in the RFI is discussed in detail in section III, along with comments received on the issues and DOE's responses. In addition, several topics not addressed in the RFI but brought up by interested parties in their comments are discussed in section III of this NOPR.

On December 18, 2012, the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210, was signed into law. In relevant part, it amended EPCA to require that DOE publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for covered residential water heaters and commercial water heating equipment within one year of the enactment of AEMTCA. (42 U.S.C. 6295(e)(5)(B)) The final rule must replace the current energy factor, thermal efficiency, and standby loss metrics with a uniform efficiency descriptor. (42 U.S.C. 6295(e)(5)(C)) AEMTCA requires that, beginning one year after the date of publication of DOE's final rule establishing the uniform descriptor, the efficiency standards for covered water heaters must be denominated according to the uniform efficiency descriptor established in the final rule (42 U.S.C. 6295(e)(5)(D)), and that DOE must develop a mathematical conversion factor for converting the measurement of efficiency for covered water heaters from the test procedures and metrics currently in effect to the new uniform energy descriptor. (42 U.S.C. 6295(e)(5)(E)(i)–(ii)) After the effective date of the final rule, covered water heaters shall be considered to comply with the final rule and with any revised labeling requirements established by the Federal Trade Commission (FTC) to carry out the final rule, if the covered water heater was manufactured prior to the effective date of the final rule and complies with the efficiency standards and labeling requirements in effect prior to the final rule. (42 U.S.C. 6295(e)(5)(K))

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

AEMTCA outlines DOE's various options for establishing a new uniform efficiency descripfor for water heaters. The options that AEMTCA provides to DOE include: (1) A revised version of the energy factor descriptor currently in use; (2) the thermal efficiency and standby loss descriptors currently in use; (3) a revised version of the thermal efficiency and standby loss descriptors; (4) a hybrid of descriptors; or (5) a new approach. (42 U.S.C. 6295(e)(5)(G)) Lastly, AEMTCA requires that DOE invite stakeholders to participate in the rulemaking process, and that DOE contract with the National Institute of Standards and Technology (NIST), as necessary, to conduct testing and simulation of alternative descriptors identified for consideration. (42 U.S.C. 6295(e)(5)(I)–(J))

DOE published an RFI on January 11, 2013 requesting input on the various issues pertaining to water heaters discussed in AEMTCA. 78 FR 2340. The feedback received from stakeholders was taken into consideration and is discussed further in section III of this NOPR.

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to modify the current test procedures for residential water heaters and certain commercial water heaters. The proposed amendments would modify the test procedure to be more representative of conditions encountered in the field (including modifications to both the test conditions and the draw patterns) and expand the scope of the test procedure to apply to certain commercial water heaters and certain residential water heaters that are currently not covered by the test procedure. The following paragraphs summarize these proposed changes.

DOE proposes to modify the test procedure for water heaters to establish a uniform descriptor that can be applied to: (1) All residential water heaters (including certain residential water heaters that are covered products under EPCA's definition of "water heater" at 42 U.S.C. 6291(27), but that are not covered under the existing test method); and (2) to certain commercial water heaters that have residential applications. This includes the proposed establishment of test procedure provisions that are applicable to water heaters with storage volumes between 2 gallons (7.6 L) and 20 gallons (76 L), and the proposed creation of a definition for "electric instantaneous water heater." In addition, DOE proposes to establish a new equipment class of commercial water heaters and corresponding definition for "light commercial water heater." DOE proposes to require water heaters that would be classified as "light commercial" to be tested using the test procedure for the uniform efficiency descriptor being proposed in this NOPR.

DOE is also proposing the use of multiple draw patterns for testing water heaters, with certain draw patterns prescribed as a function of equipment capacity. Further, DOE proposes updates to the water heater draw pattern to be more reflective of actual field usage based on recent field test data. Lastly, DOE is modifying the water delivery temperature requirement to better reflect conditions as seen in typical installations in the field.

[5] For more information, please visit DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/waterheaters.html.*

III. Discussion

In response to the October 2011 RFI, DOE received 19 written comments related to water heaters from the following interested parties: Pacific Gas and Electric Company (PGE), Applied Energy Technology (AET), Davis Energy Group, American Council for an Energy-Efficient Economy (ACEEE), Southern California Edison (SCE), National Renewable Energy Laboratory (NREL), Natural Resources Canada (NRCan), Natural Resources Defense Council (NRDC), Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Northwest Energy Efficiency Alliance (NEEA), American Gas Association (AGA), National Propane Gas Association (NPGA), A.O. Smith Corporation (AO Smith), Bradford White Corporation (Bradford White), Lochinvar, Stone Mountain Technologies, Bosch Thermotechnology Corp. (Bosch), General Electric Company (GE), and ASHRAE.

In response to the January 2013 RFI, DOE received 18 written comments from the following interested parties: NREL, Bradford White, AGA, NPGA, AHRI, AO Smith, joint efficiency advocates (joint comment),[6] GE, NEEA, Rheem Manufacturing Company (Rheem), American Public Gas Association (APGA), Edison Electric Institute (EEI), Heat Transfer Products Inc. (HTP), Natural Resources Canada (NRCan), Seisco International Limited (Seisco), Aquarensics, and two separate comments from the University of Houston—Clear Lake (UHCL1, UHCL2).

These interested parties commented on a range of issues, including those identified by DOE in the October 2011 RFI and the January 2013 RFI, as well as several other pertinent issues. The issues on which DOE received comment, as well as DOE's response to those comments and the resulting proposed changes to the test procedures for water heaters, are discussed in the subsections immediately below.

A. Scope

DOE's test procedures for residential water heaters codified at 10 CFR 430.23(e) and 10 CFR part 430, subpart B, appendix E address gas-fired, electric, and oil-fired storage-type (*i.e.*, storage volume not less than 20 gallons (76 L)) and gas-fired and electric instantaneous-type (*i.e.*, storage volume less than 2 gallons (7.6 L)) water heaters. However, the DOE test procedure does not define "electric instantaneous water heater." In addition, it does not address the following types of products: (1) Gas-fired water heaters that have a storage volume at or above 2 gallons and less than 20 gallons (76 L); (2) electric storage water heaters with storage volume less than 20 gallons (76 L); and (3) storage water heaters with very large storage capacities, including oil-fired water heaters with storage volumes greater than 50 gallons (190 L), gas-fired water heaters with storage volumes above 100 gallons (380 L), and electric water heaters with storage volumes above 120 gallons (450 L). As discussed in the following sections, DOE proposes to expand the scope of coverage of its test method so that it is applicable to all products that meet the definition of residential water heater, including those products listed above which are currently not addressed by the existing DOE test method. DOE is also revising 10 CFR 430.32(d) to clarify the applicability of the existing standards with respect to the expanded test procedure scope.

DOE's test procedures for commercial water heaters are found at 10 CFR 431.106. In terms of capacity, the procedures for commercial water heaters cover storage water heaters with an input rating up to 4,000 British thermal units (Btu) per hour (Btu/h) per gallon of stored water, instantaneous water heaters with input ratings not less than 4,000 Btu/h per gallon of stored water, and hot water supply boilers with input ratings from 300,000 Btu/h to 12,500,000 Btu/h and of at least 4,000 Btu/h per gallon of stored water. Units using natural gas, oil, or electricity are covered by these test methods.

EPCA includes definitions for both residential and commercial water heaters that set the scope of DOE's authority for these products. (42 U.S.C. 6291(27); 42 U.S.C. 6311(12)) As required by AEMTCA, DOE proposes to create a uniform metric and test method for all covered water heaters,[7] regardless of whether a particular water heater falls under the scope of residential water heaters or commercial water heaters as defined in EPCA. In doing so, DOE also proposes to expand the scope of the test procedure to include definitions and test methods for the types of products noted above that are not covered by DOE's residential test procedure. DOE identified these topics as issues for comment in the October 2011 RFI and the January 2013 RFI. 76 FR 63211, 63212–63213 (Oct. 12, 2011); 78 FR 2340, 2344–2346 (Jan. 11, 2013).

1. Coverage Range of Uniform Metric and Test Procedure

In the January 2013 RFI, DOE requested comment on whether the uniform efficiency descriptor required by AEMTCA should apply to all types of residential and commercial water heaters covered by EPCA, in addition to hot water supply boilers and unfired hot water storage tanks. In requesting comment, DOE acknowledged that AEMTCA provides for the possibility of an exclusion for certain water heaters from the uniform efficiency metric and accompanying test method. 78 FR 2340, 2345–46 (Jan. 11, 2013).

DOE received 7 comments that opposed DOE's tentative interpretation that AEMTCA requires the uniform descriptor to apply to all types of residential and commercial water heaters and indicated that DOE should utilize the statutory provision permitting an exclusion for any specific category of otherwise covered water heaters that do not have a residential use. (Bradford White, No. 30 at p. 2: AHRI, No. 33 at p. 1; AO Smith, No. 34 at p. 1; Joint comment, No. 35 at p. 2; NEEA, No. 37 at p. 2; Rheem, No. 38 at p. 2; HTP, No. 41 at p. 1)[8] Bradford White recommended that the uniform efficiency descriptor be limited to water heaters with inputs less than 200,000 Btu/h, which would cover those water heaters intended for residential applications. (Bradford White, No. 30 at p. 2) AHRI, AO Smith, Rheem, and HTP indicated that the legislation was intended to apply to residential products only and that development of a uniform metric and test method for all water heaters is not realistic given the substantially different duty cycles between water heaters meant for commercial applications and those meant for residential applications. (AHRI, No. 33 at pp. 1–2; AO Smith, No. 34 at p. 1; Rheem, No. 38 at p. 2; HTP, No. 41 at p. 1) The joint commenters supported a realignment of the scope that includes all water heaters except those clearly designed to deliver large amounts of hot water. (Joint comment, No. 35 at p. 2) NEEA recommended that DOE should focus on water heaters

[6] ACEEE submitted a joint comment on behalf of ACEEE, the Appliance Standards Awareness Project (ASAP), the National Consumer Law Center (NCLC), the Natural Resources Defense Council (NRDC), the Northeast Energy Efficiency Partnerships (NEEP), and the Northwest Power and Conservation Council (NPCC).

[7] As provided by 42 U.S.C. 6295(e)(5)(F), DOE is proposing to allow for the exclusion from the uniform efficiency descriptor of certain commercial water heaters that do not have a residential use and can be clearly described in the final rule and are effectively rated using the thermal efficiency and standby loss descriptors. The water heaters that DOE is proposing to exclude are discussed further in section III.A.1.

[8] All references to comments received in response to the October 2011 and January 2013 RFI's identify the commenter, the identification number applied by DOE, and the page of the comment package on which the particular point has been discussed.

meant for residential and small commercial applications. (NEEA, No. 37 at p. 2) No commenters supported DOE's tentative interpretation that AEMTCA requires the uniform descriptor to apply to all types of residential and commercial water heaters.

After considering the comments received, DOE proposes to exclude from the uniform efficiency descriptor any specific category of water heater that does not have a residential use. As noted above, AEMTCA provides that DOE can exclude from the uniform descriptor any specific categories of covered water heaters that do not have a residential use, can be clearly described in the final rule, and are effectively rated using the current thermal efficiency and standby loss descriptors. (42 U.S.C. 6295(e)(5)(F)) DOE received 13 comments regarding how to define water heaters that do not have a residential application. In light of these comments, DOE proposes to define a new classification of commercial water heaters for which the uniform efficiency descriptor would apply (*i.e.*, "light commercial water heaters"), which DOE believes can be clearly distinguished from the commercial water heaters for which the uniform descriptor would not apply under this proposal. DOE believes that the current metrics for commercial water heaters that are used only in commercial settings are appropriate and adequate to characterize the performance of such commercial water heaters. Commercial water heaters typically cycle less than residential water heaters due to longer run-times followed by standby periods. (Residential water heaters are typically subject to a number of small draws and short on-times throughout the day.) As a result, cycling losses of water heaters used in commercial applications are generally not as significant as those used in residential applications. Thus, DOE believes that thermal efficiency and standby loss metrics adequately characterize the efficiency in active and standby modes, respectively.

AHRI, AO Smith, and HTP suggested that the following characteristics may be suitable to distinguish water heaters intended for non-residential use: (1) Designed to deliver water at a thermostatically controlled temperature of 180 °F or more; (2) bear a Code Symbol Stamp signifying compliance with the requirements of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code; and (3) require electricity as the primary energy source and require the use of 3-phase external supply. (AHRI, No. 33 at p. 2; AO Smith, No. 34 at p. 1; HTP, No. 41 at p. 2) The joint commenters likewise stated that water heaters utilizing 3-phase electric power, designed to deliver water above 180 °F, and falling under the guise of the ASME pressure vessel code are not typical of residential applications. (Joint comment, No. 35 at p. 2) NEEA commented that there are many water heaters with features that make them unsuitable for residential and small commercial applications and provided examples of units with set points of 180 °F or higher, 3-phase power, and large input ratings and volumes. (NEEA, No. 37 at p. 2) AHRI, AO Smith, Rheem, and HTP also provided tables of rated inputs and storage volumes to distinguish water heaters that are not intended for residential applications. (AHRI, No. 33 at p. 2; AO Smith, No. 34 at p. 1; Rheem, No. 38 at p. 2; HTP, No. 41 at p. 2) Those limits are grouped by water heater type and are shown in Table III.1.

TABLE III.1—SUGGESTED CAPACITY LIMITATIONS FOR DEFINING NON-RESIDENTIAL WATER HEATERS

Water heater type	Indicator of non-residential application by commenter
Gas-fired storage	AHRI, Rheem: Rated input >100 kBtu/h; Rated storage volume <20 gallons and >100 gallons. AO Smith: Rated Input > 100kBtu/h; Rated storage volume >100 gallons. HTP: Rated input >150 kBtu/h; Rated storage volume <20 gallons and >120 gallons.
Oil-fired storage	AHRI, AO Smith, Rheem: Rated input >140 kBtu/h; Rated storage volume >50 gallons.
Electric storage	AHRI, Rheem, HTP: Rated input >12 kW; Rated storage volume <20 gallons and >120 gallons. AO Smith: Rated Input >12 kW; Rated storage volume >120 gallons.
Heat Pump with Storage	AHRI, AO Smith, Rheem, HTP: Rated current >24 Amperes; Rated voltage >250 V; Rated storage volume >120 gallons.
Gas-fired instantaneous	AHRI, AO Smith, Rheem, HTP: Rated input >200 kBtu/h; Water volume >1 gallon per 4000 Btu/h of input.
Electric instantaneous	AHRI, Rheem: Rated input >12 kW; Water volume >2 gallons. AO Smith: Rated input >25 kW; Water volume >2 gallons.
Oil-fired instantaneous	AHRI, Rheem, AO Smith: Rated input >210 kBtu/h; Water volume >2 gallons.

Bradford White recommended that the new descriptor be limited to water heaters with inputs less than 200,000 Btu/h because, according to the commenter, water heaters with inputs greater than or equal to 200,000 Btu/hr are not used in residential applications since such a high input is not required in these types of applications. (Bradford White, No. 30 at p. 2) AGA stated that efficiency descriptors and test methods are best developed through consensus-based processes and referred DOE to the scope that is currently present in ASHRAE Standard 118.2, *Method of Testing for Rating Residential Water Heaters*. (AGA, No. 31 at 2)

Upon considering these comments, DOE agrees with commenters that a unit requiring three-phase electricity would nearly always be used only in a commercial setting, as residential homes are wired almost exclusively for single-phase power. Likewise, DOE agrees with commenters that units with an ASME pressure vessel rating or units capable of delivering water at temperatures at or exceeding 180 °F would generally only be used in commercial settings. As a result, DOE proposes to use these three criteria as the basis for defining "light commercial" water heaters that have residential applications.

DOE also considered the input and storage capacity criteria proposed by stakeholders to differentiate commercial water heaters that would only be used in non-residential applications from commercial water heaters that could have residential applications. DOE notes that equipment that was once classified as residential based on input capacity or storage volume might now be installed in a commercial setting and vice versa. Given that such changes occur over time as new technologies develop, DOE is declining to propose criteria in this NOPR on an input capacity basis. Instead, DOE believes that the three criteria discussed in the preceding

paragraph are adequate to define the class of commercial water heaters that could have residential applications.

Consequently, DOE proposes to add the following definition of "light commercial water heater" to 10 CFR 431.102:

Light commercial water heater means any gas-fired, electric, or oil storage or instantaneous commercial water heater that meets the following conditions:

(1) For models requiring electricity, uses single-phase external power supply;

(2) Is not capable of delivering hot water at temperatures of 180 °F or above; and

(3) Does not bear a Code Symbol Stamp signifying compliance with the requirements of the ASME Boiler and Pressure Vessel Code.

Although light commercial water heaters could have residential applications, DOE notes that the new "light commercial water heater" definition represents a type of water heater that, to a significant extent, is distributed in commerce for industrial or commercial use. These water heaters were and continue to be covered industrial equipment, and, if these proposals are finalized, will continue to be subject to the regulations in part 431 and the certification requirements for commercial and industrial equipment in part 429. Similarly, although DOE recognizes that some consumer water heaters may be installed in a commercial setting, those waters heaters are covered consumer products for the purposes of DOE regulations, the regulations in part 430 continue to apply, and they must be certified as consumer products under part 429.

If a commercial water heater does not meet all of these three conditions, it would be classified as a commercial water heater that would not be expected to be used in residential applications and would be subject to the current test methods prescribed in 10 CFR 431.106, which reference ANSI Z21.10.3. If a commercial water heater meets all three criteria, DOE proposes to consider it a "light commercial water heater," which would be subject to the uniform efficiency descriptor and test method proposed in today's NOPR. Accordingly, DOE proposes to add a row to Table 1 of 10 CFR 431.106 specifying 10 CFR part 430, subpart B, Appendix E as the test method for this class of equipment. DOE seeks comment on both the proposed definition of "light commercial water heater" and the proposal to subject this equipment to the test methods at Appendix E. This is identified as issue 1 in section V.E, "Issues on Which DOE Seeks Comment."

DOE also received comments recommending that certain types of water heaters should be excluded from the uniform descriptor for various reasons. NREL commented that storage tanks do not make a complete water heating system, so an energy factor is not appropriate. NREL elaborated that a rating using a standby loss coefficient could be appropriate. (NREL, No. 29 at pp. 3–4) AHRI, AO Smith, and HTP recommended that DOE exclude from the descriptor: (1) Unfired storage tanks because they do not actually heat water; (2) add-on heat pumps because DOE has previously determined that these are not covered products and they are not complete water heaters; and (3) hot water supply boilers because, by definition, they have inputs exceeding the values listed in the commenters' recommendations and because these products are all subject to the requirements of the ASME Boiler and Pressure Vessel Code (AHRI, No. 33 at pp. 4–5; AO Smith, No. 34 at p. 3; HTP, No. 41 at p. 5) Rheem expressed support for AHRI's list of exclusions. (Rheem, No. 38 at p. 2) NEEA recommended that DOE should exclude water storage tanks from the uniform descriptor because they are technically not water heaters and they simply store water heated elsewhere. NEEA also commented that unfired storage tanks should not be excused from all efficiency requirements since standby loss efficiency is important for all hot water storage vessels, regardless of where and how the water is heated. (NEEA, No. 37 at p. 2) Conversely, the joint commenters recommended that the uniform efficiency descriptor should be able to effectively measure the efficiency of electric heat pump water heaters without an integrated storage tank in the event it is included in future Federal coverage. (Joint comment, No. 35 at p. 5)

DOE has tentatively determined that certain commercial equipment such as unfired storage tanks and add-on heat pump water heaters are not appropriately rated using the uniform descriptor applicable to other water heaters. Unfired storage tanks are not complete water-heating systems and require additional equipment in the field to operate. Thus, DOE believes that other metrics may be more appropriate for these devices with limited functionality compared to actual water heaters, and that their performance as part of a complete water-heating system is so dependent upon other components of the system that use of the uniform descriptor may be unrepresentative of its performance as a system. For add-on heat pump water heaters, DOE agrees with stakeholders that DOE has previously determined that these are not covered residential products. As such, DOE only has authority to cover commercial add-on heat pumps; however, this equipment does not have residential applications, and, therefore, is not suitable for inclusion in the uniform efficiency descriptor. DOE has also tentatively determined that hot water supply boilers are more appropriately rated using the existing metrics for commercial water heaters, as this equipment has very high input ratings and are subject to the ASME Boiler and Pressure Vessel Code, and their use is similar to that of other commercial water heaters in commercial applications. DOE will address the types of water-heating equipment that are excluded from the uniform descriptor (*e.g.*, unfired storage tanks, add-on heat pump water heaters, and hot water supply boilers) in a subsequent test procedure rulemaking.

2. Storage Capacity Limits

Under the existing regulatory definitions, DOE's current residential water heater test procedures are not applicable to gas or electric water heaters with storage tanks that are at or above 2 gallons (7.6 L) and less than 20 gallons (76 L). In terms of the high end of the capacity range, the current DOE test procedure for residential water heaters only applies to gas-fired water heaters with storage volumes less than or equal to 100 gallons (380 L), electric resistance and heat pump storage water heaters with storage volumes less than or equal to 120 gallons (450 L), and oil-fired water heaters with storage volumes less than or equal to 50 gallons (190 L). 10 CFR part 430, subpart B, appendix E, sections 1.12.1, 1.12.2, and 1.12.4.

In the 1998 rulemaking establishing test procedures for residential water heaters, DOE proposed to include units with storage volumes between 2 and 20 gallons, but commenters raised concerns that the test procedure demand of 64.3 gallons per day was not appropriate for these small units. 63 FR 25996, 26000 (May 11, 1998). At that time, DOE concluded that the data to determine the appropriate daily hot water consumption did not exist and that alternative procedures proposed by commenters were not fully evaluated. For these reasons, the Department tabled consideration of the inclusion of these water heaters until a future revision of the DOE test procedure. In recent years, however, water heaters with such capacities have begun to populate the market. The definitions in

the DOE test procedure (cited above) specify that instantaneous-type water heaters have a storage volume of less than two gallons (7.6 L) and that electric or gas storage-type water heaters have a storage volume of 20 gallons (76 L) or more. The storage capacity of oil water heaters in the test method is not restricted by a lower limit, with the specification stating that an oil-fired storage water heater simply has a rated capacity less than or equal to 50 gallons (190 L). 10 CFR part 430, subpart B, appendix E, sections 1.7 and 1.12. The definition for "Storage-type Water Heater of More than 2 Gallons (7.6 Liters) and Less than 20 Gallons (76 Liters)" is currently reserved. *Id.* at section 1.12.5. DOE requested comment on the potential to address this gap in the October 2011 RFI, and received several comments from interested parties. 76 FR 63211, 63213 (Oct. 12, 2011).

DOE received 11 comments in support of the inclusion of water heaters with storage volumes between 2 and 20 gallons. (Bradford White, No. 2 at p. 1; PGE, No. 3 at p. 1; SCE, No. 4 at p. 1; Stone Mountain Technologies, No. 5 at p. 2; AO Smith, No. 8 at p. 1; NEEA, No. 9 at p. 2; AHRI, No. 12 at p. 1; NREL, No. 14 at p. 7; NRDC, No. 20 at p. 1; AET, No. 22 at p. 7; ACEEE, No. 24 at pp. 3–4). No comments were received opposed to this measure.

AHRI, AO Smith, Bradford White, and Lochinvar suggested that a distinct test procedure is needed for electric storage water heaters with volumes between 2 and 20 gallons since the current test method is not suited for such point-of-use products and that this test method measure only the standby loss of the unit. (Bradford White, No. 2 at p. 1; AO Smith, No. 8 at p.1; Lochinvar, No. 10 at p. 1; AHRI, No. 12 at p. 2) Stone Mountain Technologies stated further that all electric resistance water heaters should be subjected to only a standby loss test, because differences between models is almost solely based on standby losses. (Stone Mountain Technologies, No. 5 at p. 3) DOE has considered these points but has tentatively concluded that, for equity across water-heating technologies, all water heaters should be tested under a simulated-use profile as will be discussed in section III.C. DOE proposes a profile that is appropriate for point-of-use water heaters, so any concerns that the current test method is not suitable are addressed by the proposed test method. This profile will simulate the way that a point-of-use water heater is used in the field and will capture any operational characteristics that could affect its efficiency. DOE also believes that a simulated-use test will better capture any potential cycling losses or inefficiencies in meeting the demands imposed on all water heaters.

After considering the comments received, DOE proposes to expand the scope of the water heater test procedure for the uniform efficiency descriptor to include water heaters with storage volumes between 2 and 20 gallons. The proposed modifications will specify the method of test set-up (including instrumenting such water heaters), a test method to assess the delivery capacity, and the draw pattern that would be used to determine the energy efficiency of such units. The proposed amendments for water heaters with storage volumes between 2 and 20 gallons are discussed in detail in section III.C of today's notice of proposed rulemaking.

DOE is not aware of any residential water heaters available on the market with storage volumes above 100 gallons, 120 gallons, and 50 gallons for gas-fired, electric (resistance and heat pump), and oil-fired water heaters, respectively, that would be covered as residential products under EPCA. Due to the lack of water heaters with very large storage volumes that meet the definition of a residential "water heater," DOE tentatively concluded in the October 2011 RFI that it is unnecessary to expand the scope of the test procedure to include gas-fired products over 100 gallons, electric products over 120 gallons, or oil-fired products over 50 gallons, and requested comment on this tentative conclusion. 76 FR 63211, 63213 (Oct. 12, 2011).

Four commenters (Bradford White, AO Smith, NEEA, AHRI) supported DOE's position to maintain the existing capacity limits for storage water heaters, while three commenters (Stone Mountain Technologies, NREL, AET) recommended that the test method be expanded to include all water heaters with storage volumes from 0 to 120 gallons. (Bradford White, No. 2 at p. 1; AO Smith, No. 8 at p. 1; NEEA, No. 9 at p. 2; AHRI, No. 12 at p. 1; Stone Mountain Technologies, No. 5 at p. 2; NREL, No. 14 at p. 8; AET, No. 22 at pp. 6–7) AET noted that the pressure vessel code from the American Society of Mechanical Engineers requires that vessels intended to store fluids under pressure must individually undergo a rigorous test and inspection procedure if they have volumes greater than 120 gallons. AET noted that because these test and certification procedures are expensive, manufacturers will avoid making products intended for residential use that require an ASME inspection and code stamp. For this reason, AET commented that the upper limit of 120 gallons would be appropriate for all residential water heaters. AET further suggests that expanding the volume limit to 120 gallons would prevent manufacturers from evading efficiency standards by marketing water heaters slightly larger than the currently specified limits. (AET, No. 22 at pp. 6–7)

The subsequent passage of AEMTCA has necessitated that DOE reconsider the scope of all water heater test procedures. DOE has considered these comments, as well as the provisions of AEMTCA, and proposes to expand the scope of the test procedure to include all covered water heaters that could have residential applications and remove the limitations on maximum storage volume that are currently in the residential test procedure for gas-fired, electric, and oil storage water heaters. The Department's authority to regulate water heaters is limited to those explicitly defined as covered products by EPCA. EPCA defines the term "water heater" as a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand. (42 U.S.C. 6291(27)) Further, EPCA defines storage type units which include gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less. EPCA also defines instantaneous type units, which are water heaters that contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less. Lastly, EPCA defines covered heat pump type units, which have a maximum current rating of 24 amperes at a voltage no greater than 250 volts, and which are designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, and include all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function. Id.

For commercial water heating equipment, EPCA defines "storage water heater" as a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand, and does not include units with an input rating of 4000 Btu per hour or more per gallon of stored water. EPCA also defines "instantaneous water heater" as a water

heater that has an input rating of at least 4000 Btu per hour per gallon of stored water. Lastly, EPCA defines the term "unfired hot water storage tank" as a tank used to store water that is heated externally. (42 U.S.C. 6311(12))

AEMTCA requires that the new metric apply to the extent possible to all water-heating technologies used in residential applications. (42 U.S.C. 6295(e)(5)(F) and (H)) DOE believes that the test method proposed in today's NOPR adequately addresses large water heaters regardless of storage volume, provided that they are used in residential applications. As noted previously in section III.A.1, DOE proposes to exclude units used only in non-residential applications, but DOE does not believe that storage volume alone would dictate whether a unit is residential or commercial. As noted by AET, the ASME pressure vessel code requires that vessels intended to store fluids under pressure must undergo a rigorous test and inspection procedure if they have volumes greater than 120 gallons. Any such products would be ASME pressure vessel rated, and under the definition of "light commercial water heater" proposed in section III.A.1, would not be subject to the uniform efficiency descriptor, which would effectively limit the maximum storage volume to 120 gallons for the purposes of using the uniform descriptor. For these reasons, DOE proposes to eliminate the maximum storage volume limitations from the residential water heater test procedure.

3. Input Capacity Limits

DOE's current residential water heater test procedure is not applicable to gas-fired instantaneous water heaters with input capacities at or below 50,000 Btu/h or at or above 200,000 Btu/h. 10 CFR Part 430, subpart B, Appendix E, section 1.7.2. In addition, the test procedure is not applicable to gas-fired storage water heaters with input capacities above 75,000 Btu/h, electric storage water heaters with input ratings above 12 kW, and oil-fired storage water heaters with input ratings above 105,000 Btu/h. 10 CFR Part 430, subpart B, Appnedix E, section 1.12.

DOE proposes to eliminate the minimum limit on the firing rate of instantaneous gas water heaters of 50,000 Btu/h, as AEMTCA requires that the new metric apply to the maximum extent practical to all water-heating technologies intended for residential application. (42 U.S.C. 6295(e)(5)(F) and (H)) As discussed in section III.C, DOE proposes to adopt multiple draw patterns that would vary based on the delivery capacity of the water heater. Because the draw pattern would be dependent upon delivery capacity, DOE believes that small gas-fired instantaneous units could be appropriately tested under the proposed procedure. Thus, DOE believes there is no reason to retain this lower limit on gas-fired instantaneous water heater delivery capacity.

Similarly, DOE proposes to remove the maximum input ratings for gas-fired, electric, and oil-fired storage water heaters, and for gas-fired instantaneous water heaters from the test procedure. DOE believes that the proposed test procedure, because it varies based on delivery capacity, is applicable to units with input capacities above those included in the current residential water heater test procedure. Although these maximum input limitations were based upon DOE's "water heater" definition at 42 U.S.C. 6291(27), because AEMTCA requires that the new metric apply to all water-heating technologies except those that do not have a residential use, DOE believes that such limits are no longer controlling or appropriate in terms of the scope of the water heaters test procedure. As discussed in section III.A.1, given the technology shifts that occur over time, DOE does not believe input capacity limitations to be a consistent indicator of whether a product has a residential use.

4. Electric Instantaneous Water Heaters

DOE's current test procedures do not contain a definition for "electric instantaneous water heater," but rather have a space reserved to define that term. 10 CFR Part 430, subpart B, appendix E, section 1.7.1. EPCA defines "electric instantaneous water heater" as having an input capacity of 12 kilowatts (kW) or less. (42 U.S.C. 6291(27)(B)) As noted by commenters and discussed in section III.A.1, the heating power required for electric instantaneous water heaters intended for whole-home applications is typically much higher than the power capability commonly found in storage-type electric water heaters. Given the emergence of electric instantaneous water heaters on the market, DOE requested comment in the October 2011 RFI on addressing this gap in the test procedure by prescribing a definition specifically for the term "electric instantaneous water heater." DOE noted in the RFI that although the 24-hour simulated use test in DOE's test procedure for instantaneous water heaters at 10 CFR Part 430, subpart B, appendix E, section 5.2.4 is titled "24-hour Simulated Use Test for Gas Instantaneous Water Heaters," the method is also applicable for electric instantaneous water heaters. DOE requested comment on potential modifications to the DOE test procedure to address electric instantaneous water heaters.

DOE received thirteen comments in support of the proposal to amend DOE's water heater test procedure to include electric instantaneous water heaters. (Bradford White, No. 2 at p. 1; PGE, No. 3 at p. 1; SCE, No. 4 at p. 1; Stone Mountain Technologies, No. 5 at p. 2; AO Smith, No. 8 at p. 1; NEEA, No. 9 at p. 2; Lochinvar, No. 10 at p. 1; AHRI, No. 12 at p. 1; NREL, No. 14 at p. 9; NRDC, No. 20 at p. 1; Bosch, No. 17 at p. 1; AET, No. 22 at pp. 8–9; and ACEEE, No. 24 at p. 4.) DOE received no comments opposing such an inclusion. Bradford White, AO Smith, AHRI, NREL, AET, and ACEEE also suggested that the test procedure should be amended to cover electric instantaneous water heaters with heating rates higher than 12 kW in order to accommodate units that are meant to serve whole-home applications. (Bradford White, No. 2 at p. 1; AO Smith, No. 8 at p. 1; AHRI, No. 12 at p. 2; NREL, No. 14 at p. 9; AET, No. 22 at pp. 8–9; ACEEE, No. 24 at p. 4) AHRI and ACEEE suggested that the test procedure for electric instantaneous water heaters should be made applicable to water heaters with inputs up to 25 kW (AHRI, No. 12 at p. 2; ACEEE, No. 24 at p. 4), while Bradford White suggested an input limit of 35 kW (Bradford White, No. 2 at p. 1), and NREL recommended an input limit of 50 kW (NREL, No. 14 at p. 9). AET commented that the upper limit be based on a maximum current of 200 Amperes, which is the typical maximum value allowed in residences in the United States. (AET, No. 22 at pp. 8–9) In response to the January 2013 RFI, Aquarensics, UHCL1, UHCL2, and Seisco commented that the test method should cover electric instantaneous water heaters with input ratings in excess of 12 kW. (Aquarensics, No. 43 at p.1; UHCL1, No. 44 at p. 1; UHCL2, No. 45 at p. 1; Seisco, No. 47 at p. 1) Further, Aquarensics, UHCL1, UHCL2, and Seisco all commented that commercially-available electric instantaneous water heaters that are designed for residential applications have input ratings greater than the current limit of 12 kW for residential electric water heaters under EPCA. (Aquarensics, No. 43 at p. 2; UHCL1, No. 44 at p. 1; UHCL2, No. 45 at p. 1; Seisco, No. 47 at p. 3) Aquarensics and UHCL2 noted residential applications that used units with an input rating of 28 kW. UHCL1 commented that whole-house instantaneous water heaters typically require 25 kW to 35 kW.

Seisco stated that residential electric instantaneous water heaters having inputs above 30 kW are commonly built and have been used for residential applications since 1999. Seisco further stated that electric instantaneous water heaters with input ratings up to 35 kW are used for whole-house applications.

After considering the comments on the RFIs, DOE proposes to amend its water heaters test procedure to include applicable provisions for electric instantaneous water heaters, and to define the term "electric instantaneous water heater" as follows:

Electric Instantaneous Water Heater means a water heater that uses electricity as the energy source, initiates heating based on sensing water flow, is designed to deliver water at a controlled temperature of less than 180 °F (82 °C), and has a manufacturer's specified storage capacity of less than 2 gallons (7.6 liters). The unit may use a fixed or variable power input.

DOE notes that the proposed definition would encompass both electric instantaneous water heaters that are residential (*i.e.*, with an input capacity of 12 kW or less) and commercial (*i.e.*, with an input capacity greater than 12 kW). Because water heaters both above and below 12 kW have residential applications, both types would be covered by the uniform efficiency descriptor. Today's proposed rule provides for a maximum flow rate test, as well as a test to obtain the energy efficiency expressed in terms of Energy Factor (EF). These tests are identical to those implemented for gas instantaneous water heaters.

B. Uniform Efficiency Descriptor

AEMTCA provided the following options for the uniform efficiency descriptor metric: (1) A revised version of the energy factor descriptor currently in use; (2) the thermal efficiency and standby loss descriptors currently in use; (3) a revised version of the thermal efficiency and standby loss descriptors; (4) a hybrid of descriptors; or (5) a new approach. (42 U.S.C. 6295(e)(5)(G)) In the January 2013 RFI, DOE requested comment on the appropriate metric to be used as the uniform descriptor. 78 FR 2340, 2344–45 (Jan. 11, 2013). Eight parties provided comments supporting the use of the energy factor metric, but obtained using a different method of test than provided in the current test procedure. (NREL, No. 29 at p. 1; Bradford White, No. 30 at p. 1; AHRI, No. 33 at p. 3; AO Smith, No. 34 at p. 2; GE, No. 36 at p. 1; NEEA, No. 37 at p. 1; Rheem, No. 38 at p. 3; HTP, No. 41 at p. 3) The joint comment indicated that the existing energy factor metric is inadequate and indicated support for a series of simulated use tests that would result in a revised energy factor. (Joint comment, No. 35 at p. 1) No comments were received that proposed the use of thermal efficiency, standby loss factor, or any new metrics.

NREL stated that the thermal efficiency and standby loss metrics are not suitable as primary metrics for residential applications, because they do not completely capture performance. (NREL, No. 29 at p. 1) AHRI and HTP indicated that the energy factor metric would enable testing agencies to build on prior experience in testing water heaters for residential applications, that it would result in an easier conversion from the current metric to the uniform descriptor, and that it can be technology neutral. (AHRI, No. 33 at pp. 3–4; HTP, No. 41 at p. 3) HTP also suggested a voluntary rating for combined water-heating and space-heating appliances based on ASHRAE Standard 124, *Methods of Testing for Rating Combination Space-Heating and Water-Heating Appliances.* (HTP, No. 41 at p. 4) AO Smith suggested that the uniform descriptor be given a qualifying name to distinguish it from the current energy factor, providing "New Energy Factor" as an example. (AO Smith, No. 34 at p. 2) GE indicated that an energy factor metric would be technology neutral and that it would minimize complexity in converting from the current metric to the uniform descriptor. (GE, No. 36 at p. 1)

NRCan provided a report documenting results of testing of two commercial water heaters that are marketed towards the residential sector under the existing residential test procedure. (NRCan, No. 42 at p. 1) The report did not identify any problems or concerns with testing these units under the existing test procedure.

Based on these comments, DOE proposes a modified version of the existing energy factor metric as the uniform descriptor for products covered under this test procedure. DOE believes that an energy factor that is derived from a simulated use test will provide a technology-neutral metric for the efficiency of water heaters intended for residential applications. The simulated use test will capture key performance aspects such as burner efficiency, standby loss, and cycling that affect energy efficiency seen by consumers. However, DOE will not adopt voluntary rating requirements for combination appliances at this time, as that is outside the scope of today's test procedure NOPR. Further, DOE does not plan to change the name, as suggested by A.O. Smith. The Department believes that because standards and ratings will be transitioned to the new metric and the old metric will be come obsolete, there will be little confusion by maintaining the name "energy factor."

C. Draw Pattern

The term "draw pattern" describes the number, flow rate, length, and timing of hot water removal from the water heater during testing. Primary decisions in developing draw patterns include the total amount of water to be removed during the test and the number of draws during the test. The total amount of water taken in each draw, which is a function of the flow rate and the length of the draw, must also be specified. Finally, the spacing between those draws is needed to complete the specification of the draw pattern.

The current residential water heater test procedure includes a 24-hour simulated-use test for determining energy factor. 10 CFR Part 430, subpart B, appendix E, sections 5.1.5 and 5.2.4. The 24-hour test specifies that 6 draws of equal volume be removed from the water heater in the first 6 hours of the test for a total draw of 64.3 ± 1.0 gallons (243.4 ± 3.8 L).[9] Following the six draws, the water heater sits in an idle mode for the remainder of the 24-hour test. *Id.* The draw pattern is the same regardless of the type (e.g., gas-fired, electric resistance, oil-fired, heat pump, storage, instantaneous) and characteristics (*e.g.*, storage volume, input capacity) of the water heater.

In the October 2011 RFI, DOE noted that recent data [10] [11] [12] suggest that the draw pattern can impact the energy factor of a water heater and can potentially offer an advantage to one type of water heater technology over another. 76 FR 63211, 63213 (Oct. 12, 2011). These studies also suggest that the existing draw pattern in the simulated use test may not be

[9] 10 CFR Part 430, subpart B, appendix E, section 5.1.5 currently states, "During the simulated use test, a total of 64. ±3 1.0 gallons (243 ± 2.8 liters) shall be removed." DOE contends that the total is in error and should instead read "64.3 ± 1.0 gallons (243 ± 2.8 liters)." No correction is proposed at this time since the quantity will change in the proposed test procedure.

[10] Healy, WM, Ullah, T, and Roller, J., "Input-Output Approach to Predicting the Energy Efficiency of Residential Water Heaters—Testing of Gas Tankless and Electric Storage Water Heaters," ASHRAE Transactions 117 (2011).

[11] Hoeschele, M.A. and Springer, D.A., "Field and Laboratory Testing of Gas Tankless Water Heater Performance," *ASHRAE Transactions* 114 (2): 453–461 (2008).

[12] Bohac, D, Schoenbauer, B., Hewett, M., Lobenstein, M.S., Butcher, T. "Actual Savings and Performance of Natural Gas Tankless Water Heaters," Center for Energy and Environment Report for Minnesota Office of Energy Security (August 30, 2010).

representative of actual draw patterns to which water heaters are subjected in the field. Because different water heaters will be subjected to different field demands (consumer usage patterns) due to operational or performance differences, DOE proposes to revise the draw pattern to be more representative of typical usage patterns experienced in the field. DOE is also proposing to amend its test procedure to provide for different draw patterns for different water heaters based upon the characteristics of each water heater, such as the rate of hot water the unit can provide, the storage volume, and the heating rate (*i.e.*, input rate). In the October 2011 RFI, DOE sought comment on improvements that could be made to DOE's existing 24-hour simulated use test procedure for water heaters. Additional comments were sought by and provided in response to the January 2013 RFI.

DOE received 27 comments that addressed these issues. Four commenters (AGA, Bosch, General Electric, and Rheem) recommended that DOE maintain the test procedure as it currently stands. AGA argued the importance of consistency with previous ratings. (AGA, No. 13 at p. 1) Bosch commented that the current test procedure covers a large quantity of applications without trying to estimate the usage for any given household. (Bosch, No. 17 at p. 2) General Electric wrote that the six-draw requirement is appropriate for medium-volume water heaters. (GE, No. 21 at pp. 1–2) Rheem suggested that the added scope of covered products called for by AEMTCA would best be handled by maintaining the existing residential water heater test procedure at this time while continuing to pursue an amended test method. (Rheem, No. 38 at p. 3) Rheem further argued that such an incremental approach would allow manufacturers to continue on a path to meet minimum efficiency requirements imposed by amended energy conservation standards.

In total, DOE received twenty-three comments recommending that the Agency move away from the six-draw requirement as currently specified in the DOE test procedure (although certain of these comments were multiple submissions from the same interested party). (Bradford White, No. 2 at p. 2; PGE, No. 3 at p. 2; SCE, No. 4 at p. 2; Stone Mountain Technologies, No. 5 at p. 2; AO Smith, No. 8 at p. 2; NEEA, No. 9 at p. 2; NPGA, No. 11 at pp. 1–2; AHRI, No. 12 at p. 2; NREL, No. 14 at pp. 1–2; GTI, No. 15 at p. 2; NRCan, No. 16 at pp. 1–2; NRDC, No. 20 at p. 2; AET, No. 22 at p. 2; ACEEE, No. 24 at p. 1; NREL, No. 29 at p. 2; Bradford White, No. 30 at p. 2; AHRI, No. 33 at p. 4; AO Smith, No. 34 at p. 3; Joint comment, No. 35 at p. 1; GE, No. 36 at p. 1; NEEA, No. 37 at p. 3; APGA, No. 39 at p. 2; AHRI, No. 46 at p. 1)

Bradford White indicated its support for a 24-hour simulated use test because it is "technology blind." (Bradford White, No. 2 at p. 2) PGE and SCE recommended that the draw pattern be modified to reduce bias towards tankless water heaters, and that different draw patterns be applied based on the capacity of the water heater. (PGE, No. 3 at p. 2; SCE, No. 4 at p. 2) Stone Mountain Technologies indicated that recent studies have shown that the efficiency of most gas-fired tankless models is overstated using the current DOE test procedure. The commenter stated that this finding, along with the addition of small water heaters within the scope of the test procedure, necessitate a modification to the current draw pattern. Further, Stone Mountain Technologies opined that an appropriate number of draws for a practical test method would be between 10 and 15. (Stone Mountain Technologies, No. 5 at p. 2) AO Smith and AHRI supported revising the test procedure while retaining the simulated-use concept and indicated that an AHRI industry effort is underway to develop a modified draw pattern. (AO Smith, No. 8 at p. 2; AHRI, No. 12 at p. 2; AHRI, No. 33 at p. 4; AO Smith, No. 34 at p. 3) AHRI submitted a proposed revised energy factor test method to DOE, which was considered for today's NOPR and is discussed below. (AHRI, No. 46, pp. 1–7) NEEA stated that it is clear that the draw pattern used in the current test procedure bears no resemblance to that seen in actual use, and accordingly, the current draw pattern should be abandoned. (NEEA, No. 9 at p. 2) NREL commented that the draw patterns in the new test must be statistically representative of actual usage, meaning that the frequency distributions of key variables in the test procedure (such as volume of draws and timing between draws) are reasonably matched to field data. Furthermore, it commented that DOE should ensure that any proposed test draw profile must be consistent with all relevant statistical distributions determined from the database of hot water draws created by the Lawrence Berkeley National Laboratory (LBNL). (NREL, No. 14 at pp. 1–2, 8) NREL also mentioned the efforts underway by ASHRAE to develop a test method based on multiple draw patterns that have different total draw volumes that are appropriate for water heaters of different sizes. (NREL, No. 29 at p. 2) NEEA likewise discussed these efforts by ASHRAE. (NEEA, No. 27 at p. 2)

GTI discussed the effect of a greater number of draws during the test on the efficiency rating of instantaneous water heaters, and presented data on estimated energy factors and efficiencies under different draw patterns. (GTI, No. 15 at pp. 6–9) NRCan discussed changes being proposed to the committee responsible for Canadian Standards Association (CSA) P.3—*Testing Method for Measuring Energy Consumption and Determining Efficiencies of Gas-Fired Storage Water Heaters*. The committee is considering changing the current draw pattern and replacing it with a new pattern of 10 to 15 draws spread throughout the day, with the volume and time of each draw varying. NRCan also provided data from a field study in Ontario that included information on hot water draw patterns. (NRCan, No. 16 at p. 2) NRDC urged DOE to examine the existing data on draw patterns and to conduct its own further testing if necessary. (NRDC, No. 20 at p. 2) AET commented that the draw patterns need to be more realistic in terms of the number of repeated small draws and that it is important for tank-type, instantaneous, and tankless water heaters to all be rated using the same draw patterns for a given capability range, because comparisons among them will otherwise have little meaning. (AET, No. 22 at p. 2) ACEEE commented that the current draw pattern is no longer adequate for generating the information that consumers need to make wise purchasing decisions. In ACEEE's view, the six-draw test does not reflect patterns seen in field studies and that the current six-draw pattern is inadequate, primarily because different technologies that may lead to the same energy use in typical applications would get quite different EF ratings in the lab. (ACEEE, No. 24 at p. 1) Standards Committee 118.2 of ASHRAE submitted minutes from a meeting held on June 28, 2011, indicating that the committee passed motions to develop new draw patterns for a simulated-use test. (ASHRAE, No. 25 at pp. 1–2)

Fifteen commenters supported the implementation of different draw patterns based upon water heater capacities. Bradford White proposed three different draw patterns that would be applicable to water heaters of low use, normal-to-high use, and heavy-duty use. (Bradford White, No. 2 at pp. 5–6; Bradford White, No. 30 at pp. 13–15) PGE and SCE recommended that DOE prescribe draw patterns based on ranges of capacities of units or based upon burner size for tankless units. (PGE, No.

3 at p. 2; SCE, No. 4 at p. 2) Stone Mountain Technologies stated that the flow rate during individual draws and the total volume drawn during the test should be based on the hot water delivery capacity of the model. Furthermore, Stone Mountain Technologies suggested that the capacity should be based on the theoretical volume of hot water that can be delivered in 15 minutes using the energy storage and the net heat input. (Stone Mountain Technologies, No. 5 at p. 2) AHRI and AO Smith recommended that DOE should develop a simulated-use test that will vary for differing models based on some specified criterion such as storage volume or flow rate or other appropriate characteristic. (AHRI, No. 12 at p. 2; AO Smith, No. 8 at p. 2) NEEA indicated that its own laboratory testing and that of some others suggest that multiple draw patterns (perhaps 3 to 5) would be appropriate, depending on the capacity of the water heater. (NEEA, No. 9 at p. 2) NRCan indicated that the CSA P.3 committee is considering 3 or 4 categories for daily hot water use households: Low, medium, high, and, potentially, a point-of-use category. The water heaters would be categorized by first-hour rating, maximum gallons per minute, or maximum heat input. (NRCan, No. 16 at p. 2) General Electric commented that the draw pattern should be proportionately scaled up for large volume water heaters (greater than 50 gallon capacity) and, similarly, scaled down for smaller water heaters (less than 50 gallons). (GE, No. 21 at p. 2) ACEEE stated that DOE must use different draw patterns for water heaters of different capacities and suggested that manufacturers should be allowed to choose how a particular product is rated. (ACEEE, No. 24 at p. 2) In response to the January 2013 RFI, the joint commenters recommended 5 different draw patterns for sizes ranging from point-of-use to very high use household/light commercial. The joint commenters noted work by LBNL and Stone Mountain Technologies in devising a capacity rating based on published storage volume and heat source size. (Joint comment, No. 35 at p. 2) GE commented that water heaters should be tested based on their capacity as measured by the first-hour rating. (GE, No. 36 at p. 1)

AHRI provided a suggested simulated use test that described four different draw patterns that would be applied to a water heater based on its first-hour rating or maximum flow rate measurement. (AHRI, No. 46 at pp. 5–6) As explained below, AHRI suggested cut-offs between the four different size categories at first-hour ratings of 20, 55, and 80 gallons and at maximum flow rates of 1.5, 2.5, and 3.5 gallons per minute; all values correspond to a nominal outlet temperature of 135 °F and a nominal inlet temperature of 58 °F. The draw patterns are based on a set of activities that would be expected in a typical residence, with the total volume removed per day for the four patterns being 15, 40, 64.2, and 82.75 gallons. The draw pattern for point-of-use water heaters involved 11 draws, while the other three draw patterns involved 12 draws each. Flow rates varied for each draw during the draw pattern, except for the point-of-use draw pattern which imposed a fixed flow rate of 1 gallon per minute throughout the test.

Applied Energy Technology acknowledged the need to test a water heater according to a draw pattern appropriate for its delivery capacity, but instead of supporting a suite of tests for water heaters of different capacity, it recommended that DOE consider a test approach applicable to water heaters of all sizes from which pieces of information are obtained pertaining to the particular capacity of the water heater under test. AET's suggested test method entails a series of draw clusters that simulate different end uses in a residence. Water heaters with a high capacity could presumably deliver sufficiently hot water at all times during the test, but water heaters with lower capacity may fail to provide water at a required temperature under those draw clusters that called for large volumes of hot water in a short time. Under AET's approach, a water heater would be rated for those clusters during which it could meet the demand placed upon it as determined by the outlet temperature during those draw clusters. (AET, No. 22 at pp. 18–37) AET commented that details of the test method needed to be refined, and no discussion was provided as to how to use the efficiency determined during each draw cluster for which the water heater could meet the demand to yield an energy factor.

DOE has tentatively concluded that the current DOE test procedure's draw pattern applied during the simulated-use test can potentially yield results that are biased towards particular water-heating technologies. The DOE test procedure specifies a small number of draws per day when compared to typical usage, a relatively large time between draws, and uniform volumes of water per draw. The test procedure applies to all water heater technologies without regard to any inherent differences in performance across the technologies. A revised draw pattern in the simulated-use test that better reflects how water is actually used in different homes using different water heater technologies could allow for a more realistic representation of the expected energy consumption consumers would experience for a particular water heater technology.

A test procedure that is completely uniform across all water heater types and sizes (*i.e.*, no differences in the amount of hot water drawn or the number of draws, etc.) can provide results that are biased toward different water heater technologies. For electric resistance and fossil fuel-fired storage water heaters, the predominant factor affecting the energy factor is the total amount of water removed per day. At a given set point temperature, the water heater loses heat to the environment at an essentially constant rate regardless of the amount of water removed. Since the energy factor is the ratio of hot water energy delivered to the overall energy consumed by the water heater, which is a sum of that needed to heat the water and that which is lost to the environment, the energy factor increases when the numerator of that ratio increases. Hence, the energy factor increases when the amount of water delivered per 24 hours increases. The performance of these water heaters is not expected to depend upon the length of draws, the flow rates of draws, nor the spacing between the draws.

Storage water heaters that rely on heat pump technology show the same efficiency trend with overall delivered water volume per day as seen with other storage water heater technologies, but it is also expected that the energy factors would depend upon the way that water is distributed among draws. A heat pump water heater operates most efficiently when the heat pump portion of the water heater provides the heat to the water as opposed to any backup electric resistance heating. This backup resistance heating is needed when the hot water in the appliance is depleted and a rapid amount of heat needs to be delivered to raise the stored water temperature back to the desired value. Since heat pumps tend to have a low heating rate, heat pump water heaters currently on the market incorporate resistance elements to provide that rapid heating. These resistance elements, however, dramatically reduce the efficiency. In the current test procedure, water heaters that have been tested do not require backup electric resistance heating to maintain an adequate water temperature within the tank since there is enough time between draws for the tank to fully recover to a

temperature that is above that which triggers the resistance elements. If a revised draw pattern would require a larger amount of water to be drawn from the water heater in a set period of time, either through a single larger draw or multiple draws spaced close together as would be more representative of average use, the heat pump water heater may be forced to utilize electric resistance heating to maintain the required tank temperature, and the energy factor would drop.

For small storage water heaters in the "point-of-use" category (water heaters that generally are not intended to serve as a single water heater for all uses in a household), a test utilizing the current draw pattern would likely result in delivery of water during the draws that is below a temperature that would be considered useful by the resident. These units have a small stored volume of hot water that is appropriate for small uses such as hand washing but not for a draw of more than 10 gallons at 3 gallons per minute (gpm), as is imposed by the current test procedure. An efficiency test that takes into account these limitations should put a demand on the water heater that calls for individual draws less than those implemented in the current DOE test.

Draw patterns and water heater cycling frequency likely have an effect on the measured efficiency of instantaneous water heaters. Instantaneous water heaters typically use large burners or heating elements to heat the water from the inlet temperature to the outlet temperature as it flows through the appliance. The burner typically is not energized until a water draw is initiated. Once the draw stops, the burner is shut off, and the remaining water in the appliance and the material making up the appliance gradually lose their heat and return to the ambient temperature. This heat loss (losses associated with heating up and cooling off of the burner) is considered a cycling loss, as the loss is associated with the cycling on and off of the water heater's main energy input.

Draw patterns affect water heater cycling and, thus, the overall measured efficiency of the water heater. Shorter draws typically act to lower the measured efficiency because, as the water heater cycles more frequently, cycling losses increase. Further, cycling losses account for a larger portion of energy usage during shorter draws, resulting in a disproportionate amount of heat input going towards raising the temperature of the heat exchanger as opposed to raising the temperature of the water. Hence, shorter draws typically result in a lower measured efficiency. However, draws that are clustered closer together typically act to raise the measured efficiency by reducing cycling losses because the appliance may be able to maintain an elevated temperature between the end of one draw and the initiation of a subsequent draw. The cycling losses are mitigated by the fact that the appliance does not cool down as much after the end of one draw and thus does not need to be heated as much when the subsequent draw is initiated. Hence, shorter spacing between draws typically results in an increase in the water heater's measured efficiency.

The efficiency of instantaneous water heaters is less affected by the total volume of hot water delivered per day than storage water heaters because their standby losses (i.e., losses associated with a water heater in standby mode, independent of the cycling losses discussed above) are negligible. Standby losses increase measured energy consumption without a corresponding increase in energy delivered, thereby decreasing the energy factor. An increase in the volume of water delivered per day results in a nearly proportional increase in energy consumption for instantaneous water heaters. The other drivers of total energy consumption are standby heat loss and cycling heat loss, with standby heat loss being essentially constant during the test and cycling losses being a function of the number of draws and their spacing. As these two losses approach zero, the dependence of energy factor on daily draw volume decreases since the energy consumption is dominated by that needed to heat the water, which vary proportionally. For water heaters currently on the market, the cycling losses experienced by instantaneous water heaters tend to be much less than the standby losses experienced by storage water heaters. Because standby losses increase measured energy consumption without a corresponding increase in energy delivered, the total energy consumption for instantaneous water heaters is much closer to the energy needed to heat the water than that seen with storage water heaters, and the dependence on daily draw volume is also lower.

The flow rate at which water is drawn from the water heater may affect the measured efficiency of an instantaneous water heater. The heat transfer from the heat exchanger to the water is a function of the speed at which water moves through the heat exchanger; efficiency may increase at higher flow rates. Additionally, since instantaneous water heaters typically employ heating elements or burners with variable capacity to meet the desired outlet temperature at different flow rates, the efficiency of the heat input device (*e.g.*, burner or heating element) may also vary depending upon the heating rate. This effect could either increase or decrease the overall efficiency depending upon the setting to which the heating element or burner is tuned.

To summarize, under the current DOE test procedure, certain types of water heaters can provide results that are biased toward certain water heater technologies. The small number of draws imposed under the existing test procedure, relative to the actual number of draws noted in field usage data, reduces the measured cycling losses relative to those occurring in field conditions. By contrast, the duration of time between draws in the test procedure is relatively long when compared to field usage data, which effectively increases the measured cycling losses relative to those occurring in field conditions. Water heaters with low heating rates would appear to benefit since they could easily recover to operational temperature.

The current DOE test procedure does not adequately measure energy efficiency during a representative average use cycle or period of use for some technologies. The uniform volume taken during each draw of the current test method does not simulate high-demand use, such as a long shower, that could change the way that a water heater operates, nor does it simulate performance under short draws during which water is not delivered at the prescribed set point temperature. Furthermore, DOE agrees with commenters who stated that the draw patterns should be based on the delivery capacity of the water heater because, as explained above, the measured water heater efficiency is influenced by the draw pattern incorporated into the test procedure and because a single draw pattern is not appropriate for the range of water heater sizes that fall under the scope of this test procedure. Consequently, DOE proposes a revised simulated-use test that involves four different draw patterns for water heaters of different capacities. Water heaters would be classified into the following usage categories (described below) corresponding to their usage capacity: (1) Point-of-use; (2) low; (3) medium; and (4) high. The proposed classifications are based on delivery capacity as determined in a first-hour rating test for storage-type water heaters or a maximum flow rate test for instantaneous water heaters.

In crafting a proposed set of draw patterns, DOE considered and utilized

the recommended draw patterns submitted by commenters, in particular those submitted by Bradford White (Bradford White, No. 2 at p. 3; Bradford White, No. 30 at p. 11), AHRI (AHRI, No. 46 at p. 3), and AET (AET, No. 22 at p. 1). (DOE notes that no test data were supplied with any of the proposed test methods.) Additionally, DOE utilized data compiled by the LBNL [13] that describes field studies of hot water usage to ensure that the draw patterns were representative of field use. LBNL found that typical usage in residences in North America is characterized by a large number of small volume draws, by a smaller volume of water per day than is currently prescribed in the residential test method, and by a significant variation in draw volume and number of draws per day. The data suggest development of a single typical draw pattern would be difficult and inappropriate. Instead, DOE has attempted to develop several draw patterns that capture key features affecting performance (*e.g.*, length and frequency of draws, flow rates), while maintaining a test that will not be overly burdensome to conduct and which will produce repeatable results.

Based upon this understanding, DOE proposes the following draw patterns containing volumes per day that are consistent with the data found by LBNL. The proposed low-use pattern calls for the water heater to provide 38 gallons per day, which is consistent with the median values found for households with 1 to 2 occupants. The proposed medium-use pattern, which requires a supply of 55 gallons per day, is consistent with the median values found for households with 3 to 4 occupants. The LBNL data show a median volume of hot water used for families with 5 or more occupants to be approximately 58 gallons. This unexpectedly low result might be attributable to the lower sample number of such large households. For this reason, DOE has departed from the LBNL field data and proposes a total volume of 84 gallons per day for the high-use pattern. This value is consistent with that proposed by Bradford White (Bradford White, No. 2 at p. 5) and AHRI (AHRI, No. 46 at p. 6), and DOE believes that it is a representative number for high use cases based on the range of hot water usage per day reported by LBNL. While the LBNL report suggests that the number of draws of hot water per day could exceed 50, DOE has tentatively determined that imposing a draw pattern during a test with that many draws could lead to measurement difficulties owing to (1) the need to measure energy removal in such short draws; and (2) the potential variation inherent in precisely controlling so many draws. Accordingly, DOE has tentatively concluded that a smaller number of draws (ranging from 9 to 14) will strike a balance between the need to capture cycling losses associated with water heater operation and the need for accurate measurement. Additionally, many of the short draws found in field tests are clustered close together in time. In these situations, cycling losses are negligible because the water heater remains at operational temperature over the course of the smaller draws. For these draws, energy efficiency can be reliably estimated by consolidating the multiple draws into a single larger draw.

As discussed in section III.F, "Test Conditions," DOE proposes that both the first-hour rating test and the maximum flow rate test will be carried out with the prescribed outlet water temperature at 125 °F. DOE proposes to modify the first-hour rating test to stop draws of hot water when the outlet water temperature drops 15 °F below its maximum temperature during each draw. This cut-off temperature is a departure from the current test, which cuts off the draw when the outlet water temperature drops 25 °F below the maximum recorded outlet temperature. With the nominal delivery temperature being 135 °F in the current test procedure, the cut-off temperature is 110 °F. This proposed change in temperature drop to trigger the end of a draw would maintain the approach that the minimum useful temperature of hot water is 110 °F. This value is consistent with Table 3, Chapter 50 of the ASHRAE Handbook of HVAC Applications,[14] which indicates that a representative temperature for showers and tubs is 110 °F. For water heaters with rated storage volumes at or above 20 gallons, water will continue to be drawn at 3 gallons per minute during the first-hour rating test. For water heaters having rated storage volumes below 20 gallons that are not designed to provide a continuous supply of hot water, water will be drawn at a rate of 1 gallon per minute during the first-hour rating test. A water heater that is designed to provide a continuous supply of hot water at the set point temperature [15] will be tested to obtain a maximum flow rate, while water heaters that are not so designed will be subject to a first-hour rating test.

DOE proposes the following ranges of first-hour ratings and maximum flow rates to characterize storage and instantaneous water heaters, respectively:

Point-of-use:
- First-Hour Rating less than 20 gallons.
- Maximum Flow Rate less than 1.7 gallons per minute (gpm).

Low:
- First-Hour Rating greater than or equal to 20 gallons, less than 55 gallons.
- Maximum Flow Rate greater than 1.7 gpm, less than 2.8 gpm.

Medium:
- First-Hour Rating greater than or equal to 55 gallons, less than 80 gallons.
- Maximum Flow Rate greater than or equal to 2.8 gpm, less than 4 gpm.

High:
- First-Hour Rating greater than or equal to 80 gallons.
- Maximum Flow Rate greater than or equal to 4 gpm.

DOE based these proposed ranges (or "bins") on first-hour rating data for existing models, requirements of the current plumbing code, and recommended cut-offs proposed by Bradford White and AHRI. (Bradford White, No. 2 at pp. 4–5; Bradford White, No. 30 at p. 2; AHRI, No. 46 at p. 4) In today's NOPR, DOE proposes to modify the set point temperature from the current 135 °F to 125 °F, as discussed further in section III.F.1. While it is acknowledged that the published first-hour rating data were taken at a set point temperature of 135 °F, limited testing shows that first-hour ratings at a set point temperature of 125 °F are comparable to those at 135 °F. The first-hour ratings of all water heaters on the market cluster around certain values to accommodate different levels of use. Those clusters are captured in the bins proposed here. DOE's proposed bins differ from those presented by Bradford White in its comments on the October 2011 RFI and the January 2013 RFI, because the commenter's approach grouped medium-use and high-use water heaters into a common category and added a category for water heaters meant for so-called "heavy-duty use." (Bradford White, No. 2 at pp. 4–5) DOE

[13] Lutz, JD, Renaldi, Lekov A, Qin Y, and Melody M., "Hot Water Draw Patterns in Single Family Houses: Findings from Field Studies," Lawrence Berkeley National Laboratory Report number LBNL–4830E (May 2011) (Available at *http://www.escholarship.org/uc/item/2k24v1kj*) (last accessed October 18, 2013).

[14] ASHRAE 2011, *Hondbook of HVAC Applications*, Chapter 50 Service Water Heating (Available at: *https://www.oshroe.org/resources-publications/hondbook*).

[15] A set point temperature is the temperature that the user selects via a thermosat as the temperature of the delivered hot water at the outlet of the water heater.

has tentatively concluded that the categories defined by Bradford White group too many water heaters in the mid-use category. DOE's proposed first-hour rating categories match those proposed by AHRI. DOE believes that these breakpoints are appropriate based on minimum first-hour ratings required by the Uniform Plumbing Code.[16] The code mandates minimum first-hour ratings for water heaters serving homes with different combinations of bedrooms and bathrooms. Four different minimum values are implemented by the code: 42, 54, 67, and 80 gallons.

DOE has tentatively concluded that its proposed usage categories are appropriate, given that they are consistent with the Uniform Plumbing Code, albeit with certain minor modifications. In considering the Uniform Plumbing Code, DOE considered 42 gallons per day as a lower limit for the low-use category, but concluded that it would not be realistic for a water heater intended to provide point-of-use functionality to deliver up to that level of water in one hour. Instead, DOE has tentatively decided to set the upper limit for point-of-use water heaters and the lower limit for low-use water heaters at 20 gallons per day. While water heaters with first-hour ratings below 42 gallons per day may not be used as a single water heater for whole-house applications, DOE believes that their use more closely resembles that of low-use water heaters rather than that of point-of-use water heaters. DOE has grouped homes with 2 to 4 bedrooms and less than 3 bathrooms in the medium category, which would require minimum first-hour ratings of 54 or 67. Five bedroom homes with up to 2.5 bathrooms or homes with three or more bathrooms would require water heaters with first-hour ratings at least 80 gallons per day; these water heaters fit into the proposed high-use category.

DOE acknowledges the uncertainty in using data generated under the existing test procedure, which are based on a first-hour rating test conducted at a delivery temperature of 135 °F, for establishing bins for the applicable draw patterns. Testing by DOE has indicated that storage water heaters with relatively high recovery rates yield higher first-hour ratings under the proposed procedure than under the current procedure, while those with low recovery rates tend to have slightly lower first-hour ratings at 125 °F compared to the rating at 135 °F. DOE seeks comments related to the translation of current first-hour ratings to a first-hour rating determined using the proposed 125 °F set point and the proposed breakpoints between the different size categories. This is identified as issue 2 in section V.E, "Issues on Which DOE Seeks Comment."

The proposed maximum gpm ratings for instantaneous water heaters were devised based on expected uses for water heaters serving applications of different sizes. The categorizations are consistent with those suggested by AHRI, with the ratings being scaled up to account for the higher maximum flow rates expected at the lower set point temperature (125 °F).

DOE seeks comment on the proposed criteria for characterizing water heaters as point-of-use, low usage, medium usage, and high usage, and whether these criteria are appropriate and sufficient. This is identified as issue 3 in section V.E, "Issues on Which DOE Seeks Comment."

For each sizing category, DOE proposes to apply a 24-hour simulated-use test to determine the energy factor. One of four separate draw patterns would be applied to each water heater based on the appropriate sizing category. The draw patterns would have the following number of draws per day: Point-of-use: 9; low: 11; medium: 12; and high: 14. DOE acknowledges that the number of draws per day in a typical household can often approach 100 and that the volume in each draw can be very small. However, DOE believes that a test with so many draws would be subject to large variability in results due to the challenges in accurately determining the energy content of such short draws. In contrast, DOE has tentatively concluded that the proposed draw patterns would capture the key ways in which hot water is used in residences while yielding a test that is repeatable.

DOE's proposal uses a slightly modified version of the draw patterns submitted by Bradford White and AHRI in response to the January 2013 RFI as a basis for the low, medium, and high draw patterns; Bradford White did not submit a draw pattern for point-of-use water heaters. In addition, the patterns presented by Bradford White grouped medium-use water heaters with heavy use, so data were missing for both point-of-use and medium use water heaters. Additionally, information provided by AET has also been considered to craft some aspects of the draw patterns. AET provided information on typical uses that would be applied to a water heater in terms of flow rates, number of draws, and volumes. (AET, No. 22 at pp. 22–36) This information was utilized in drafting the proposed draw patterns for point-of-use and medium-use water heaters.

A number of changes are proposed as compared to the current draw patterns found in the DOE simulated-use test procedure. First, the proposed draw patterns would involve more draws than are currently implemented, and the draws would vary in length during the simulated-use test. Second, the spacing between the draws would vary to better capture the effects of different cycling times on the energy efficiency of the water heater. Third, the proposed draws would involve different flow rates during the test; these flow rates would be 1.0, 1.7, or 3.0 gpm.[17] The total volumes that would be removed for each category are in line with recent field data compiled by the Lawrence Berkeley National Laboratory that was previously discussed. DOE believes that the proposed draw patterns would improve the estimation of energy efficiency by considering the impact of shorter draws, lower flow rates, higher number of draws, and variable standby times between draws.

DOE proposes draw patterns for implementation in the 24-hour simulated-use tests as outlined in Table III.2 through Table III.5. The total volume of water drawn in the proposed draw patterns are 10 gallons for the point-of-use pattern, 38 gallons for the low-usage pattern, 55 gallons for the medium-usage pattern, and 84 gallons for the high-usage pattern.

[16] International Association of Plumbing and Mechanical Officials, "2012 Uniform Plumbing Code" (2012) (Available at *www.iapmo.org*) (last accessed March 29, 2013).

[17] For point-of-use models, the flow rate is specified as the lesser of 1 gpm or the maximum gpm. Therefore, if a unit were to have a maximum gpm rating below 1.0 gpm, that unit would be tested at its maximum gpm flow rate.

TABLE III.2—POINT-OF-USE DRAW PATTERN

Draw number	Time during test (hh:mm)	Volume (gallons)	Flow rate (gpm)
1	0:00	2	Lesser of (1, max gpm).
2	1:00	1	Lesser of (1, max gpm).
3	1:05	0.5	Lesser of (1, max gpm).
4	1:10	0.5	Lesser of (1, max gpm).
5	1:15	0.5	Lesser of (1, max gpm).
6	8:00	1	Lesser of (1, max gpm).
7	8:15	2	Lesser of (1, max gpm).
8	9:00	1.5	Lesser of (1, max gpm).
9	9:15	1	Lesser of (1, max gpm).

TABLE III.3—LOW-USAGE DRAW PATTERN

Draw number	Time during test (hh:mm)	Volume (gallons)	Flow rate (gpm)
1	0:00	15.0	1.7
2	0:30	2	1
3	1:00	1	1
4	10:30	6	1.7
5	11:30	4.0	1.7
6	12:00	1.0	1
7	12:45	1.0	1
8	12:50	1.0	1
9	16:15	2.0	1
10	16:45	2.0	1.7
11	17:00	3.0	1.7

TABLE III.4—MEDIUM-USAGE DRAW PATTERN

Draw number	Time during test (hh:mm)	Volume (gallons)	Flow rate (gpm)
1	0:00	15	1.7
2	0:30	2.0	1
3	1:40	9.0	1.7
4	10:30	9.0	1.7
5	11:30	5.0	1.7
6	12:00	1.0	1
7	12:45	1.0	1
8	12:50	1.0	1
9	16:00	1.0	1
10	16:15	2.0	1
11	16:45	2.0	1.7
12	17:00	7.0	1.7

TABLE III.5—HIGH-USAGE DRAW PATTERN

Draw number	Time during test (hh:mm)	Volume (gallons)	Flow rate (gpm)
1	0:00	27	3
2	0:30	2.0	1
3	0:40	1	1
4	1:40	9.0	1.7
5	10:30	15	3
6	11:30	5.0	1.7
7	12:00	1.0	1
8	12:45	1.0	1
9	12:50	1.0	1
10	16:00	2.0	1
11	16:15	2.0	1
12	16:30	2.0	1.7
13	16:45	2.0	1.7
14	17:00	14.0	3

For instantaneous water heaters with maximum flow rates less than 1 gpm, DOE proposes that the flow rates during all draws of the point-of-use test will be set at the maximum gpm as determined during that test. DOE also proposes to tighten the tolerance on the volume removed in each draw from 0.5 gallons to 0.25 gallons since these patterns involve smaller draw volumes than in the current procedure.

DOE proposes to utilize interim metrics during testing that would be used in calculations to normalize the test to standard conditions, as in the current test procedure, to account for deviations from the prescribed storage tank temperature, ambient temperature, water delivery temperature, and inlet water temperature. The standby loss coefficient is one interim metric that would be determined during the longest standby portion of each test in which no recovery or draws are taking place. The recovery efficiency is a second interim metric that would be determined based on the first draw of each test, with the energy supplied and consumed during subsequent draws being accounted for when a complete recovery does not occur prior to the second draw.

DOE proposes to abandon the determination of recovery efficiency at different flow rates as currently done for instantaneous water heaters; test data have shown the difference between these recovery efficiencies as being less than five percent, and the resulting effect on the energy factor is negligible.

DOE notes that the proposed draw patterns differ slightly from those suggested by AHRI in response to the January 2013 RFI. (AHRI, No. 46 at pp. 5–6) In DOE's view, the proposed draw patterns appropriately differentiate between the size categories by increasing the number of draws as the size of the water heater increases. DOE also intends to minimize the different number of flow rates required for all tests, with the proposed draw patterns involving three different flow rates as opposed to the four specified by AHRI. The patterns proposed here have also been formulated to allow for the determination of key performance metrics that are needed for computing the energy factor, namely recovery efficiency and standby loss coefficient. DOE believes that the proposed patterns will ease those determinations. Finally, DOE has conducted testing according to the proposed patterns to validate the procedure and make adjustments as needed, whereas AHRI has not indicated that its specific patterns presented have been validated. In any event, DOE has tentatively concluded that the draw patterns proposed in today's NOPR are very similar to the patterns proposed by AHRI, and that little difference will be observed between ratings collected from either draw pattern. This assessment is based on the fact that the total volumes drawn per day for each category are comparable, the number of draws per day is comparable, and each pattern is based on a distribution that represents a cluster of draws in the morning and another cluster in the evening hours. Consequently, DOE has tentatively concluded that the patterns proposed in this NOPR are consistent with those presented by AHRI. DOE seeks comment on whether the proposed draw patterns for the different water heater size categories are appropriate. This is identified as issue 4 in section V.E, "Issues on Which DOE Seeks Comment."

D. Instrumentation

DOE proposes to maintain the instrumentation installation requirements and piping configuration as currently specified in the residential water heater test procedure. Bradford White recommended that the internal temperature probe required in the current test procedure be eliminated and that all exposed piping on the inlet and outlet of the water heater be eliminated as much as possible. (Bradford White, No. 30 at p. 2) DOE is concerned that the removal of the internal temperature probe would not enable the critical correction for stored energy inside the water heater, a value that could move the energy factor by several points. For this reason, DOE proposes to maintain the internal temperature probe inside the tank of a storage water heater. DOE is also proposing to maintain the piping configuration as currently specified in the residential water heater test procedure, as some water heaters include particular technologies such as heat traps that minimize losses through piping connections. For storage water heaters having a rated volume below 20 gallons, which are not covered in the existing DOE test method, DOE proposes that the average tank temperature would be determined based on three temperature sensors located within the storage tank as opposed to the currently required six sensors for storage water heaters having a rated volume above 20 gallons. The three sensors would be located at the vertical midpoints of three sections of equal volume within the tank. For these units, DOE believes that three sensors are sufficient for determining the mean tank temperature and that the use of six sensors would provide little extra information and may add to the parasitic heat losses from these smaller units.

DOE proposes to tighten the allowed accuracy on electric power and energy measuring equipment from the current value of ± 1 percent to ± 0.5 percent. A study has shown the significant effect of the accuracy of the electric power measurements on the uncertainty in the overall energy factor.[18] An analogous change was made in ASHRAE 118.2–2006, "Method of Testing for Rating Residential Water Heaters," and DOE research confirms that equipment having this tolerance level can be readily procured. DOE also proposes to require that for mass measurements greater than or equal to 10 pounds (4.5 kg), a scale that is accurate within ± 0.5 percent of the reading be used to make the measurement.

DOE also proposes to modify the data acquisition rate of the inlet and outlet water temperature during draws. Currently, for all water heaters except variable firing rate instantaneous water heaters, temperature data measurements are taken at 5-second intervals starting 15 seconds after the draw commences. For instantaneous water heaters with a variable firing rate, temperature data measurements are taken at 5-second intervals starting 5 seconds after the draw commences. The proposed test procedure amendments call for temperature data at the inlet and outlet temperature sensors to be recorded at 3-second intervals starting 5 seconds after commencement of the draw for all water heaters. Accordingly, DOE also proposes to require that the time constant of the instruments used to measure the inlet and outlet water temperatures be no greater than 2 seconds. DOE anticipates that this approach would better capture the energy impact of water heater start-up and cycling.

E. Discrete Performance Tests

In the October 2011 RFI, DOE considered using a series of discrete tests as an alternative approach to using a single 24-hour simulated-use test to determine the energy factor of residential water heaters. In a series of discrete performance tests, the results of various individual tests (*e.g.*, thermal efficiency test, recovery efficiency test, standby loss test) would be used to calculate the energy factor. This approach would reduce testing burden, yield more repeatable results, and provide the ability to predict

[18] Healy WM, Lutz JD, and Lekov AB., "Variability in Energy Factor Test Results for Residential Electric Water Heaters," *HVAC&R Research*, vol. 9, No. 4 (October 2003).

performance over a broader range of applications. DOE requested comments on the feasibility and equitability of a series of discrete tests in the October 2011 RFI. 76 FR 63211, 63214 (Oct. 12, 2011).

Two commenters (ACEEE, NREL) supported the general premise of discrete performance tests for rating water heaters, while acknowledging the challenges in implementing such an approach. More specifically, NREL indicated that studies are needed to validate that discrete tests would provide a computed energy factor with a level of accuracy equal to or better than a single simulated-use test. (NREL, No. 14 at p. 5) ACEEE indicated that discrete tests combined with an algorithm to determine the energy factor could reduce test time, produce ratings at a variety of usage patterns with a single set of tests, and could be used to account for novel features implemented by manufacturers to improve efficiency. ACEEE also acknowledged that the algorithms would still need to be developed and validated, a process with an unknown time frame. (ACEEE, No. 24 at pp. 2–3)

Eleven commenters (Stone Mountain Technologies, AO Smith, NEEA, NPGA, AHRI, AGA, GTI, Bosch, NRDC, General Electric, and AET) opposed the use of discrete tests to determine the energy factor. AHRI and AO Smith stated that such tests have a limited use relative to the wide range of technologies being employed in current designs of residential water heaters since they would not be as equitable as a simulated-use approach. (AHRI, No. 12 at p. 2; AO Smith, No. 8 at p. 2) GTI commented that much uncertainty remains in the analytical methodology for generating rating metrics, its comparability across equipment categories, and whether the outcome would actually yield a simpler and more repeatable alternative to the current test procedure. (GTI, No. 15 at p. 2) Stone Mountain Technologies stated that testing and analysis to date do not support such an approach. (Stone Mountain Technologies, No. 5 at p. 3) Bosch expressed support for the current draw profile and test approach because of what the commenter perceives as the extremely low repeatability and accuracy of test results at low input rates and the lack of data on appropriate draw patterns for use in calculating the energy factor. (Bosch, No. 17 at p. 2) General Electric expressed support for the current draw profile and test approach, arguing that it would more accurately focus on actual results and more closely approximate the real-world performance of residential water heaters. (GE, No. 21 at pp. 1–2) NEEA stated that the concept of using discrete performance tests to determine energy factor is not practical. (NEEA, No. 9 at p. 3) AGA commented that discrete performance tests have been shown to develop inconsistent results and impose new uncertainties in testing, and NRDC raised questions about the equitability of testing between technology types. (AGA, No. 13 at pp. 1–2; NRDC, No. 20 at p. 2) AET stated that it does not believe that the approach would work in practice because of controls not working as designed, the presence of multiple operating modes on water heaters, and the need to conduct more characterization tests than initially expected. These issues with discrete performance tests would make the algorithms used to obtain an energy factor prone to error. (AET, No. 22 at pp. 5–6)

DOE has decided not to pursue the use of discrete performance tests for rating the energy efficiency of residential water heaters given the potential inequity in test results across technologies, the added uncertainties in ratings, and the general lack of potentially suitable algorithms to develop an energy-factor for water heaters. Rather, as discussed previously in section III.C, DOE is maintaining the single simulated-use test, which DOE believes can be a more, technology-blind method for determining the energy efficiency (EF) of water heaters.

F. Test Conditions

1. Water Delivery Temperature

The current residential water heater test procedure calls for average hot water temperature within the storage tank to be set for delivery at 135 °F ± 5 °F (57.2 °C ± 2.8 °C). 10 CFR part 430, subpart B, appendix E, section 2.4. However, DOE noted in the October 2011 RFI that the Underwriters Laboratories (UL) standards specify that manufacturers must ship residential water heaters with thermostats set at temperatures no greater than 125 °F (52 °C) to safeguard against scalding hazards (UL 174, *Standard for Household Electric Storage Tank Water Heaters, Underwriters Laboratories* (April 29, 2004)). DOE also noted that DOE's own research suggests that although the majority of water heaters are shipped with the thermostat preset to 120 °F (49 °C), the average set point in use in the field is 124.2 °F (51.2 °C), suggesting that some homeowners or installers adjust the thermostat. 76 FR 63211, 63214 (Oct. 12, 2011).

The set point impacts the performance of various types of water heaters differently, and as a result, DOE reexamined the appropriateness of the set point specification in the proposed test procedure. As noted in the October 2011 RFI, a higher delivery temperature has a disproportionately large and negative impact on heat pump water heater efficiency (as compared to other types of water heaters), because heat pump water heaters can have markedly different performance at elevated stored water temperature compared to temperatures more representative of typical residential usage. For other types of water heaters, heat transfer characteristics between the heating source and the water may differ at lower delivery temperatures, thereby affecting the efficiency. 76 FR 63211, 63214 (Oct. 12, 2011).

However, DOE also noted in the October 2011 RFI that there are some concerns with using a lower set point temperature in the test procedure: (1) Some end uses (*e.g.*, dishwasher operation) require hot water delivered at 130 °F to 140 °F (54 °C to 60 °C) for effective operation; and (2) there may be the potential for the growth of Legionella in hot water stored below 135 °F (57 °C).[19]

DOE sought comment on the appropriate set point temperature for the residential water heater test procedure and the benefits and concerns with using a lower temperature. Three commenters to the October 2011 RFI (Bradford White, Bosch, and General Electric) recommended that the set point temperature should be kept at its current value of 135 °F (57 °C). Additionally, two commenters on the January 2013 RFI also recommended maintaining the set point at 135 °F (57 °C). (Bradford White, No. 30 at p. 2; AHRI, No. 46 at p. 2) Bosch stated that this value will maintain harmonization with test standards in Canada. General Electric indicated that plumbers may change the set point, but a lower temperature in the test procedure runs the risk of encouraging consumer dissatisfaction with water heaters that are otherwise properly sized for their household due not to lack of capacity, but to lack of properly adjusted storage temperatures. Additionally, General Electric indicated that DOE runs the risk

[19] ASHRAE Guideline 12, "*Minimizing the Risk of Legionellosis Associated with Building Water Systems,*" states that the temperature range most favorable for amplification of legionellae bacteria is 77° – 108 °F (25° – 42 °C), and that document recommends that when practical, hot water should be stored at temperatures of 120 °F (49 °C) or above. However, the guideline also states that for high-risk situations (such as in health care facilities and nursing homes), hot water should be stored above 140 °F (60 °C). For more information visit: *www.ashrae.org.*

of encouraging energy inefficiency in actual use at higher set points of water heaters designed and optimized to test procedures at lower set points. (Bradford White, No. 2 at p. 2; Bosch, No. 17 at p. 2; GE, No. 21 at pp. 2–3) In submitting a suggested test method, AHRI noted that it considered lower set points but that its recommendation is to continue to use 135 °F as the set point in the test. AHRI indicated that its recommended draw patterns should be modified if DOE determines that a different set point temperature setting is appropriate. (AHRI, No. 46 at p. 2)

Thirteen comments were submitted that recommended that the set point temperature be lowered from its current value. PGE, SCE, NREL, AET, and ACEEE recommended a set point temperature of 120 °F (PGE, No. 3 at p. 2; SCE, No. 4 at p. 2; NREL, No. 14 at p. 4; AET, No. 22 at p. 3; ACEEE, No. 24 at p. 4), while NEEA recommended a value of 125 °F. (NEEA, No. 9 at p. 3; NEEA, No. 37 at p. 4) In a comment on the January 2013 RFI, the joint commenters supported a set point temperature between 120 °F and 125 °F. (Joint comment, No. 35 at p. 3) Likewise, Stone Mountain Technologies and NRDC recommended a set point between 120 °F and 125 °F. (Stone Mountain Technologies, No. 5 at p. 3; NRDC, No. 20 at p. 2) AHRI and AO Smith did not suggest a specific value, but recommended that the set point temperature be lowered. (AHRI, No. 12 at p. 2; AO Smith, No. 8 at p 2) AET commented that the proposed ASHRAE Standard 188, (Standard 188P), "Prevention of Legionellosis Associated with Building Water Systems," and ASHRAE Guideline 12, "Minimizing the Risk of Legionellosis Associated with Building Water Systems," are re-examining recommendations for preventing the growth of Legionella. AET stated that water temperatures in the range of 120 °F are adequate to prevent Legionella colonies, provided that the water is maintained at a temperature "high enough, long enough, and often enough." (AET, No. 22 at pp. 11–12)

AET commented that the test procedure should allow for variable delivery temperatures, because some point-of-use water heaters are designed to deliver water no hotter than 105 °F (40.6 °C) to 110 °F (43.3 °C). AET argued that no credit should be given to water delivered at temperatures above the set point temperature, in order to discourage temperature overshoots. Likewise, AET argued that no credit should be given to water delivered at a temperature below that which is considered useful to the user (*i.e.*, below 105 °F (40.6 °C)). (AET, No. 22 at p. 13)

After carefully considering these comments, DOE proposes to lower the set point temperature of residential water heaters in the test procedure to 125 °F. This value was primarily selected based on data available in DOE's analysis for the April 2010 energy conservation standards final rule as previously discussed, which found that the average set point temperature for residential water heaters is 124.2 °F (51.2 °C). Additionally, the recent compilation of field data across the United States and southern Ontario by LBNL previously referenced found a median daily outlet water temperature of 122.7 °F (50.4 °C); this value rounded to the nearest 5 °F increment supports a test set point temperature of 125 °F. This new value would apply to first-hour rating tests for storage water heaters, maximum flow rate tests for instantaneous water heaters, and energy factor tests for all water heaters.

DOE appreciates the comment from AET regarding the new proposed guidelines for Legionella prevention, and tentatively concludes that a set point of 125 °F in the test method would not result in safety concerns related to the growth of Legionella. Further, as discussed immediately above, DOE notes that water heaters are commonly set to temperatures in the range of 120 °F to 125 °F even though the current set point in the test method is 135 °F. DOE does not expect consumer behavior related to set points to change if the set point is lowered in the test method.

For first-hour rating tests, DOE proposes that draws would terminate when the outlet temperature drops 15 °F (8.3 °C) from its maximum outlet temperature during the draw, as opposed to the drop of 25 °F (13.9 °C) implemented in the current test procedure. This change would ensure that water delivered meets the nominal useful temperature of 110 °F (43.3 °C). DOE acknowledges that the Canadian test procedure requires testing at 135 °F (57 °C), but DOE is responsible for developing a water heater test procedure that reflects and is appropriate for the United States market. In response to comments indicating that DOE should retain the 135 °F set point temperature, DOE believes that the test should be conducted at typical operating temperatures and should not penalize those units optimized for such typical conditions.

GE commented that the set point temperature should be based upon the outlet water temperature as opposed to the average stored water temperature to allow newer technologies to be included in the protocol and to achieve the goal of being technology-neutral. (GE, No. 36 at p. 2) HTP made a similar assertion that the set point should not be based on the mean tank temperature, noting that requiring a mean tank temperature could penalize condensing gas water heaters that rely on stratification and cooler water at the bottom of the tank to achieve better heat transfer resulting in the condensation of moisture within the flue gases. (HTP, No. 41 at p. 2) Due to these concerns, AHRI suggested an alternative method for setting the thermostat. Instead of setting the thermostat based on the mean tank temperature as determined by the internal tank temperature probe, AHRI suggested that the thermostat setting should be determined by drawing water from the water heater for several minutes to determine if the set point temperature is achieved. (AHRI, No. 46 at p. 5) AHRI proposed that the flow rate at which the water would be drawn during this procedure to set the thermostat would be 1 gpm for point-of-use water heaters and 1.7 gpm for all other size storage water heaters.

DOE agrees in principle with the comments and the suggested approach presented by AHRI for setting the thermostat. After carefully considering these comments, DOE acknowledges that the current method for setting the thermostats of water heaters that rely on stratification may lead to outlet water temperatures significantly higher than would normally be expected in practice, since the top of the water heater needs to be at an elevated temperature compared to the mean temperature to meet the requirement that the mean temperature fall within the value specified in the test procedure. However, DOE is not aware of a simple method to assure that multiple thermostats are set appropriately by monitoring outlet water temperature during a draw.

As a result, DOE proposes a method for determining the appropriate set point temperature that differs slightly from that proposed by AHRI. DOE proposes to apply the thermostat setting procedure that utilizes the outlet temperature during a draw, as suggested by AHRI, only to water heaters having a single thermostat. For water heaters with multiple thermostats, DOE proposes to maintain the procedure currently prescribed in the residential water heater test method which utilizes the internal tank temperature probes to determine if the water heater thermostat is set properly. DOE is not aware of any technologies that rely on stratification that utilize multiple thermostats, so it believes that the current approach for

setting the thermostat is appropriate for water heaters having multiple thermostats. DOE is also proposing to make a clear distinction by rated volume between those water heaters using a lower flow rate during this test compared to those using a higher flow rate since the thermostat setting will need to be done prior to the experimental determination of whether the water heater is to be considered a point-of-use water heater. While making this adjustment, DOE is maintaining calculations to normalize the standby loss to a mean tank temperature of 125 °F ± 5 °F (51.7°C ± 2.8 °C) to ensure equitable comparison between water heaters.

DOE is interested in receiving comments on both the proposed set point temperature of 125 °F ± 5 °F, and the proposed approach to setting the thermostat for storage water heaters, particularly on the appropriateness of different methods for water heaters having a single thermostat compared to those with multiple thermostats. These are identified as issues 6 and 7 in section V.E, "Issues on Which DOE Seeks Comment."

2. Ambient Temperature and Relative Humidity

The residential water heater test procedure requires that testing be performed in an environment with an ambient air temperature fixed at 67.5 °F ± 2.5 °F (19.7 °C ± 1.4 °C): 10 CFR part 430, subpart B, appendix E, section 2.2. For heat pump water heaters, however, the environmental conditions are more tightly constrained with an ambient air temperature requirement of 67.5 °F ± 1 °F (19.7 °C ± 0.6 °C) and a relative humidity requirement of 50 percent ± 1 percent. *Id.* These specifications for heat pump water heaters reflect the fact that heat pump water heater energy use is highly dependent on the ambient temperature and relative humidity. Because water heaters are placed in a wide variety of locations within and outside of a home, and given the large impact of these factors on heat pump water heater efficiency, DOE considered potential revisions to the ambient air test conditions set forth in the DOE test procedure in order to assess whether the currently-specified conditions are representative of conditions typically encountered in residential installations. In the October 2011 RFI, DOE requested comment on the appropriate ambient temperature and relative humidity testing points and tolerances for all types of residential water heaters. 76 FR 63211, 63214–15 (Oct. 12, 2011).

DOE received seven comments (Bradford White, Stone Mountain Technologies, AO Smith, AHRI, Bosch, General Electric, and AET) that supported the current ambient temperature and relative humidity conditions. Bradford White suggested that DOE should consider relaxing the tolerances for temperature and relative humidity when testing heat pump water heaters since it is very difficult to control to those conditions, recommending that the allowable ambient temperature variation be ± 2.5 °F and the allowable variation in relative humidity be ± 5 percent. (Bradford White, No. 2 at p. 2; Stone Mountain Technologies, No. 5 at p. 3; AO Smith, No. 8 at p. 2; AHRI, No. 12 at p. 2; Bosch, No. 17 at p. 2; GE, No. 21 at p. 3; AET, No. 22 at p. 4)

NEEA submitted for DOE consideration as a test method a test plan that has been implemented in the Pacific Northwest in which heat pump water heaters are tested at both the current DOE specifications and at a second point with the ambient temperature at 50 °F (10 °C) and the relative humidity at 58 percent. A bin-weighted calculation using these two points would yield an energy factor, and NEEA stated that it believes that these conditions are more appropriate than the current ones for installations in the northern half of the United States and would lead to better estimates of the actual performance in the field. (NEEA, No. 9 at p. 3) NEEA reiterated the desire to test at multiple conditions in response to the January 2013 RFI. (NEEA, No. 37 at p. 5) NRDC indicated that the conditions need to be re-examined but did not offer any suggestions. (NRDC, No. 20 at p. 2) ACEEE suggested that DOE should evaluate changing the ambient temperature to 50 °F or other such value that approximates the national average winter basement temperature. (ACEEE, No. 24 at p. 3) Davis Energy Group presented data from a survey of homes in California that reported average ambient temperatures that ranged from 65.4 °F to 71.7 °F. (Davis Energy Group, No. 6 at p. 1)

After carefully considering these comments, DOE proposes to maintain the current ambient dry bulb temperature of between 65 °F and 70 °F when testing water heaters other than heat pump water heaters and at 67.5 °F ± 1 °F when testing heat pump water heaters. DOE also proposes to maintain relative humidity at 50 percent, but to relax the tolerances to ± 2 percent relative humidity. DOE believes these conditions are generally representative of typical field conditions encountered by water heaters installed in the U.S. and has not found any data to justify changing these conditions. DOE proposes to relax the tolerance for relative humidity because research indicates that commonly-used, laboratory-grade relative humidity sensors have uncertainties on the order of 1 to 1.5 percent. For this reason, the tolerance cannot be expected to be below the accuracy in measuring that value. It should be noted, however, that the relative humidity can be obtained from measurements of dry bulb and wet bulb temperatures, and the determination of relative humidity through these temperature measurements would result in a measure of relative humidity with much lower uncertainty since dry bulb and wet bulb temperatures can be measured with high accuracy. However, most laboratories use relative humidity sensors which provide an accurate but less burdensome method for measuring relative humidity. DOE is also proposing to add a statement to the instrumentation section that specifies that the accuracy of relative humidity sensors shall be within ± 1.5 percent relative humidity.

3. Laboratory Airflow

The existing test procedure specifies that the water heater shall be set up in an area that is protected from drafts. To clarify this statement, DOE proposes to add a stipulation that the area be protected from drafts of more than 50 ft/min (2.5 m/s). This value is in accordance with specifications in Canadian Standard 745–03, "Energy Efficiency of Electric Storage Tank Water Heaters and Heat Pump Water Heaters."

G. Annual Energy Consumption Calculation

The annual energy consumption is calculated for residential water heaters in the existing test procedure based on the daily energy consumption multiplied by 365 days. In a letter submitted to the FTC on September 16, 2013, regarding the labeling of residential water heaters, AHRI pointed out that calculating the annual energy consumption based on the daily energy consumption can lead to differing annual energy consumption, and consequently, differing estimated yearly operating costs, for water heater models with the exact same EF rating. AHRI specifically provided an example of two water heaters with differing daily energy consumption values, but with EF values that would round to the same value based on the DOE rounding requirements provided in 10 CFR 430.23(e). AHRI stated that having slightly different yearly operating cost

estimates for two water heaters with the same efficiency rating can be confusing to consumers, and somewhat misleading based on the accuracy of the test method. AHRI suggested revising the calculation of the annual energy consumption so that it is based on the EF rating.

DOE agrees with AHRI regarding the calculation of the annual energy consumption and the accuracy of the test method. As a result, DOE proposes to adopt the calculation method suggested by AHRI for annual energy consumption, which is based on the nominal energy consumed during the test and the energy factor rating, rather than the daily energy consumption.

H. Conversion of Existing Energy Factor Ratings

The proposed test procedure amendments could result in some types of water heaters reporting some numerical changes in EF due to the proposed changes in the draw pattern, set point temperature, and water delivery temperature. However, the extent of change can vary across the numerous design types of water heaters and, perhaps more importantly, within a given design type. This variability makes it difficult to capture the effect of the proposed test procedure amendments by a consistent, systematic adjustment to the current test procedure.

Foreseeing these circumstances, AEMTCA amended EPCA to require that along with the uniform descriptor, DOE must develop a mathematical conversion factor to translate from the existing metrics to the uniform descriptor. (42 U.S.C. 6295(e)(5)(E)) AEMTCA provided that a manufacturer may apply the conversion factor to rerate existing models of covered water heaters that are in existence prior to the effective date of the final rule establishing the uniform descriptor. Further, the conversion factor must not affect the minimum efficiency requirements for covered water heaters, and, as a result, would not lead to a change in measured energy efficiency for existing products. DOE interprets these requirements to mean that DOE will be required to translate existing ratings from the current metrics to the new metric, while maintaining the stringency of the current standards. In the January 2013 RFI, DOE sought comment on the best approach for this conversion factor. 78 FR 2340, 2345 (Jan. 11, 2013).

NREL stated that there is not a simple conversion factor that will work across all systems, but it provided a list of references with validated algorithms that could assist DOE in developing these conversion factors. (NREL, No. 29 at p. 4) AHRI and AO Smith commented that DOE should not simply test multiple units to determine an average difference between the current and new ratings and use that value to convert the ratings. (AHRI, No. 33 at p. 4; AO Smith, No. 34 at p. 3) The joint commenters supported the use of a "good-enough" mathematical conversion method to express existing ratings in terms of the new uniform descriptor and urged DOE to test a sample of existing products to validate the algorithmic conversion method. (Joint comment, No. 35 at p. 4) Considering the limited laboratory capacity to test all water heaters under the revised method of test, NEEA commented that DOE should assume that all water heaters that comply with current standards will also comply after the implementation of the new metrics. (NEEA, No. 37 at p. 6) EEI commented that the conversion factor should not make currently existing standards more stringent and should only be based on point-of-use metrics to be consistent with Federal law. (EEI, No. 40 at p. 2) HTP commented that the most exact approach would be to conduct an empirical analysis using curve fitting to actual test data, although the commenter acknowledged that there is not sufficient time for manufacturers to obtain this information and for the Department to then correlate and analyze the data. (HTP, No. 41 at p. 3)

DOE notes these comments regarding the conversion factor and will consider them fully once the test procedure is finalized to assist in developing the conversion factor. DOE plans to conduct a separate rulemaking to establish the conversion factor once the test method is finalized, and in that rulemaking, DOE will establish a mathematical method for determining the rated efficiency under the new efficiency descriptor from the rated efficiency under the existing metrics. Should it become apparent in the rulemaking to establish the conversion factor that changes may be required in the test procedure, DOE would address any issues at that time. DOE also plans to translate its current energy conservation standards to equivalent standards denominated in the new uniform efficiency metric in the separate rulemaking.

I. Other Issues

DOE also sought comments in the October 2011 RFI and the January 2013 RFI on any other relevant issues that commenters believe could affect the test procedure for water heaters, and continues to seek comment in today's notice. 76 FR 63211, 63215 (Oct. 12, 2011); 78 FR 2340, 2346 (Jan. 11, 2013). Although DOE has attempted to identify those portions of the test procedure where it believes amendments may be warranted, interested parties are welcome to provide comments on any aspect of the test procedure, including updates of referenced standards, as part of this comprehensive 7-year-review rulemaking.

AET supported keeping the inlet water temperature at 58 °F. (AET, No. 22 at p. 4) Davis Energy Group provided data on average inlet water temperatures reported in studies in California that ranged from 64.2 °F to 72.3 °F. (Davis Energy Group, No. 6 at p. 3) Despite these values being higher than the current nominal temperature specified in the current DOE test procedure, DOE has not seen any data that suggests a different temperature is more appropriate on a national basis, so DOE has tentatively decided to maintain the inlet temperature at 58 °F in the proposed test procedure.

AHRI suggested an alternative means to prepare a storage-type water heater prior to commencement of the 24-hour simulated-use test. (AHRI, No. 46 at p. 7) AHRI suggested that DOE could improve the consistency of energy factor tests by running the draw patterns on two consecutive days, with measurements only taking place during the second 24-hour period. After careful consideration, DOE has tentatively concluded that this approach would lead to more consistent results since the state of the water heater at the beginning of the 24-hour test period will be similar to that at the end of the test period, thereby minimizing the need to make large corrections to the energy consumption values which could introduce errors. DOE is aware of testing conducted in this manner that has resulted in consistent values for the energy factor.[20] DOE is tentatively proposing to require storage water heaters to be pre-conditioned in this manner. It is DOE's understanding that test laboratories must already let the water heater sit at temperature for an extended period of time to let the unit achieve operational temperature. Therefore, DOE reasons that the proposed pre-conditioning routine might be done during this stage, thereby resulting in little or no added test time. DOE is interested in comment regarding the value of the pre-conditioning period and the incremental burden, if any, that

[20] Healy WM., Lutz JD, and Lekov AB., "Variability in Energy Factor Test Results for Residential Electric Water Heaters," *HVAC&R Research*, vol. 9, No. 4 (October 2003).

it would place on manufacturers. This is identified as issue 5 in section V.E, "Issues on Which DOE Seeks Comment."

NREL argued that published metrics from the DOE test procedure should allow for calculation of performance under conditions outside the particular conditions imposed by the test procedure. (NREL, No. 29 at p. 1) DOE does not propose to require any published metrics from the test procedure specifically for the purpose of calculating performance at various conditions outside of those imposed by the test method, as the purpose of the DOE test procedure is to determine compliance to minimum efficiency standards and to provide a basis for representation of energy performance to consumers.

The joint comment urged DOE to consider several additional points. (Joint comment, No. 35 at p. 6) First, it raised the question as to the appropriate rating method for a hybrid solar water heating system whose tank might be passive or active. DOE notes that solar water heaters are not covered equipment under EPCA, and thus the DOE test method for water heaters need not address these systems. Further, hybrid solar water heating systems consisting of a stand-alone water heater with additional solar components that are added in the field could be tested according to the rating method provided for the water heater if the solar components were not present. The stand-alone heater would be subject to energy conservation standards without consideration of the benefits, if any, of the solar portion. Second, the joint commenters questioned how to rate "hybrid" fuel-fired units with tanks larger than 2 gallons. DOE believes that amendments proposed in this NOPR will cover those products—the storage volume gaps that currently exist in the scope would be removed under this proposal, and the proposed test method would cover those products. Lastly, the joint commenters asked whether test procedures should reflect energy savings from "smart" or "grid-interactive" water heaters. DOE does not believe that a separate test procedure is warranted for this equipment, because they are functionally similar to non-grid-interactive water heaters. DOE acknowledges that usage patterns for grid-interactive water heaters may be very different from water heaters that are not grid-interactive or controlled as part of demand response programs. However, DOE believes that there is generally a wide range of usage patterns for all water heating products seen in the field, and it would be impractical to attempt to tailor the test method to every potential usage pattern. Thus, DOE believes that such differences in usage patterns are better addressed as part of standards analyses, rather than as a separate test method.

PGE commented that a method is needed for reporting source energy consumption for future standards rulemakings, because the commenter opined that source energy is a more complete metric for representing the energy consumed by appliances and would yield a better comparison between the energy consumption of gas, electric, and gas/electric units. The commenter further opined that the test procedures should include calculations to allow for two energy factors, one based on site energy and one based on source energy. (PGE, No. 3 at p. 2) In response to the January 2013 RFI, DOE received additional comments related to source-based metrics. EEI stated that, consistent with other Federal laws, any new descriptor or conversion factor should only be based on point-of-use metrics. (EEI, No. 40 at p. 2) AGA, NPGA, and APGA all supported a metric based on the full fuel cycle that would provide a complete accounting of energy consumption from extraction, processing, and transportation of energy. (AGA, No. 31, at p. 3; NPGA, No. 32 at p. 1; APGA, No. 39 at p. 1)

In addressing this comment, DOE notes that the Department has historically presented national energy savings (NES) in terms of primary energy savings (*i.e.*, source energy savings). However, in response to the recommendations of a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" appointed by the National Academy of Science, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281(August 18, 2011). To this end, DOE has begun to also estimate energy savings using the FFC metric. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels, and thus presents a more complete picture of the impacts of efficiency standards. DOE's approach is based on application of FFC multipliers for each fuel type used by covered products and equipment, as presented in DOE's statement of policy published in the **Federal Register** on August 18, 2011. *Id.*

DOE has reviewed the water heater test procedures, including today's proposed amendments, in relation to the newly established FFC policy, and has tentatively concluded that no substantive amendments are needed to the water heater test procedures to accommodate the FFC policy. In support of this conclusion, the following discussion elaborates separately on the FFC policy implications for energy efficiency standards and representations.

For the purposes of energy conservation standards, the test procedure-derived measure of energy consumption and efficiency, including the regulatory efficiency metric (*i.e.*, EF) is sufficient and complete enough to allow for full consideration of the FFC impacts in the energy conservation standards analysis. In support of this conclusion, it is noted that the existing and future energy conservation standards for these products are, and are expected to continue to be, analyzed independently by fuel type. DOE believes this independent analytical approach eliminates any possible mischaracterization or inappropriate consideration of a standard's stringency that might be associated with the test procedure's regulatory metrics for these products. More specifically, the commenters' suggestion to add a source-based Energy Factor for water heaters would not add to or improve the standards analysis for water heaters because of the expansion of the standard's analysis already incorporated in the current approach.

For the purposes of representations, DOE has also tentatively concluded that some small improvements to the water heater test procedure are deemed appropriate to accommodate the FFC policy. It is important to note that both the current test procedure and the proposed revised test method for this product incorporate numerous measures of energy consumption and efficiency, some of which are used in the regulatory context mentioned above and some of which support the consumer information objective of the test procedure. Although the main thrust of the PGE, AGA, APGA, and NPGA suggestions seems to be based on the assumption that the addition of a source-based energy factor would improve analysis for water heater standards, there also seems to be a suggestion that such inclusion would also provide improvement in a non-regulatory or consumer information context. An important example of a non-regulatory metric is annual energy consumption, which provides a complete accounting of the energy consumption to the consumer and which can be used to estimate annual

operating cost. For water heaters, DOE proposes to add terms in the test method to quantify daily electric energy consumption separately from fossil fuel energy consumption and to add separate estimates of annual fossil fuel energy consumption and annual electrical energy consumption in addition to the overall annual energy consumption. This separation would allow the user of the test procedure to estimate operational cost of water heaters that use both fossil fuel and electricity based on the prices of those different energy sources. From a consumer's perspective, annual operating cost is particularly useful for the products that have dual fuel inputs. DOE believes this consumer cost perspective is reasonably reflected in the FFC (*i.e.*, the source/site factors recommended by the commenter are essentially numerically identical to the fuel cost ratios published biennially by the Secretary). Therefore, the commenters' suggested addition of a source-based energy factor using the suggested multipliers is, in DOE's view, not likely to convey any improvement in product-to-product comparisons relative to annual operating cost. In fact, annual operating cost would likely be a superior basis of comparison for consumers, considering the familiarity with annual budgets and the lack of familiarity with source-based efficiency comparisons.

In addition, and perhaps more importantly, annual operating cost provides a reasonable comparison across competing product types utilizing different fuels (*e.g.*, electric water heaters and gas-fueled water heaters). Arguably, site-based energy factors for electric water heaters (typically approximately 0.9 for an electric resistance model) would be higher than the counterpart energy factors for gas water heaters (typically approximately 0.6), but not representative of the relative efficiency of each type of water heater. Thus, an inappropriate conclusion would be conveyed to consumers. DOE believes such inappropriate conclusions can be easily avoided in any consumer information program by focusing on annual operating cost. Here again, the biennial published unit cost of energy would protect the consumer from inappropriate conclusions. Accordingly, for purposes of representations, DOE is not aware, nor has it been made aware through responses to the request for information, of any specific problems, shortcomings, or misrepresentations resulting from the existing test procedure measures of energy consumption and efficiency as it relates to the FFC policy. The proposed amendments to the water heater test procedure would provide additional metrics that could be used should one desire more information related to the FFC policy for a particular application of the test method.

DOE is interested in receiving comment on adding terms to quantify daily electric energy consumption separately from fossil fuel energy consumption and adding separate estimates of annual fossil fuel energy consumption and annual electrical energy consumption in addition to the overall annual energy consumption. This is identified as issue 8 in section V.E, "Issues on Which DOE Seeks Comment."

A final issue raised by commenters is that heat pump water heaters that have recently entered the market typically have multiple operational modes, and the current DOE test procedure does not specify which mode should be used when the unit is undergoing testing. AO Smith and AHRI commented that all heat pump water heaters should be tested under a single mode of operation which is the default or "out-of-the-box" condition. (AO Smith, No. 8 at p. 2; AHRI No. 12 at p. 3) DOE agrees with this comment and proposes a clarification to the test procedure to indicate that heat pump water heaters are to be tested in the default mode when obtaining both the first-hour rating and determining the energy factor. This clarification is consistent with guidance issued by DOE on June 12, 2012 (*see: http://www1.eere.energy.gov/guidance/detail_search.aspx?IDQuestion=623&pid=2&spid=1).*

J. Certification, Compliance, and Enforcement Issues

In this notice of proposed rulemaking, DOE proposes to make several changes to its certification, compliance, and enforcement regulations at 10 CFR Part 429. First, DOE proposes to add requirements to 10 CFR 429.17 that the rated value of storage tank volume must equal the mean of the measured storage volume of the units in the sample. DOE notes that there are currently no requirements from the Department limiting the amount of difference that is allowable between the tested (i.e., measured) storage volume and the "rated" storage volume that is specified by the manufacturer. DOE has tested 65 residential storage-type water heaters, including 44 gas-fired water heaters, 19 electric water heaters, and 2 oil-fired water heaters. Through this testing, DOE has found that water heaters are consistently rated at storage volumes above their actual storage volume. For gas fired water heaters, the rated volume ranged from 1.5 to 15.6 percent above the measured volume, with the mean being 4.8 percent. For electric water heaters, the rated volume ranged from 5.0 to 10.6 percent above the measured volume, with the mean being 9.4 percent. DOE notes that its minimum energy conservation standards are based on the rated storage volume and decrease as rated storage volume increases. DOE also believes consumers often look to storage volume as a key factor in choosing a storage water heater. Consequently, DOE proposes to adopt rating requirements that the rated value must be the mean of the measured value. In addition, DOE proposes to specify that for DOE-initiated testing, a tested value within five percent of the rated value would be a valid test result where the rated storage volume would then be used in downstream calculations. If the test result of the volume is invalid (*i.e.*, the measured value is more than five percent different than the rated value), then DOE proposes to use the measured value in determining the applicable minimum energy conservation standard and calculations within the test procedure. DOE proposes to specify similar requirements for light commercial water heaters.

Additionally, because the first-hour and maximum gpm ratings will determine the applicable draw pattern for use during the energy factor test, DOE proposes to include rating requirements for those values. DOE proposes that the rated first-hour rating or maximum gpm rating, as applicable, must be the mean of the measured values of the sample used for certifying the basic model's efficiency rating. For DOE testing, the rating will be considered valid if it is within five percent of the certified rating. In such a case, DOE proposes that the rated value would be used for the purposes of choosing the appropriate draw pattern for the energy factor test. In the case of an invalid rating (*i.e.*, the rated first-hour rating or maximum gpm rating is more than five percent different from the measured value), DOE proposes to use the measured value to determine the applicable draw pattern for the energy factor test.

DOE has further considered section 7.0 of the current test procedure, "Ratings for Untested Models," and believes that this information is more appropriately addressed in the 10 CFR part 429, which deals with requirements for certification of residential water heaters. DOE proposes to remove this section from Appendix E and place a similar section in 10 CFR 429.17. DOE

proposes to maintain the requirements for gas water heaters, which allow units using propane gas that have an input rating within 10 percent of an identical natural gas unit to use the rating for the natural gas unit in lieu of separate testing. However, DOE proposes to eliminate the provisions for electric water heaters that currently allow a manufacturer of electric water heaters that are identical except with different input ratings to designate a standard input rating at which to test the water heater.

Under the current procedure, the manufacturer of electric water heaters may designate the standard input rating that would apply to all models that are identical with the exception of the power input to the heating element and test only at single input rating. It provides instructions for specifying the first-hour rating of units with higher and lower input ratings than the standard rating. The procedure also provides that the energy factor can be assumed to be the same across all input ratings. DOE proposes to remove these provisions due to the proposed revisions in the test method for the first-hour rating and energy factor tests. The first-hour rating would be expected to vary based on the power input to the electric heating element, and under the revisions proposed in this test method the applicable draw pattern for the energy factor test would be based on the first-hour rating. As a result, it is important that the first-hour rating is accurate for the given model as it will potentially impact the draw pattern and the resultant EF rating.

K. Reference Standards

DOE's test procedure for residential water heaters currently references two industry standards: American Society for Testing and Measurement (ASTM) D2156–80, "Smoke Density in Flue Gases from Burning Distillate Fuels, Test Method for" and ASHRAE Standard 41.1–1986, "Standard Measurement Guide: Section on Temperature Measurements."

DOE proposes to maintain these references in the uniform efficiency descriptor test method, but to update the reference standards to the most recent versions of the industry standards: ASTM D2156–09, "Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels" and ASHRAE Standard 41.1–1986 (RA2006), "Standard Method for Temperature Measurement." DOE has reviewed both of the updated standards and has tentatively concluded that their adoption would not substantially impact the test method.

L. Compliance With Other EPCA Requirements

As mentioned above, in amending a test procedure, EPCA directs DOE to determine to what extent, if any, the test procedure would alter the measured energy efficiency or measured energy use of a covered product. (42 U.S.C. 6293(e)(1)) If the amended test procedure alters the measured energy efficiency or measured energy use, the Secretary must amend the applicable energy conservation standard to the extent the amended test procedure changes the energy efficiency of products that minimally comply with the existing standard. (42 U.S.C. 6293(e)(2)) The current energy conservation standards for residential water heaters are based on energy factor (EF), and the energy conservation standards for commercial water heaters are based on thermal efficiency and standby loss. DOE believes that the conversion factor (or factors) required by AEMTCA (as discussed in section III.G) will ensure that there is no change in measured energy efficiency.

Consistent with 42 U.S.C. 6293(c), DOE typically requires that any representations of energy consumption of covered products must be based on any final amended test procedures 180 days after the publication of the test procedure final rule. However, in this instance, the statute specifically provides for an effective date of the test procedure final rule which is one year after the date of the publication of the final rule. (42 U.S.C. 6295(e)(5)(D)(ii)) In addition, AEMTCA provides for the use of a conversion factor that will apply beginning on the date of publication of the conversion factor in the **Federal Register** and ending on the later of 1 year after the date of publication of the conversion factor or December 31, 2015. (42 U.S.C. 6295(e)(5)(E)(v)) Thus, one year after the publication of the test procedure final rule, it will become effective, and manufacturers may at their discretion make representations of energy efficiency based either (a) on the final amended test procedures or (b) on the previous test procedures after applying the conversion factor. The previous test procedures for residential water heaters are set forth at 10 CFR part 430, subpart B, appendix E as contained in 10 CFR parts 200 to 499 edition revised as of January 1, 2013. The previous test procedures for commercial water heating equipment are set forth at 10 CFR 431.106 as contained in 10 CFR parts 200 to 499 edition revised as of January 1, 2013. As required by AEMTCA, the conversion factor may be used until the later of one year after the publication of the factor, or December 31, 2015, after which time all testing must be conducted in accordance with the new amended test procedure. DOE notes that during the interim period manufacturers must use the same test procedure for representations of energy efficiency, including certifications of compliance.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993). Accordingly, this regulatory action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at: *www.gc.doe.gov/gc/office-general-counsel.*

Today's proposed rule would prescribe test procedure amendments that would be used to determine compliance with energy conservation standards for residential water heaters and certain commercial water heaters. For residential water heaters and certain commercial water heaters, the proposed amendments would establish a uniform

efficiency descriptor which would be more representative of conditions encountered in the field (including modifications to both the test conditions and the draw patterns), and expand the scope of the test procedure to apply to certain residential water heaters and certain commercial water heaters that are currently not covered by the test procedure. DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. 68 FR 7990.

For the manufacturers of the covered water heater products, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848–49 (May 15, 2000), as amended at 65 FR 53533, 53544–45 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*. Residential water heater manufacturing is classified under NAICS 335228—"Other Major Household Appliance Manufacturing." The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business. Commercial water heaters are classified under NAICS 333319 –"Other Commercial and Service Industry Machinery Manufacturing," for which SBA also sets a size threshold of 500 employees or fewer for being considered a small business.

DOE has identified 13 manufacturers of residential water heaters (including manufacturers of products that fall under the proposed expanded scope) that can be considered small businesses. DOE identified nine manufacturers of "light commercial" water heaters that can be considered small businesses. Seven of the "light commercial" water heater manufacturers also manufacture residential water heaters, so the total number of water heater manufacturers impacted by this rule would be 15. DOE's research involved reviewing several industry trade association membership directories (*e.g.*, AHRI), product databases (*e.g.*, AHRI, CEC, and ENERGY STAR databases), individual company Web sites, and marketing research tools (*e.g.*, Hoovers reports) to create a list of all domestic small business manufacturers of products covered by this rulemaking.

For the reasons explained below, DOE has tentatively concluded that the test procedure amendments contained in this proposed rule would not have a significant economic impact on any manufacturer, including small manufacturers.

For residential water heaters, the amendments proposed in today's notice of proposed rulemaking apply primarily to the draw pattern and water delivery temperature. Under DOE's existing test procedure, manufacturers must perform a simulated use test consisting of 6 draws of equal lengths with a water heater delivery temperature of 135 °F. If adopted, today's proposal would require manufacturers to perform a simulated use test consisting of 9 to 14 draws of varied length, depending on the capacity of the water heater, at a water delivery temperature of 125 °F. The change in water delivery temperature requires no additional effort or expense for the manufacturer, because establishing the test temperature is simply a matter of choosing the appropriate setting on the water heater. Likewise, the change in the number of draws would also result in very little burden on manufacturers. The length and timing of draws for the existing test procedure are largely controlled automatically by computer control. The proposed changes would result in manufacturers having to reprogram the computer test programs to account for the new draw patterns. DOE estimates that this effort would take approximately one week to program and confirm operation of the amended test. It is estimated that approximately two days of a programmer's time would be needed at a cost of $1,000 including overhead and benefits. This one-time cost is comparable to that charged by a third-party test laboratory for a single test, so it is not considered burdensome for water heater manufacturers. Since the simulated use test takes 24 hours under both the existing and proposed test method, the length of the test would not change. The current proposal does specify a 24-hour pre-conditioning period prior to the 24-hour test for storage water heaters, however, which would add to the time required to conduct the test. This extra test time would not require extra personnel, but it may necessitate the development of additional test platforms to accommodate the amount of testing that a manufacturer must conduct. A duplicate test platform, if necessary, could result in an additional cost of approximately $5,000 in terms of materials and time needed for construction. DOE understands, however, that a 24-hour pre-conditioning period is already implemented by manufacturers as a best practice to allow the water heater to achieve operational temperature, so the added burden would be minimal. In addition, these tests can be conducted in the same facilities used for the current energy testing of these products, so there would be no additional facility costs required by the proposed rule.

Lastly, the only potential instrumentation upgrade required to conduct the test would be electric power and energy measuring equipment that meets the accuracy levels that have changed from ± 1 percent to ± 0.5 percent. DOE believes that equipment meeting these tolerances is already the industry standard. Purchase of a new instrument, if needed, would be expected to cost approximately $1,000.

For certain commercial water heaters included in the scope of this rulemaking, the efficiency test required for equipment would change from the thermal efficiency and standby loss tests specified in the current DOE test method, to the simulated use test for energy factor proposed in today's NOPR. The energy factor test is inherently more complex than the thermal efficiency and standby loss tests, and, thus, it may be more difficult to implement. However, the standby loss test takes a significant amount of time, which is comparable to the 24-hour simulated use test. Accordingly, overall testing time should remain fairly constant. DOE understands that the complexity of the energy factor test would impose additional costs on manufacturers due to the need to automate draw patterns, as compared to the thermal efficiency test. In addition, some hardware purchases may be needed to allow for computer-controlled draws of hot water that are required in a simulated use test. However, DOE notes that many commercial water heater manufacturers also manufacture residential water heaters, and may already have this equipment from testing of residential units. Nonetheless, DOE estimates that this hardware could cost approximately $1,000, assuming that the laboratory already has a computer-controlled data acquisition system to collect data during the thermal efficiency and standby loss tests currently required. DOE estimates the costs for a programmer to create a computer program that automatically controls the hot water draws would be similar to the costs above, but that the time required may be slightly longer if the program is being developed from scratch. Under such circumstances, DOE estimates that 5 days of programmer

time would be needed for a cost of $2,500, including overhead and benefits.

Lastly, DOE considered the impacts on small businesses that manufacture residential water heaters that fall into categories that were previously not covered by the DOE residential water heater test procedure (*e.g.*, models with storage volumes between 2 and 20 gallons). In reviewing the market for these products, DOE did not identify any manufacturers that did not also manufacture other types of water heating equipment. Thus, DOE believes that these manufacturers would already have the needed equipment and computer programs to conduct the current DOE test. For the reasons stated previously, DOE does not believe the proposed updates will cause significant additional burdens for these manufacturers.

Accordingly, DOE tentatively concludes and certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, so DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of water heaters must certify to DOE that their products comply with all applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedure for water heaters, including any amendments adopted for the test procedure on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential and commercial water heaters. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for residential and commercial water heaters. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and tentatively determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For regulatory actions likely to result in a rule that may cause the expenditure by

State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *www.gc.doe.gov/gc/office-general-counsel.*) DOE examined today's proposed rule according to UMRA and its statement of policy and has tentatively determined that the rule contains neither an intergovernmental mandate, nor a 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 in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to amend the test procedures for measuring the energy efficiency of residential water heaters and certain commercial water heaters is not a significant regulatory action under Executive Order 12866 or any successor order. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

Today's proposed rule would incorporate testing methods contained in the following commercial standards: (1) ASTM D2156–09, "Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels"; and (2) ASHRAE Standard 41.1–1986 (RA 2006), "Standard Method for Temperature Measurement." While today's proposed test procedure is not exclusively based on these standards, components of the test procedures are adopted directly from these standards without amendment. The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in these standards prior to prescribing a final rule.

V. Public Participation

A. Attendance at the Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar

participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=82*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak and Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice of proposed rulemakiing between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov*. Persons who wish to speak should include in their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice of proposed rulemaking. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice of the proposed rulemaking, and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice of proposed rulemaking.

Submitting comments via regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed

simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/ courier, or mail. Comments and documents submitted via email, hand delivery/ courier, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/ courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Is the proposed definition of "light commercial water heater" appropriate, and is it appropriate to test commercial water heaters meeting this definition under the uniform descriptor, while testing all other commercial water heaters using thermal efficiency and standby loss?

2. Is information or data available regarding the translation of current first-hour ratings to a first-hour rating determined using the proposed 125 °F set point? What is the effect of such translation on the appropriate breakpoints between different size categories?

3. Is the proposed method of characterizing water heaters as point-of-use, low, medium, or high appropriate and sufficient?

4. Are the draw patterns proposed for the different water heater size categories appropriate?

5. What is the added burden, if any, in requiring a 24-hour pre-conditioning period for storage-type water heaters compared to current practice?

6. Is the proposed change to the nominal water delivery temperature to 125 °F appropriate, and if not, what data or information is available that would justify a different water delivery temperature?

7. Is the proposed method for setting the thermostat(s) of storage-type water heaters appropriate?

8. The addition of terms to quantify daily electric energy consumption separately from fossil fuel energy consumption and adding separate estimates of annual fossil fuel energy consumption and annual electrical energy consumption in addition to the overall annual energy consumption.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on October 28, 2013.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE proposes to amend parts 429, 430 and 431 of Chapter II, Subchapter D of Title 10, Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.17 is amended by adding new paragraphs (a)(2)(iii), (a)(2)(iv), (c), and (d) to read as follows:

§ 429.17 Residential water heaters.

(a) * * *

(2) * * *

(iii) Any represented value of the rated storage volume must be calculated as the mean of the measured storage volumes, V_{st}, of all the units within the sample.

(iv) Any represented value of first-hour rating for storage water heaters or maximum gallons per minute (gpm for instantaneous water heaters must be calculated as the mean of the measured first-hour ratings or measured max gpm ratings, respectively, of all the units within the sample.

* * * * *

(c) *Determination of ratings for untested basic models.* Manufacturers of gas-fired water heaters are not required to test other models that differ from tested basic models only in whether the unit uses natural gas or propane gas. In lieu of testing, the represented value for a model that utilizes propane gas must be identical to the basic model that utilizes natural gas as long as the rated input ratings are within ±10% for both basic models.

(d) Represented values. The requirements of § 429.17 are applicable to all values reported in accordance with paragraphs (b) and (c) of this section. Represented values of energy factor shall be rounded off to the nearest 0.01.

■ 3. Section 429.44 is amended by:

■ a. Redesignating paragraphs (a), (b) and (c) as (b), (c) and (d);

■ b. Adding a new paragraph (a); and

■ c. Revising newly redesignated paragraph (b).

The revisions and additions read as follows:

§ 429.44 Commercial water heating equipment.

(a) For light commercial water heaters, all represented values should be determined in accordance with § 429.17.

(b) *Determination of Represented Value for All Types of Commercial Water Heaters except Light Commercial Water Heaters.* Manufacturers can determine the represented value, which includes the certified rating, for each basic model of commercial water heating equipment except light commercial water heaters, either by testing, in conjunction with the applicable sampling provisions, or by applying a validated AEDM.

* * * * *

■ 4. Add § 429.134 to read as follows:

§ 429.134 Product-specific enforcement provisions.

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) *Residential Water Heaters and Light Commercial Water Heaters.* (1) *Verification of rated first-hour rating and rated maximum gpm rating.* The first-hour rating (for storage water heaters) or maximum gallons per minute (gpm) rating (for instantaneous water heaters) of the basic model will be measured pursuant to the test requirements of part 430 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of first-hour rating (for storage water heaters) or maximum gpm rating (for instantaneous water heaters) certified by the manufacturer. The certified rating will be considered valid only if the measurement is within five percent of the certified rating.

(i) If the certified first-hour rating or maximum gpm rating is found to be valid, that rating will be used as the basis for determining the applicable draw pattern pursuant to the test requirements of part 430 for each unit tested.

(ii) If the certified first-hour rating or maximum gpm rating is found to be invalid, the average measured rating will serve as the basis for determining the applicable draw pattern pursuant to the test requirements of part 430 for each unit tested.

(2) *Verification of rated storage volume.* The storage volume of the basic model will be measured pursuant to the test requirements of part 430 for each unit tested. The results of the measurement(s) will be averaged and compared to the rated storage volume certified by the manufacturer. The certified rating will be considered valid only if the measurement is within five percent of the certified rating.

(i) If the certified rated storage volume is found to be valid, that volume will be used as the basis for calculation of the required energy factor for the basic model.

(ii) If the certified rated storage volume is found to be invalid, the average measured volume will be used as the basis for calculation of the required energy factor for the basic model.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 5. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 6. Section 430.2 is amended by adding the definitions of "Electric instantaneous water heater," "Electric storage water heater," "Gas-fired instantaneous water heater," "Gas-fired storage water heater," "Heat pump water heater," and "Oil storage water heater" in alphabetical order, to read as follows:

§ 430.2 Definitions.

* * * * *

Electric instantaneous water heater means a water heater that uses electricity as the energy source, initiates heating based on sensing water flow, is not capable of delivering water at a controlled temperature of 180 °F (82 °C) or greater, has a maximum nameplate input rating 12 kW (40,956 Btu/h) or less, and has a rated storage capacity of less than 2 gallons (7.6 liters). The unit may use a fixed or variable burner input.

* * * * *

Electric storage water heater means a water heater that uses electricity as the energy source, is not capable of heating and storing water at a thermostatically controlled temperature of 180 °F (82 °C) or greater, has a maximum nameplate input rating of 12 kW (40,956 Btu/h) or less, and has a rated storage capacity of not less than 2 gallons (7.6 liters) nor more than 120 gallons (450 liters).

* * * * *

Gas-fired instantaneous water heater means a water heater that uses gas as the main energy source, initiates heating based on sensing water flow, is not capable of delivering water at a controlled temperature of 180 °F (82 °C) or greater, has a maximum nameplate input rating less than 200,000 Btu/h (210 MJ/h), and has a rated storage capacity of less than 2 gallons (7.6 liters). The unit may use a fixed or variable burner input.

Gas-fired storage water heater means a water heater that uses gas as the main energy source, is not capable of heating and storing water at a thermostatically controlled temperature of 180 °F (82 °C) or greater, has a maximum nameplate input rating of 75,000 Btu/h (79 MJ/h) or less, and has a rated storage capacity of not less than 2 gallons (7.6 liters) nor more than 120 gallons (380 liters).

* * * * *

Heat pump water heater means a water heater that uses electricity as the energy source, is not capable of heating and storing water at a thermostatically-controlled temperature of 180 °F (82 °C) or greater, has a maximum current rating of 24 amperes (including the compressor and all auxiliary equipment such as fans, pumps, controls, and, if on the same circuit, any resistive elements) for an input voltage of 250 volts or less, and, has a rated storage capacity of 120 gallons (450 liters) or less.

* * * * *

Oil storage water heater means a water heater that uses oil as the energy source, is not capable of heating and storing water at a thermostatically controlled temperature of 180 °F (82 °C) or greater, has a nameplate input rating of 105,000 Btu/h (110 MJ/h) or less, and has a manufacturer's rated storage capacity of 120 gallons (190 liters) or less.

* * * * *

■ 7. Section 430.3 is amended by:
■ a. Adding paragraph (f)(11);
■ b. Redesignating paragraphs (h) through (p) as (i) through (o), respectively; and
■ c. Adding a new paragraph (h).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(f) * * *

(11) ASHRAE 41.1–1986 (RA 2006), Standard Method for Temperature Measurement, ASHRAE approved June 27, 2007, ANSI approved March 25, 2008, IBR approved for appendix E to subpart B of this part.

* * * * *

(h) *ASTM.* American Society for Testing and Materials International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 (*www.astm.org*).

(1) ASTM D2156–09 ("ASTM D2156"), Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels, Edition 09, ASTM approved December 1, 2009, IBR approved for appendix E to subpart B of this part.

(2) [Reserved]

* * * * *

■ 8. Section 430.23 is amended by revising paragraph (e) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(e) *Water Heaters.* (1) The estimated annual operating cost for water heaters shall be—

(i) For a gas or oil water heater, the sum of (a) the product of the annual gas or oil energy consumption, determined according to section 6.1.10 or 6.2.7 of appendix E of this subpart, times the representative average unit cost of gas or oil, as appropriate, in dollars per Btu as provided by the Secretary; plus (b) the product of the annual electric energy consumption, determined according to section 6.1.9 or 6.2.6 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting sum then being rounded off to the nearest dollar per year.

(ii) For an electric water heater, the product of the annual energy consumption, determined according to section 6.1.9 or 6.2.6 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) For an individual test, the tested energy factor for a water heater shall be—

(i) For a gas or oil water heater, as determined by section 6.1.7 or 6.2.4 of appendix E of this subpart rounded to the nearest 0.01.

(ii) For an electric water heater, as determined by section 6.1.7 or 6.2.4 of appendix E of this subpart rounded to the nearest 0.01.

* * * * *

■ 9. Appendix E to Subpart B of Part 430 is revised to read as follows:

Appendix E to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

Note: After [*date 365 days after publication of a final rule in the* **Federal Register** *that establishes a conversion factor, or December 31, 2015, whichever is later*], any representations made with respect to the energy use or efficiency of residential water heaters and commercial water heaters covered by this test method must be made in accordance with the results of testing pursuant to this appendix.

Manufacturers conducting tests of residential water heaters and commercial water heaters covered by this test method after [*date 365 days after publication of the test procedure final rule in the* **Federal Register**] and prior to [*date 365 days after publication of the final rule in the* **Federal Register** *that establishes a conversion factor, or December 31, 2015, whichever is later*] must conduct such test in accordance with either this appendix or previous test method. For residential water heaters the previous test method is appendix E as it appeared at 10 CFR part 430, subpart B, appendix E, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2013. For commercial water heaters the previous test method is 10 CFR 431.106 in the 10 CFR parts 200 to 499 edition revised as of January 1, 2013. Any representations made with respect to the energy use or efficiency of such water heaters must be in accordance with whichever version is selected.

1. Definitions

1.1. *Cut-in* means the time when or water temperature at which a water heater control or thermostat acts to increase the energy or fuel input to the heating elements, compressor, or burner. .

1.2. *Cut-out* means the time when or water temperature at which a water heater control or thermostat acts to reduce to a minimum the energy or fuel input to the heating elements, compressor, or burner.

1.3. *Design Power Rating* means the nominal power rating that a water heater manufacturer assigns to a particular design of water heater, expressed in kilowatts or Btu (kJ) per hour as appropriate.

1.4. *Draw Cluster* means a collection of water draw events during the simulated-use test that are closely grouped in time.

1.5. *Energy Factor* means the measure of water heater overall efficiency.

1.6. *First-Hour Rating* means the estimate of the maximum volume of "hot" water that a storage-type water heater can supply within an hour that begins with the water heater fully heated (*i.e.*, with all thermostats satisfied). It is a function of both the storage volume and the recovery rate.

1.7. *Heat Trap* means a device which can be integrally connected or independently attached to the hot and/or cold water pipe connections of a water heater such that the device will develop a thermal or mechanical seal to minimize the recirculation of water due to thermal convection between the water heater tank and its connecting pipes.

1.8. *Maximum gpm (L/ min) Rating* means the maximum gallons per minute (liters per minute) of hot water that can be supplied by an instantaneous water heater while maintaining a nominal temperature rise of 67 °F (37.3 °C) during steady-state operation, as determined by testing in accordance with section 5.3.2 of this appendix.

1.9. *Rated Storage Volume* means the water storage capacity of a water heater, in gallons (liters), as certified by the manufacturer pursuant to 10 CFR part 429.

1.10. *Recovery Efficiency* means the ratio of energy delivered to the water to the energy content of the fuel consumed by the water heater.

1.11. *Recovery Period* means the time when the main burner of a storage water heater is raising the temperature of the stored water.

1.12. *Standby* means the time, in hours, during which water is not being withdrawn from the water heater. There are two standby time intervals used within this test procedure: $\tau_{stby,1}$ represents the elapsed time between the time at which the maximum mean tank temperature is observed after the first draw cluster and the minute prior to the start of the first draw following the end of the first draw cluster of the 24-hour simulated use test; $\tau_{stby,2}$ represents the total time during the 24-hour simulated use test when water is not being withdrawn from the water heater.

1.13. *Symbol Usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure:

C_p specific heat of water
E_{annual} annual energy consumption of a water heater
$E_{annual,e}$ annual electrical energy consumption of a water heater
$E_{annual,f}$ annual fossil-fuel energy consumption of a water heater
E_f energy factor of a water heater
F_{hr} first-hour rating of a storage-type water heater
F_{max} maximum gpm (L/ min) rating of an instantaneous water heater rated at a temperature rise of 67 °F (37.3 °C)

i a subscript to indicate the draw number during a test

M_i mass of water removed during the ith draw of the 24-hr simulated use test

M^*_i for storage-type water heaters, mass of water removed during the ith draw during the first-hour rating test

M_{10m} for instantaneous water heaters, mass of water removed continuously during a 10-minute interval in the maximum gpm (L/min) rating test

n for storage-type water heaters, total number of draws during the first-hour rating test

N total number of draws during the 24-hr simulated use test

Q total fossil fuel and/or electric energy consumed during the entire 24-hr simulated use test

Q_d daily water heating energy consumption adjusted for net change in internal energy

Q_{da} Q_d with adjustment for variation of tank to ambient air temperature difference from nominal value

Q_{dm} overall adjusted daily water heating energy consumption including Q_{da} and Q_{HWD}

Q_e total electrical energy used during the 24-hour simulated use test

Q_f total fossil fuel energy used by the water heater during the 24-hour simulated use test

Q_{hr} hourly standby losses

Q_{HW} daily energy consumption to heat water at the measured average temperature rise across the water heater

$Q_{HW,67\ °F}$ daily energy consumption to heat quantity of water removed during test over a temperature rise of 67 °F (37.3 °C)

Q_{HWD} adjustment to daily energy consumption, Q_{HW}, due to variation of the temperature rise across the water heater not equal to the nominal value of 67 °F

Q_r energy consumption of water heater from the beginning of the test to the end of the first recovery period following the first draw, which may extend beyond subsequent draws

Q_{stby} total energy consumed by the water heater during the standby time interval $\tau_{stby,1}$

$Q_{su,0}$ total fossil fuel and/or electric energy consumed from the beginning of the test to the end of the cutout following the first draw cluster

$Q_{su,f}$ total fossil fuel and/or electric energy consumed from the beginning of the test to the initiation of the first draw following the first draw cluster

T_0 mean tank temperature at the beginning of the 24-hr simulated use test

T_{24} mean tank temperature at the end of the 24-hr simulated use test

$T_{a,stby}$ average ambient air temperature during standby periods of the 24-hr simulated use test

T_{del} for instantaneous water heaters, average outlet water temperature during a 10-minute continuous draw interval in the maximum gpm (L/ min) rating test

$T_{del,i}$ average outlet water temperature during the ith draw of the 24-hr simulated use test

T_{in} for instantaneous water heaters, average inlet water temperature during a 10-minute continuous draw interval in the maximum gpm (L/ min) rating test

$T_{in,i}$ average inlet water temperature during the ith draw of the 24-hr simulated use test

$T_{max,1}$ maximum measured mean tank temperature after cut-out following the first draw of the 24-hr simulated use test

T_{stby} average storage tank temperature during the standby period $\tau_{stby,2}$ of the 24-hr simulated use test

$T_{su,0}$ maximum measured mean tank temperature at the beginning of the standby period which occurs after cut-out following the final draw of the first draw cluster

$T_{su,f}$ measured mean tank temperature at the end of the standby period which occurs at the minute prior to commencement of the first draw that follows the end of the first draw cluster

$T_{t,stby}$ average storage tank temperature during the standby period $\tau_{stby,1}$ of the 24-hr simulated use test

$T^*_{del,i}$ for storage-type water heaters, average outlet water temperature during the ith draw (i=1 to n) of the first-hour rating test

$T^*_{max,i}$ for storage-type water heaters, maximum outlet water temperature observed during the ith draw (i=1 to n) of the first-hour rating test

$T^*_{min,i}$ for storage-type water heaters, minimum outlet water temperature to terminate the ith draw (i=1 to n) of the first-hour rating test

UA standby loss coefficient of a storage-type water heater

V_i volume of water removed during the ith draw (i=1 to N) of the 24-hr simulated use test

V^*_i volume of water removed during the ith draw (i=1 to n) of the first-hour rating test

V_{10m} for instantaneous water heaters, volume of water removed continuously during a 10-minute interval in the maximum gpm (L/ min) rating test

V_{st} measured storage volume of the storage tank

W_f weight of storage tank when completely filled with water

W_t tare weight of storage tank when completely empty of water

η_r recovery efficiency

ρ density of water

$\tau_{stby,1}$ elapsed time between the time the maximum mean tank temperature is observed after the first draw cluster and the minute prior to the start of the first draw following the first draw cluster

$\tau_{stby,2}$ overall time of standby periods when no water is withdrawn during the 24-hr simulated use test

2. Test Conditions

2.1 *Installation Requirements.* Tests shall be performed with the water heater and instrumentation installed in accordance with Section 4 of this appendix.

2.2 *Ambient Air Temperature.* The ambient air temperature shall be maintained between 65.0 °F and 70.0 °F (18.3 °C and 21.1 °C) on a continuous basis. For heat pump water heaters, the dry bulb temperature shall be maintained at 67.5 °F ± 1 °F (19.7 °C ± 0.6 °C) and, in addition, the relative humidity shall be maintained between 48% and 52% throughout the test.

2.3 *Supply Water Temperature.* The temperature of the water being supplied to the water heater shall be maintained at 58 °F ± 2 °F (14.4 °C ± 1.1 °C) throughout the test.

2.4 *Storage Tank Temperature.* The thermostats of a storage-type water heater shall be set so that water is delivered at a temperature of 125 °F ± 5 °F (51.7°C ± 2.8 °C).

2.5 *Set Point Temperature.* The thermostat of instantaneous water heaters shall be set to deliver water at a temperature of 125 °F ± 5 °F (51.7 °C ± 2.8 °C).

2.6 *Supply Water Pressure.* During the test when water is not being withdrawn, the supply pressure shall be maintained between 40 psig (275 kPa) and the maximum allowable pressure specified by the water heater manufacturer.

2.7 *Electrical and/ or Fossil Fuel Supply.*

2.7.1 *Electrical.* Maintain the electrical supply voltage to within ±1% of the center of the voltage range specified by the water heater and/or heat pump manufacturer.

2.7.2 *Natural Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 7–10 inches of water column (1.7–2.5 kPa). If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ± 10% of the manufacturer's specified manifold pressure. For all tests, use natural gas having a heating value of approximately 1,025 Btu per standard cubic foot (38,190 kJ per standard cuhic meter).

2.7.3 *Propane Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 11–13 inches of water column (2.7–3.2 kPa). If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ± 10% of the manufacturer's specified manifold pressure. For all tests, use propane gas with a heating value of approximately 2,500 Btu per standard cubic foot (93,147 kJ per standard cubic meter).

2.7.4 *Fuel Oil Supply.* Maintain an uninterrupted supply of fuel oil. Use fuel oil having a heating value of approximately 138,700 Btu per gallon (38,660 kJ per liter).

3. Instrumentation

3.1 *Pressure Measurements.* Pressure-measuring instruments shall have an error no greater than the following values:

Item measured	Instrument accuracy	Instrument precision
Gas pressure	±0.1 inch of water column (±0.025 kPa)	±0.05 inch of water column (±0.012 kPa).
Atmospheric pressure	±0.1 inch of mercury column (±0.34 kPa)	±0.05 inch of mercury column (±0.17 kPa).

Item measured	Instrument accuracy	Instrument precision
Water pressure	±1.0 pounds per square inch (±6.9 kPa)	±0.50 pounds per square inch (±3.45 kPa).

3.2 *Temperature Measurement*

3.2.1 *Measurement.* Temperature measurements shall be made in accordance with the Standard Method for Temperature Measurement, ASHRAE Standard 41.1–1986 (RA 2006).

3.2.2 *Accuracy and Precision.* The accuracy and precision of the instruments, including their associated readout devices, shall be within the following limits:

Item measured	Instrument accuracy	Instrument precision
Air dry bulb temperature	±0.2 °F (±0.1 °C)	±0.1 °F (±0.06 °C).
Air wet bulb temperature	±0.2 °F (±0.1 °C)	±0.1 °F (±0.06 °C).
Inlet and outlet water temperatures	±0.2 °F (±0.1 °C)	±0.1 °F (±0.06 °C).
Storage tank temperatures	±0.5 °F (±0.3 °C)	±0.25 °F (±0.14 °C).

3.2.3 *Scale Division.* In no case shall the smallest scale division of the instrument or instrument system exceed 2 times the specified precision.

3.2.4 *Temperature Difference.* Temperature difference between the entering and leaving water may be measured with any of the following:

a. A thermopile
b. Calibrated resistance thermometers
c. Precision thermometers
d. Calibrated thermistors
e. Calibrated thermocouples
f. Quartz thermometers

3.2.5 *Thermopile Construction.* If a thermopile is used, it shall be made from calibrated thermocouple wire taken from a single spool. Extension wires to the recording device shall also be made from that same spool.

3.2.6 *Time constant.* The time constant of the instruments used to measure the inlet and outlet water temperatures shall be no greater than 2 seconds.

3.3 *Liquid Flow Rate Measurement.* The accuracy of the liquid flow rate measurement, using the calibration if furnished, shall be equal to or less than ±1% of the measured value in mass units per unit time.

3.4 *Electrical Energy.* The electrical energy used shall be measured with an instrument and associated readout device that is accurate within ±0.5% of the reading.

3.5 *Fossil Fuels.* The quantity of fuel used by the water heater shall be measured with an instrument and associated readout device that is accurate within ±1% of the reading.

3.6 *Mass Measurements.* For mass measurements greater than or equal to 10 pounds (4.5 kg), a scale that is accurate within ±0.5% of the reading shall be used to make the measurement. For mass measurements less than 10 pounds (4.5 kg), the scale shall provide a measurement that is accurate within ±0.1 pound (0.045 kg).

3.7 *Heating Value.* The higher heating value of the natural gas, propane, or fuel oil shall be measured with an instrument and associated readout device that is accurate within ±1% of the reading. The heating values of natural gas and propane must be corrected from those reported at standard temperature and pressure conditions to provide the heating value at the temperature and pressure measured at the fuel meter.

3.8 *Time.* The elapsed time measurements shall be measured with an instrument that is accurate within ±0.5 seconds per hour.

3.9 *Volume.* Volume measurements shall be measured with an accuracy of ±2% of the total volume.

3.10 *Relative Humidity.* If a relative humidity (RH) transducer is used to measure the relative humidity of the surrounding air while testing heat pump water heaters, the relative humidity shall be measured with an accuracy of ±1.5% RH.

4. Installation

4.1 *Water Heater Mounting.* A water heater designed to be freestanding shall be placed on a ¾ inch (2 cm) thick plywood platform supported by three 2 × 4 inch (5 cm × 10 cm) runners. If the water heater is not approved for installation on combustible flooring, suitable non-combustible material shall be placed between the water heater and the platform. Counter-top water heaters shall be placed against a simulated wall section. Wall-mounted water heaters shall be supported on a simulated wall in accordance with the manufacturer-published installation instructions. When a simulated wall is used, the construction shall be 2 × 4 inch (5 cm × 10 cm) studs, faced with ¾ inch (2 cm) plywood. For heat pump water heaters not delivered as a single package, the units shall be connected in accordance with the manufacturer-published installation instructions and the overall system shall be placed on the above-described plywood platform. If installation instructions are not provided by the heat pump manufacturer, uninsulated 8 foot (2.4 m) long connecting hoses having an inside diameter of ⅝ inch (1.6 cm) shall be used to connect the storage tank and the heat pump water heater. The testing of the water heater shall occur in an area that is protected from drafts of more than 50 ft/ min (2.5 m/s) from room ventilation registers, windows, or other external sources of air movement.

4.2 *Water Supply.* Connect the water heater to a water supply capable of delivering water at conditions as specified in Sections 2.3 and 2.6 of this appendix.

4.3 *Water Inlet and Outlet Configuration.* For freestanding water heaters that are taller than 36 inches (91.4 cm), inlet and outlet piping connections shall be configured in a manner consistent with Figures 1 and 2. Inlet and outlet piping connections for wall-mounted water heaters shall be consistent with Figure 3. For freestanding water heaters that are 36 inches or less in height and not supplied as part of a counter-top enclosure (commonly referred to as an under-the-counter model), inlet and outlet piping shall be installed in a manner consistent with Figures 4, 5, and 6. For water heaters that are supplied with a counter-top enclosure, inlet and outlet piping shall be made in a manner consistent with Figures 7A and 7B, respectively. The vertical piping noted in Figures 7A and 7B shall be located (whether inside the enclosure or along the outside in a recessed channel) in accordance with the manufacturer-published installation instructions.

All dimensions noted in Figures 1 through 7 shall be achieved. All piping between the water heater and inlet and outlet temperature sensors, noted as T_{IN} and T_{OUT} in the figures, shall be Type "L" hard copper having the same diameter as the connections on the water heater. Unions may be used to facilitate installation and removal of the piping arrangements. A pressure gauge and diaphragm expansion tank shall be installed in the supply water piping at a location upstream of the inlet temperature sensor. An appropriately rated pressure and temperature relief valve shall be installed on all water heaters at the port specified by the manufacturer. Discharge piping for the relief valve shall be non-metallic. If heat traps, piping insulation, or pressure relief valve insulation are supplied with the water heater, they shall be installed for testing. Except when using a simulated wall, clearance shall be provided such that none of the piping contacts other surfaces in the test room.

4.4 *Fuel and/or Electrical Power and Energy Consumption.* Install one or more instruments that measure, as appropriate, the quantity and rate of electrical energy and/or fossil fuel consumption in accordance with section 3.

4.5 *Internal Storage Tank Temperature Measurements.* For water heaters with rated storage volumes greater than or equal to 20 gallons, install six temperature measurement sensors inside the water heater tank with a vertical distance of at least 4 inches (100 mm) between successive sensors. For water heaters with rated storage volumes between 2 and 20 gallons, install three temperature measurement sensors inside the water heater

tank. A temperature sensor shall be positioned at the vertical midpoint of each of the six equal volume nodes within a tank larger than 20 gallons or the three equal volume nodes within a tank between 2 and 20 gallons. Nodes designate the equal volumes used to evenly partition the total volume of the tank. As much as is possible, the temperature sensor should be positioned away from any heating elements, anodic protective devices, tank walls, and flue pipe walls. If the tank cannot accommodate six temperature sensors and meet the installation requirements specified above, install the maximum number of sensors which comply with the installation requirements. The temperature sensors shall be installed either through: (1) The anodic device opening; (2) the relief valve opening; or (3) the hot water outlet. If installed through the relief valve opening or the hot water outlet, a tee fitting or outlet piping, as applicable, shall be installed as close as possible to its original location. If the relief valve temperature sensor is relocated, and it no longer extends into the top of the tank, a substitute relief valve that has a sensing element that can reach into the tank shall be installed. If the hot water outlet includes a heat trap, the heat trap shall be installed on top of the tee fitting. Added fittings shall be covered with thermal insulation having an R value between 4 and 8 h·ft²·°F/Btu (0.7 and 1.4 m²·°C/W).

4.6 *Ambient Air Temperature Measurement.* Install an ambient air temperature sensor at the vertical mid-point of the water heater and approximately 2 feet (610 mm) from the surface of the water heater. The sensor shall be shielded against radiation.

4.7 *Inlet and Outlet Water Temperature Measurements.* Install temperature sensors in the cold-water inlet pipe and hot-water outlet pipe as shown in Figures 1, 2, 3, 4, 5, 6, 7a, and 7b, as applicable.

4.8 *Flow Control.* A valve or valves shall be installed to provide flow as specified in sections 5.2.4.1 and 5.4 for storage tank water heaters and sections 5.3.1 and 5.4 for instantaneous water heaters.

4.9 *Flue Requirements.*

4.9.1 *Gas-Fired Water Heaters.* Establish a natural draft in the following manner. For gas-fired water heaters with a vertically discharging draft hood outlet, a 5-foot (1.5-meter) vertical vent pipe extension with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. For gas-fired water heaters with a horizontally discharging draft hood outlet, a 90-degree elbow with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A 5-foot (1.5-meter) length of vent pipe shall be connected to the elbow and oriented to discharge vertically upward. Direct vent gas-fired water heaters shall be installed with venting equipment specified in the manufacturer's instructions using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.9.2 *Oil-Fired Water Heaters.* Establish a draft at the flue collar at the value specified in the manufacturer's instructions. Establish the draft by using a sufficient length of vent pipe connected to the water heater flue outlet, and directed vertically upward. For an oil-fired water heater with a horizontally discharging draft hood outlet, a 90-degree elbow with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of vent pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct-vent oil-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions, using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

5. Test Procedures

5.1 *Operational Mode Selection.* For water heaters that allow for multiple user-selected operational modes, all procedures specified in this appendix shall be carried out with the water heater in the same operational mode (*i.e.*, only one mode). This operational mode shall be the default mode (or similarly-named, suggested mode for normal operation) as defined by the manufacturer in its product literature for giving selection guidance to the consumer. For heat pump water heaters, if a default mode is not defined in the product literature, each test shall be conducted under an operational mode in which both the heat pump and any electric resistance backup heating element(s) are activated by the unit's control scheme, and which can achieve the internal storage tank temperature specified in this test procedure; if multiple operational modes meet these criteria, the water heater shall be tested under the most energy-intensive mode. If no default mode is specified and the unit does not offer an operational mode that utilizes both the heat pump and the electric resistance backup heating element(s), the first-hour rating test and the simulated-use test shall be tested in heat-pump-only mode. For other types of water heaters where a default mode is not specified, test the unit in the most energy-intensive mode.

5.2 *Storage-type Water Heaters, Including Heat Pump Water Heaters.*

5.2.1 *Determination of Storage Tank Volume.* Determine the storage capacity, V_{st}, of the water heater under test, in gallons (liters), by subtracting the tare weight—measured while the tank is empty—from the gross weight of the storage tank when completely filled with water (with all air eliminated and line pressure applied as described in section 2.5) and dividing the resulting net weight by the density of water at the measured temperature.

5.2.2 *Setting the Thermostat.*

5.2.2.1 *Single Thermostat Tanks.*

5.2.2.1.1 *Water Heaters with Rated Volumes Less than 20 Gallons.* Starting with a tank at the supply water temperature, initiate normal operation of the water heater. After cut-out, initiate a draw from the water heater at a flow rate of 1.0 gallon ± 0.25 gallons per minute (3.8 liters ± 0.95 liters per minute) for 2 minutes. Starting 15 seconds after commencement of draw, record the outlet temperature at 15-second intervals until the end of the 2-minute period. Determine whether the maximum outlet temperature is within the range of 125 °F ± 5 °F (51.7 °C ± 2.8 °C). If not, turn off the water heater, adjust the thermostat, and then drain and refill the tank with supply water. Then, once again, initiate normal operation of the water heater, and repeat the 2-minute outlet temperature test following cut-out. Repeat this sequence until the maximum outlet temperature during the 2-minute test is within of 125 °F ± 5 °F (51.7 °C ± 2.8 °C).

5.2.2.1.2 *Water Heaters with Rated Volumes Greater than or Equal to 20 Gallons.* Starting with a tank at the supply water temperature, initiate normal operation of the water heater. After cut-out, initiate a draw from the water heater at a flow rate of 1.7 gallons ± 0.25 gallons per minute (6.4 liters ± 0.95 liters per minute) for 5 minutes. Starting 15 seconds after commencement of draw, record the outlet temperature at 15-second intervals until the end of the 5-minute period. Determine whether the maximum outlet temperature is within the range of 125 °F ± 5 °F (51.7 °C ± 2.8 °C). If not, turn off the water heater, adjust the thermostat, and then drain and refill the tank with supply water. Then, once again, initiate normal operation of the water heater, and repeat the 5-minute outlet temperature test following cut-out. Repeat this sequence until the maximum outlet temperature during the 5-minute test is within of 125 °F ± 5 °F (51.7 °C ± 2.8 °C).

5.2.2.2 *Tanks with Two or More Thermostats.* Follow the same sequence as for a single thermostat tank (*i.e.*, start at the supply water temperature; operate normally until cut-out). Determine if the setting of the thermostat that controls the uppermost heating elements yields a maximum water temperature of 125 °F ± 5 °F (51.7 °C ± 2.8 °C), as measured by the in-tank sensors that are positioned above the uppermost heating element. If the tank temperature above the uppermost heating element is not within 125 °F ± 5 °F (51.7 °C ± 2.8 °C), turn off the water heater, adjust the thermostat, and then drain and refill the tank with supply water. The thermostat that controls the heating element positioned next highest in the tank shall then be set to yield a maximum water temperature of 125 °F ± 5 °F (51.7 °C ± 2.8 °C). This process shall be repeated for the remaining heating elements in reverse order of height until the thermostat controlling the lowest element is correctly adjusted. When adjusting the thermostat that controls the lowest element, the maximum mean tank temperature after cut-out, as determined using all the in-tank sensors, shall be 125 °F ± 5 °F (51.7 °C ± 2.8 °C). When adjusting all other thermostats, use only the in-tank temperature sensors positioned above the heating element in question to evaluate the maximum mean water temperature as measured by these sensors after cut-out. For heat pump water heaters that control an auxiliary resistive element, the thermostat shall be set in accordance with the manufacturer's installation instructions.

5.2.3 *Power Input Determination.* For all water heaters except electric types, initiate normal operation (as described in section 5.1) and determine the power input, P, to the main burners (including pilot light power, if any) after 15 minutes of operation. If the water heater is equipped with a gas appliance

pressure regulator, the regulator outlet pressure shall be set within ±10% of that recommended by the manufacturer. For oil-fired water heaters, the fuel pump pressure shall be within ±10% of the manufacturer's specified pump pressure. All burners shall be adjusted to achieve an hourly Btu (kJ) rating that is within ±2% of the value specified by the manufacturer. For an oil-fired water heater, adjust the burner to give a CO_2 reading recommended by the manufacturer and an hourly Btu (kJ) rating that is within ±2% of that specified by the manufacturer. Smoke in the flue may not exceed No. 1 smoke as measured by the procedure in ASTM–D–2156–09.

5.2.4 *First-Hour Rating Test.*

5.2.4.1 *General.* During hot water draws for water heaters with rated storage volumes greater than or equal to 20 gallons, remove water at a rate of 3.0 ± 0.25 gallons per minute (11.4 ± 0.95 liters per minute). During hot water draws, for storage-type water heaters with rated storage volumes below 20 gallons, remove water at a rate of 1.0 ± 0.25 gallon per minute ((3.8 ± 0.95 liters per minute). Collect the water in a container that is large enough to hold the volume removed during an individual draw and suitable for weighing at the termination of each draw. Alternatively, a water meter may be used to directly measure the water volume(s) withdrawn.

5.2.4.2 *Draw Initiation Criteria.* Begin the first-hour rating test by imposing a draw on the storage-type water heater. After completion of this first draw, initiate successive draws based on the following criteria. For gas-fired and oil-fired water heaters, initiate successive draws when the thermostat acts to reduce the supply of fuel to the main burner. For electric water heaters having a single element or multiple elements that all operate simultaneously, initiate successive draws when the thermostat acts to reduce the electrical input supplied to the element(s). For electric water heaters having two or more elements that do not operate simultaneously, initiate successive draws when the applicable thermostat acts to reduce the electrical input to the element located vertically highest in the storage tank. For heat pump water heaters that do not use supplemental resistive heating, initiate successive draws immediately after the electrical input to the compressor is reduced by the action of the water heater's thermostat. For heat pump water heaters that use supplemental resistive heating, initiate successive draws immediately after the electrical input to the compressor or the uppermost resistive element is reduced by the action of the applicable water heater thermostat. This draw initiation criterion for heat pump water heaters that use supplemental resistive heating, however, shall only apply when the water located above the thermostat at cut-out is heated to 125 °F ± 5 °F (51.7 °C ± 2.8 °C).

5.2.4.3 *Test Sequence.* Establish normal water heater operation. If the water heater is not presently operating, initiate a draw. The draw may be terminated any time after cut-in occurs. After cut-out occurs (*i.e.,* all thermostats are satisfied), monitor the internal storage tank temperature sensors described in section 4.5 every minute and determine the mean tank temperature by averaging the values from these sensors.

Initiate a draw after a maximum mean tank temperature (the maximum of the mean temperatures of the individual sensors) has been observed following a cut-out. Record the time when the draw is initiated and designate it as an elapsed time of zero ($\tau^* = 0$). (The superscript * is used to denote variables pertaining to the first-hour rating test). Record the outlet water temperature beginning 15 seconds after the draw is initiated and at 5-second intervals thereafter until the draw is terminated. Determine the maximum outlet temperature that occurs during this first draw and record it as $T^*_{max,1}$. For the duration of this first draw and all successive draws, in addition, monitor the inlet temperature to the water heater to ensure that the required 58 °F ± 2 °F (14.4 °C ± 1.1 °C) test condition is met. Terminate the hot water draw when the outlet temperature decreases to $T^*_{max,1} - 15$ °F ($T^*_{max,1} - 8.3$ °C). Record this temperature as $T^*_{min,1}$. Following draw termination, determine the average outlet water temperature and the mass or volume removed during this first draw and record them as $\overline{T}^*_{del,i}$ and M^*_1 or V^*_1, respectively.

Initiate a second and, if applicable, successive draw each time the applicable draw initiation criteria described in section 5.2.4.2 are satisfied. As required for the first draw, record the outlet water temperature 15 seconds after initiating each draw and at 5-second intervals thereafter until the draw is terminated. Determine the maximum outlet temperature that occurs during each draw and record it as $T^*_{max,i}$, where the subscript i refers to the draw number. Terminate each hot water draw when the outlet temperature decreases to $T^*_{max,i} - 15$ °F ($T^*_{max,i} - 8.3$ °C). Record this temperature as $T^*_{min,i}$. Calculate and record the average outlet temperature and the mass or volume removed during each draw ($\overline{T}^*_{del,i}$ and M^*_i or V^*_i, respectively). Continue this sequence of draw and recovery until one hour has elapsed, then shut off the electrical power and/or fuel supplied to the water heater.

If a draw is occurring at an elapsed time of one hour, continue this draw until the outlet temperature decreases to $T^*_{max,n} - 15$ °F ($T^*_{max,n} - 8.3$ °C), at which time the draw shall be immediately terminated. (The subscript n shall be used to denote quantities associated with the final draw.) If a draw is not occurring at an elapsed time of one hour, a final draw shall be imposed at one hour. This draw shall proceed for a minimum of 30 seconds and shall be immediately terminated thereafter when the outlet temperature first indicates a value less than or equal to the cut-off temperature used for the previous draw ($T^*_{min,n-1}$). If an outlet temperature greater than $T^*_{min,n-1}$ is not measured within 30 seconds zero additional credit shall be given towards first-hour rating (*i.e.,* $M^*_n = 0$ or $V^*_n = 0$) based on the final draw. After the final draw is terminated, calculate and record the average outlet temperature and the mass or volume removed during the draw ($\overline{T}^*_{del,n}$ and M^*_n or V^*_n, respectively).

5.2.5 *24-Hour Simulated Use Test.*

5.2.5.1 *Selection of Draw Pattern.* The water heater will be tested under a draw profile that depends upon the rated first-hour rating obtained following the test prescribed in section 5.2.4 of this appendix. One of four different patterns shall be applied based on the rated first-hour rating, as shown in Table I.

TABLE I—DRAW PATTERN TO BE USED FOR STORAGE WATER HEATERS BASED ON RATED FIRST-HOUR RATING

Rated first-hour rating greater than or equal to:	. . . and rated first-hour rating less than:	Draw pattern to be used in simulated use test
0	20	Point-of-Use (Table III.1).
20	55	Low-Usage (Table III.2).
55	80	Medium-Usage (Table III.3).
80	No upper limit	High-Usage (Table III.4).

After completing the first-hour rating test in section 5.2.4, identify the appropriate draw pattern using Table I above. The draw patterns are provided in Tables III.1 through III.4 in section 5.4. Use the appropriate draw pattern when conducting the test sequence provided in section 5.2.5.2.

5.2.5.2 *Test Sequence.* If the water heater is turned off, fill the water heater with supply water and apply pressure as described in section 2.6. Turn on the water heater and associated heat pump unit, if present. If the water heater is turned on, initiate a water draw that energizes the lowest heating element in the water heater. In either case, after the cut-out occurs, begin a 24-hour pre-conditioning period that draws water in the pattern specified by Table I (*i.e.,* using Table III.1, Table III.2, Table III.3; or Table III.4, depending on the rated first-hour rating). No data need to be recorded during this 24-hour pre-conditioning period. At the end of this period, the 24-hour simulated-use test will begin.

At the start of the 24-hour test (after the 24-hour pre-conditioning period), record the mean tank temperature ($\overline{T}_0$), and the electrical and/or fuel measurement readings, as appropriate. Begin the 24-hour simulated use test by withdrawing the volume specified

in the appropriate table in section 5.4 (*i.e.*, Table III.1, Table III.2, Table III.3, or Table III.4, depending on the rated first-hour rating) for the first draw at the flow rate specified. Record the time when this first draw is initiated and assign it as the test elapsed time (τ) of zero (0). Record the average storage tank and ambient temperature every minute throughout the 24-hour simulated use test. At the elapsed times specified in the applicable draw pattern table in section 5.4 for a particular draw pattern, initiate additional draws, removing the volume of hot water at the prescribed flow rate specified by the table. The maximum allowable deviation for any single draw is ± 0.25 gallons (1.9 liters). The quantity of water withdrawn during the last draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals the prescribed daily amount for that draw pattern ± 1.0 gallon (± 3.8 liters).

All draws during the 24-hour simulated use test shall be made at the flow rates specified in the applicable draw pattern table in section 5.4, within a tolerance of ± 0.25 gallons per minute (± 0.95 liters per minute). Measurements of the inlet and outlet temperatures shall be made 5 seconds after the draw is initiated and at every subsequent 3-second interval throughout the duration of each draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw ($\overline{T}_{del,i}$ and $\overline{T}_{in,i}$). Determine and record the net mass or volume removed (M_i or V_i), as appropriate, after each draw.

At the end of the first recovery period following the first draw, which may extend beyond subsequent draws, record the maximum mean tank temperature observed after cut-out, $\overline{T}_{max,1}$, and the energy consumed by an electric resistance, gas or oil-fired water heater (including electrical energy), from the beginning of the test, Q_f. For heat pump water heaters, the total electrical energy consumed during the first recovery by the heat pump (including compressor, fan, controls, pump, etc.) and, if applicable, by the resistive element(s) shall be recorded as Q_f.

At the end of the recovery period that follows the draw notated in the applicable draw pattern table in section 5.4 as the end of the first draw cluster during the test, determine and record the total electrical energy and/or fossil fuel consumed since the beginning of the test, $Q_{su,0}$. In preparation for determining the energy consumed during standby, record the reading given on the electrical energy (watt-hour) meter, the gas meter, and/or the scale used to determine oil consumption, as appropriate. Record the maximum value of the mean tank temperature after cut-out as $\overline{T}_{su,0}$. The time at which this value is attained is the start of the standby period. At 1-minute intervals, record the mean tank temperature and the electric and/or fuel instrument readings until the next draw is initiated. Just prior to initiation of the next draw, record the mean tank temperature as $\overline{T}_{su,f}$. If the water heater is undergoing recovery when the next draw is initiated, record the mean tank temperature $\overline{T}_{su,f}$ at the minute prior to the start of the recovery. The time at which this value occurs is the end of the standby period. Determine the total electrical energy and/or fossil fuel energy consumption from the beginning of the test to this time and record as $Q_{su,f}$. Record the time interval between the time at which the maximum mean tank temperature is observed after the final draw of the first draw cluster and the end of the standby period as $\tau_{stby,1}$. Record the time during which water is not being withdrawn from the water heater during the entire 24-hour period as $\tau_{stby,2}$.

5.3 *Instantaneous Gas and Electric Water Heaters*

5.3.1 *Setting the Outlet Discharge Temperature.* Initiate normal operation of the water heater at the full input rating for electric instantaneous water heaters and at the maximum firing rate specified by the manufacturer for gas instantaneous water heaters. Monitor the discharge water temperature and set to a value of 125 °F ± 5 °F (51.7 °C ± 2.8 °C) in accordance with the manufacturer's instructions. If the water heater is not capable of providing this discharge temperature when the flow rate is 1.7 gallons ± 0.25 gallons per minute (7.6 liters ± 0.95 liters per minute), then adjust the flow rate as necessary to achieve the specified discharge water temperature.

5.3.2 *Maximum gpm Rating Test for Instantaneous Water Heaters.* Establish normal water heater operation at the full input rate for electric instantaneous water heaters and at the maximum firing rate for gas instantaneous water heaters with the discharge water temperature set in accordance with section 5.3.1. During the 10-minute test, either collect the withdrawn water for later measurement of the total mass removed, or alternatively, use a water meter to directly measure the water volume removed.

After recording the scale or water meter reading, initiate water flow through the water heater, record the inlet and outlet water temperatures beginning 15 seconds after the start of the test and at subsequent 5-second intervals throughout the duration of the test. At the end of 10 minutes, turn off the water. Determine the mass of water collected, M_{10m}, in pounds (kilograms), or the volume of water, V_{10m}, in gallons (liters).

5.3.3 *24-hour Simulated Use Test for Instantaneous Water Heaters.*

5.3.3.1 *Selection of Draw Pattern.* The water heater will be tested under a draw profile that depends upon the rated maximum gpm rating obtained following the test prescribed in section 5.3.2. Four different patterns can be applied, and Table II shows which draw pattern is applied to a water heater based on its rated maximum gpm rating.

TABLE II—DRAW PATTERN TO BE USED FOR INSTANTANEOUS WATER HEATER BASED ON RATED MAXIMUM GPM RATING

Rated maximum gpm rating greater than or equal to:	. . . and rated maximum GPM rating less than:	Draw pattern to be used in simulated use test
0	1.7	Point-of-Use (Table III.1).
1.7	2.8	Low-Usage (Table III.2).
2.8	4	Medium-Usage (Table III.3).
4	No upper limit	High-Usage (Table III.4).

The draw patterns are provided in Tables III.1 through III.4 in section 5.4. Use the appropriate draw pattern when conducting the test sequence set forth in section 5.3.3.2.

5.3.3.2 *Test Sequence.* Establish normal operation with the discharge water temperature at 125 °F ± 5 °F (51.7 °C ± 2.8 °C) and set the flow rate set as determined in section 5.2. Prior to commencement of the 24-hour simulated use test, the unit shall remain in an idle state in which controls are active but no water is drawn through the unit for a period of one hour. With no draw occurring, record the reading given by the gas meter and/or the electrical energy meter as appropriate. Begin the 24-hour simulated use test by withdrawing the volume specified in Table III.1 through III.4 for the first draw at the flow rate specified. Record the time when this first draw is initiated and designate it as an elapsed time, τ, of 0. At the elapsed times specified in Table III.1 through III.4 for a particular draw pattern, initiate additional draws, removing the volume of hot water at the prescribed flow rate specified in Table III.1 through III.4, with the maximum allowable deviation for any single draw being ± 0.5 gallons (1.9 liters). The quantity of water drawn during the final draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals the prescribed daily amount for that draw pattern ± 1.0 gallon (± 3.8 liters).

Measurements of the inlet and outlet water temperatures shall be made 5 seconds after the draw is initiated and at every 3-second interval thereafter throughout the duration of the draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw. Record the scale used to measure the mass of the withdrawn water or the water meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, determine and record the fossil fuel and/or electrical energy consumed, Q_f. Following the final draw and

subsequent recovery, allow the water heater to remain in the standby mode until exactly 24 hours have elapsed since the start of the test (*i.e.*, since $\tau = 0$). At 24 hours, record the reading given by the gas meter and/or the electrical energy meter as appropriate. Determine the fossil fuel and/or electrical energy consumed during the entire 24-hour simulated use test and designate the quantity as Q.

5.4 *Draw Patterns.* The draw patterns to be imposed during 24-hour simulated use tests are provided in Tables III.1 through III.4. Each water heater under test is to be subjected to one of the draw patterns based on its rated first-hour rating or rated maximum gpm rating as discussed in sections 5.2.5.1 and 5.3.3.1, respectively. Each draw pattern specifies the elapsed time in hours and minutes during the 24-hour test when a draw is to commence, the total volume of water in gallons (liters) that is to be removed during each draw, and the flow rate at which each draw is to be taken, in gallons (liters) per minute.

TABLE III.1—POINT-OF-USE DRAW PATTERN

Draw No.	Time during test [hh:mm]	Volume [gallons (L)]	Flow rate ** [gpm (Lpm)]
1 *	0:00	2.0 (7.6)	1 (3.8)
2 *	1:00	1.0 (3.8)	1 (3.8)
3 *	1:05	0.5 (1.9)	1 (3.8)
4 *	1:10	0.5 (1.9)	1 (3.8)
5 *	1:15	0.5 (1.9)	1 (3.8)
6	8:00	1.0 (3.8)	1 (3.8)
7	8:15	2.0 (7.6)	1 (3.8)
8	9:00	1.5 (5.7)	1 (3.8)
9	9:15	1.0 (3.8)	1 (3.8)
Total Volume Drawn per Day: 10 gallons (38 L)			

* Denotes draws in first draw cluster.

** Should the water heater have a rated maximum gpm rating less than 1 gpm (3.8 Lpm), then all draws shall be implemented at a flow rate equal to the rated maximum gpm rating

TABLE III.2—LOW-USAGE DRAW PATTERN

Draw No.	Time during test (hh:mm)	Volume (gallons)	Flow rate (gpm)
1 *	0:00	15.0 (56.8)	1.7 (6.4)
2 *	0:30	2.0 (7.6)	1 (3.8)
3 *	1:00	1.0 (3.8)	1 (3.8)
4	10:30	6.0 (22.7)	1.7 (6.4)
5	11:30	4.0 (15.1)	1.7 (6.4)
6	12:00	1.0 (3.8)	1 (3.8)
7	12:45	1.0 (3.8)	1 (3.8)
8	12:50	1.0 (3.8)	1 (3.8)
9	16:15	2.0 (7.6)	1 (3.8)
10	16:45	2.0 (7.6)	1.7 (6.4)
11	17:00	3.0 (11.4)	1.7 (6.4)
Total Volume Drawn per Day: 38 gallons (144 L)			

* Denotes draws in first draw cluster.

TABLE III.3—MEDIUM-USAGE DRAW PATTERN

Draw No.	Time during test (hh:mm)	Volume (gallons)	Flow rate (gpm)
1 *	0:00	15.0 (56.8)	1.7 (6.4)
2 *	0:30	2.0 (7.6)	1 (3.8)
3 *	1:40	9.0 (34.1)	1.7 (6.4)
4	10:30	9.0 (34.1)	1.7 (6.4)
5	11:30	5.0 (18.9)	1.7 (6.4)
6	12:00	1.0 (3.8)	1 (3.8)
7	12:45	1.0 (3.8)	1 (3.8)
8	12:50	1.0 (3.8)	1 (3.8)
9	16:00	1.0 (3.8)	1 (3.8)
10	16:15	2.0 (7.6)	1 (3.8)
11	16:45	2.0 (7.6)	1.7 (6.4)
12	17:00	7.0 (26.5)	1.7 (6.4)
Total Volume Drawn Per Day: 55 gallons (208 L)			

* Denotes draws in first draw cluster.

TABLE III.4—HIGH-USAGE DRAW PATTERN

Draw No.	Time during test (hh:mm)	Volume (gallons)	Flow rate (gpm)
1*	0:00	27.0 (102)	3 (11.4)
2*	0:30	2.0 (7.6)	1 (3.8)
3*	0:40	1.0 (3.8)	1 (3.8)
4*	1:40	9.0 (34.1)	1.7 (6.4)
5	10:30	15.0 (56.8)	3 (11.4)
6	11:30	5.0 (18.9)	1.7 (6.4)
7	12:00	1.0 (3.8)	1 (3.8)
8	12:45	1.0 (3.8)	1 (3.8)
9	12:50	1.0 (3.8)	1 (3.8)
10	16:00	2.0 (7.6)	1 (3.8)
11	16:15	2.0 (7.6)	1 (3.8)
12	16:30	2.0 (7.6)	1.7 (6.4)
13	16:45	2.0 (7.6)	1.7 (6.4)
14	17:00	14.0 (53.0)	3 (11.4)
Total Volume Drawn Per Day: 84 gallons (318 L)			

*Denotes draws in first draw cluster.

6. Computations

6.1 *Storage Tank and Heat Pump Water Heaters*

6.1.1 *Storage Tank Capacity.* The storage tank capacity, V_{st}, is computed using the following:

$$V_{st} = \frac{(W_f - W_t)}{\rho}$$

Where:

V_{st} = the storage capacity of the water heater, gal (L)

W_f = the weight of the storage tank when completely filled with water, lb (kg)

W_t = the (tare) weight of the storage tank when completely empty, lb (kg)

ρ = the density of water used to fill the tank measured at the temperature of the water, lb/gal (kg/L)

6.1.2 *First-Hour Rating Computation.* For the case in which the final draw is initiated at or prior to an elapsed time of one hour, the first-hour rating, F_{hr}, shall be computed using,

$$F_{hr} = \sum_{i=1}^{n} V_i^*$$

Where:

n = the number of draws that are completed during the first-hour rating test

V^*_i = the volume of water removed during the *i*th draw of the first-hour rating test, gal (L) or, if the mass of water is being measured,

$$V_i^* = \frac{M_i^*}{\rho}$$

Where:

M^*_i = the mass of water removed during the *i*th draw of the first-hour rating test, lb (kg).

ρ = the water density corresponding to the average outlet temperature measured during the *i*th draw, ($\overline{T}^*_{del,i}$), lb/gal (kg/L).

For the case in which a draw is not in progress at the elapsed time of one hour and a final draw is imposed at the elapsed time of one hour, the first-hour rating shall be calculated using

$$F_{hr} = \sum_{i=1}^{n-1} V_i^* + V_n^* \left(\frac{\overline{T}^*_{del,n} - T^*_{min,n-1}}{\overline{T}^*_{del,n-1} - T^*_{min,n-1}} \right)$$

where n and V^*_i are the same quantities as defined above, and

V^*_n = the volume of water drawn during the *n*th (final) draw of the first-hour rating test, gal (L)

$\overline{T}^*_{del,n-1}$ = the average water outlet temperature measured during the *(n-1)*th draw of the first-hour rating test, °F (°C).

$\overline{T}^*_{del,n}$ = the average water outlet temperature measured during the *n*th (final) draw of the first-hour rating test, °F (°C).

$T^*_{min,n-1}$ = the minimum water outlet temperature measured during the *(n-1)*th draw of the first-hour rating test, °F (°C).

6.1.3 *Recovery Efficiency.* The recovery efficiency for gas, oil, and heat pump storage-type water heaters, η_r, is computed as:

$$\eta_r = \frac{M_1 C_{p1}(\overline{T}_{del,1} - \overline{T}_{in,1})}{Q_r} + \frac{V_{st}\rho_2 C_{p2}(\overline{T}_{max,1} - \overline{T}_0)}{Q_r}$$

Where:

M_1 = total mass removed from the start of the 24-hour simulated use test to the end of the first recovery period, lb (kg), or, if the volume of water is being measured,

$M_1 = V_1\rho_1$

Where:

V_1 = total volume removed from the start of the 24-hour simulated use test to the end of the first recovery period, gal (L).

ρ_1 = density of the water at the water temperature measured at the point where the flow volume is measured, lb/gal (kg/L).

C_{p1} = specific heat of the withdrawn water evaluated at $(\overline{T}_{del,1} + \overline{T}_{in,1})/2$, Btu/(lb·°F) (kJ/(kg·°C))

$\overline{T}_{del,1}$ = average water outlet temperature measured during the draws from the start of the 24-hour simulated use test to the end of the first recovery period, °F (°C).

$\overline{T}_{in,1}$ = average water inlet temperature measured during the draws from the start of the 24-hour simulated use test to the end of the first recovery period, °F (°C).
V_{st} = as defined in section 6.1.1.
ρ_2 = density of stored hot water evaluated at $(\overline{T}_{max,1} + \overline{T}_o)/2$, lb/gal (kg/L).
C_{p2} = specific heat of stored hot water evaluated at $(\overline{T}_{max,1} + \overline{T}_o)/2$, Btu/(lb·°F) (kJ/(kg·°C).
$\overline{T}_{max,1}$ = maximum mean tank temperature recorded after cut-out following the first recovery of the 24-hour simulated use test, °F (°C).
$\overline{T}_o$ = maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated use test, °F (°C).
Q_r = the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first recovery period, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3412 Btu).

The recovery efficiency for electric water heaters with immersed heating elements is assumed to be 98%.

6.1.4 *Hourly Standby Losses.* The energy consumed as part of the standby loss test of the 24-hour simulated use test, Q_{stby}, is computed as:

$$Q_{stby} = Q_{su,f} - Q_{su,0}$$

Where:

$Q_{su,0}$ = cumulative energy consumption of the water heater from the start of the 24-hour simulated use test to the time at which the maximum mean tank temperature is attained after the recovery following the end of the first draw cluster, Btu (kJ).
$Q_{su,f}$ = cumulative energy consumption of the water heater from the start of the 24-hour simulated use test to the minute prior to the start of the draw following the end of the first draw cluster or the minute prior to a recovery occurring at the start of the draw following the end of the first draw cluster, Btu (kJ).

The hourly standby energy losses are computed as:

$$Q_{hr} = \frac{Q_{stby} - \frac{V_{st}\rho C_p(\overline{T}_{su,f} - \overline{T}_{su,0})}{\eta_r}}{\tau_{stby,1}}$$

Where:

Q_{hr} = the hourly standby energy losses of the water heater, Btu/h (kJ/h).
V_{st} = as defined in section 6.1.1.
ρ = density of stored hot water, $(\overline{T}_{su,f} + \overline{T}_{su,0})/2$, lb/gal (kg/L).
C_p = specific heat of the stored water, $(\overline{T}_{su,f} + \overline{T}_{su,0})/2$, Btu/(lb·F), (kJ/(kg·K))
$\overline{T}_{su,f}$ = the mean tank-temperature observed at the minute prior to the start of the draw following the first draw cluster or the minute prior to a recovery occurring at the start of the draw following the end of the first draw cluster, °F (°C).
$\overline{T}_{su,0}$ = the maximum mean tank temperature observed after the first recovery following the final draw of the first draw cluster, °F (°C).
η_r = as defined in section 6.1.3.
$\tau_{stby,1}$ = elapsed time between the time at which the maximum mean tank temperature is observed after the first draw cluster and the minute prior to the start of the first draw following the end of the first draw cluster of the 24-hour simulated use test or the minute prior to a recovery occurring at the start of the draw following the end of the first draw cluster, h.

The standby heat loss coefficient for the tank is computed as:

$$UA = \frac{Q_{hr}}{\overline{T}_{t,stby,1} - \overline{T}_{a,stby,1}}$$

Where:

UA = standby heat loss coefficient of the storage tank, Btu/(h·°F), (kJ/(h·°C).
$\overline{T}_{t,stby,1}$ = overall average storage tank temperature between the time when the maximum mean tank temperature is observed after cut-out following the first draw cluster and the minute prior to commencement of the next draw following the first draw cluster of the 24-hour simulated use test, °F (°C).
$\overline{T}_{a,stby,1}$ = overall average ambient temperature between the time when the maximum mean tank temperature is observed after cut-out following the first draw cluster and the minute prior to commencement of the next draw following the first draw cluster of the 24-hour simulated use test, °F (°C).

6.1.5 *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d, is computed as:

$$Q_d = Q - \frac{V_{st}\rho C_p(\overline{T}_{24} - \overline{T}_0)}{\eta_r}$$

Where:

$Q = Q_f + Q_e$ = total energy used by the water heater during the 24-hour simulated use test, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical energy shall be converted to thermal energy using the following conversion: 1kWh = 3412 Btu.)
Q_f = total fossil fuel energy used by the water heater during the 24-hour simulated use test, Btu (kJ).
Q_e = total electrical energy used during the 24-hour simulated use test, Btu (kJ).
V_{st} = as defined in section 6.1.1.
ρ = density of the stored hot water, evaluated at $(\overline{T}_{24} + \overline{T}_0)/2$, lb/gal (kg/L)
C_p = specific heat of the stored water, evaluated at $(\overline{T}_{24} + \overline{T}_0)/2$, Btu/(lb·F), (kJ/(kg·K)).
$\overline{T}_{24}$ = mean tank temperature at the end of the 24-hour simulated use test, °F (°C).
$\overline{T}_0$ = mean tank temperature at the beginning of the 24-hour simulated use test, recorded one minute before the first draw is initiated, °F (°C).
η_r = as defined in section 6.1.3.

6.1.6 *Adjusted Daily Water Heating Energy Consumption.* The adjusted daily water heating energy consumption, Q_{da}, takes into account that the temperature difference between the storage tank and surrounding ambient air may not be the nominal value of 57.5 °F (125 °F − 67.5 °F) or 32.0 °C (51.7 °C − 19.7 °C) due to the 10 °F (5.6 °C) allowable variation in storage tank temperature, 125 °F ± 5 °F (51.7 °C ± 2.8 °C), and the 5 °F (2.8 °C) allowable variation in surrounding ambient temperature 65 °F (18.3 °C) to 70 °C (21.1 °C). The adjusted daily water heating energy consumption is computed as:

$$Q_{da} = Q_d - \left[\left(\overline{T}_{stby,2} - \overline{T}_{a,stby,2}\right) - (125°F - 67.5°F)\right] UA\, \tau_{stby,2}$$

or,

$$Q_{da} = Q_d - \left[\left(\overline{T}_{stby,2} - \overline{T}_{a,stby,2}\right) - (51.7°C - 19.7°C)\right] UA\, \tau_{stby,2}$$

Where:

Q_{da} = the adjusted daily water heating energy consumption, Btu (kJ).
Q_d = as defined in section 6.1.5.
$\overline{T}_{stby,2}$ = the mean tank temperature during the total standby portion, $\tau_{stby,2}$, of the 24-hour test, °F (°C).
$\overline{T}_{a,stby,2}$ = the average ambient temperature during the total standby portion, $\tau_{stby,2}$, of the 24-hour test, °F (°C).
UA = as defined in section 6.1.4.

$\tau_{stby,2}$ = the number of hours during the 24-hour simulated test when water is not being withdrawn from the water heater.

A modification is also needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 67 °F (125 °F − 58 °F) or 37.3 °C (51.7 °C − 14.4 °C). The following equations adjust the experimental data to a nominal 67 °F (37.3 °C) temperature rise.

The energy used to heat water, Btu/day (kJ/day), may be computed as:

$$Q_{HW} = \sum_{i=1}^{N} \frac{M_i C_{pi} \left(\overline{T}_{del,i} - \overline{T}_{in,i}\right)}{\eta_r}$$

Where:

N = total number of draws in the draw pattern.

M_i = the mass withdrawn for the *i*th draw (i = 1 to N), lb (kg)

C_{pi} = the specific heat of the water of the *i*th draw evaluated at $(\overline{T}_{del,i} + \overline{T}_{in,i})/2$, Btu/(lb·°F) (kJ/(kg·°C)).

$\overline{T}_{del,i}$ = the average water outlet temperature measured during the *i*th draw (i = 1 to N), °F (°C).

$\overline{T}_{in,i}$ = the average water inlet temperature measured during the *i*th draw (i = 1 to N), °F (°C).

η_r = as defined in section 6.1.3.

The energy required to heat the same quantity of water over a 67 °F (37.3 °C) temperature rise, Btu/day (kJ/day), is:

$$Q_{HW,67°F} = \sum_{i=1}^{N} \frac{M_i C_{pi} (125°F - 58°F)}{\eta_r}$$

or

$$Q_{HW,37.3°C} = \sum_{i=1}^{N} \frac{M_i C_{pi} (51.7°C - 14.4°C)}{\eta_r}$$

The difference between these two values is:

$Q_{HWD} = Q_{HW,67\ °F} - Q_{HW}$

or $Q_{HWD} = Q_{HW,37.3\ °C} - Q_{HW}$

This difference (Q_{HWD}) must be added to the adjusted daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature difference between the storage tank and ambient temperature may not be 57.5 °F (32.0 °C) and that the temperature rise across the storage tank may not be 67 °F (37.3 °C) is: $Q_{dm} = Q_{da} + Q_{HWD}$

6.1.7 *Energy Factor.* The energy factor, E_f, is computed as:

$$E_f = \sum_{i=1}^{N} \frac{M_i C_{pi} (125°F - 58°F)}{Q_{dm}}$$

or,

$$E_f = \sum_{i=1}^{N} \frac{M_i C_{pi} (51.7°C - 14.4°C)}{Q_{dm}}$$

Where:

N = total number of draws in the draw pattern

Q_{dm} = the modified daily water heating energy consumption as computed in accordance with section 6.1.6, Btu (kJ)

M_i = the mass withdrawn for the *i*th draw (i = 1 to N), lb (kg)

C_{pi} = the specific heat of the water of the *i*th draw, evaluated at (125 °F + 58 °F)/2 = 91.5 °F ((51.7°C + 14.4°C)/2 = 33 °C), Btu/(lb·°F) (kJ/(kg·°C)).

6.1.8 *Annual Energy Consumption.* The annual energy consumption for storage-type and heat pump water heaters is computed as:

$$E_{annual} = 365 \times \frac{(V)(\rho)(C_P)(67)}{E_f}$$

Where:

E_f = the energy factor as computed in accordance with section 6.1.8

365 = the number of days in a year

V = the volume of hot water drawn during the applicable draw pattern, gallons
= 10 for the point-of-use draw pattern
= 38 for the low usage draw pattern
= 55 for the medium usage draw pattern
= 84 for high usage draw pattern

ρ = 8.24 lb_m/gallon, the density of water at 125 °F

C_P = 1.00 Btu/lb_m°F, the specific heat of water at 91.5 °F

67 = the nominal temperature difference between inlet and outlet water

6.1.9 *Annual Electrical Energy Consumption.* The annual electrical energy consumption in kilowatt-hours for storage-type and heat pump water heaters, $E_{annual,e}$, is computed as:

$E_{annual,e} = E_{annual} * (Q_e/Q)/3412$

Where:

E_{annual} = the annual energy consumption as determined in accordance with section 6.1.8, Btu (kJ)

Q_e = the daily electrical energy consumption as defined in section 6.1.5, Btu (kJ).

Q = total energy used by the water heater during the 24-hour simulated use test in accordance with section 6.1.5, Btu (kJ)

3412 = conversion factor from Btu to kWh

6.1.10 *Annual Fossil Fuel Energy Consumption.* The annual fossil fuel energy consumption for storage-type and heat pump water heaters, $E_{annual,f}$, is computed as:

$E_{annual,f} = E_{annual} - (E_{annual,e} \times 3412)$

Where:

E_{annual} = the annual energy consumption as determined in accordance with section 6.1.8, Btu (kJ)

$E_{annual,e}$ = the annual electrical energy consumption as determined in accordance with section 6.1.9, kWh

3412 = conversion factor from kWh to Btu

6.2 *Instantaneous Water Heaters.*

$$F_{max} = \frac{M_{10m}(\bar{T}_{del} - \bar{T}_{in})}{10(\rho)(125°F - 58°F)}$$

or,

$$F_{max} = \frac{M_{10m}(\bar{T}_{del} - \bar{T}_{in})}{10(\rho)(51.7°C - 14.4°C)}$$

which may be expressed as:

$$F_{max} = \frac{M_{10m}(\bar{T}_{del} - \bar{T}_{in})}{10(\rho)(67°F)}$$

or,

$$F_{max} = \frac{M_{10m}(\bar{T}_{del} - \bar{T}_{in})}{10(\rho)(37.3°C)}$$

Where:

M_{10m} = the mass of water collected during the 10-minute test, lb (kg).

$\bar{T}_{del}$ = the average delivery temperature, °F (°C).

$\bar{T}_{in}$ = the average inlet temperature, °F (°C).

ρ = the density of water at the average delivery temperature, lb/gal (kg/L).

If a water meter is used, the maximum gpm (L/min) rating is computed as:

$$F_{max} = \frac{V_{10m}(\bar{T}_{del} - \bar{T}_{in})}{10(67°F)}$$

or,

$$F_{max} = \frac{V_{10m}(\bar{T}_{del} - \bar{T}_{in})}{10(37.3°C)}$$

Where:

V_{10m} = the volume of water measured during the 10-minute test, gal (L).

$\bar{T}_{del}$ = as defined in this section.

$\bar{T}_{in}$ = as defined in this section.

6.2.2 *Recovery Efficiency.* The recovery efficiency, η_r, is computed as:

$$\eta_r = \frac{M_1 C_{p1}(\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_r}$$

Where:

M_1 = total mass removed during the first draw of the 24-hour simulated use test, lb (kg), or, if the volume of water is being measured,

$M_1 = V_1 \cdot \rho$

Where:

V_1 = total volume removed during the first draw of the 24-hour simulated use test, gal (L).

ρ = density of the water at the water temperature measured at the point where the flow volume is measured, lb/gal (kg/L).

C_{p1} = specific heat of the withdrawn water, $(\bar{T}_{del,1} - \bar{T}_{in,1})/2$, Btu/(lb·°F) (kJ/(kg·°C)).

$\bar{T}_{del,1}$ = average water outlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

$\bar{T}_{in,1}$ = average water inlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

Q_r = the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3412 Btu.)

6.2.1 *Maximum gpm (L/min) Rating Computation.* Compute the maximum gpm (L/min) rating, F_{max}, as:

6.2.3 *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d, is computed as:

$Q_d = Q$

Where:

$Q = Q_f + Q_e$ = the energy used by the instantaneous water heater during the 24-hour simulated use test.

Q_f = total fossil fuel energy used by the water heater during the 24-hour simulated use test, Btu (kJ).

Q_e = total electrical energy used during the 24-hour simulated use test, Btu (kJ).

A modification is needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 67 °F (125 °F − 58 °F) or 37.3 °C (51.7 °C − 14.4 °C). The following equations adjust the experimental data to a nominal 67 °F (37.3 °C) temperature rise.

The energy used to heat water may be computed as:

$$Q_{HW} = \sum_{i=1}^{N} \frac{M_i C_{pi}(\bar{T}_{del,i} - \bar{T}_{in,i})}{\eta_r}$$

Where:

N = total number of draws in the draw pattern

M_i = the mass withdrawn for the *i*th draw (*i* = 1 to N), lb (kg)

C_{pi} = the specific heat of the water of the *i*th draw evaluated at $(\overline{T}_{del,i} + \overline{T}_{in,i})/2$, Btu/(lb·°F) (kJ/(kg·°C)).

$\overline{T}_{del,i}$ = the average water outlet temperature measured during the *i*th draw (*i* = 1 to N), °F (°C).

$\overline{T}_{in,i}$ = the average water inlet temperature measured during the *i*th draw (*i* = 1 to N), °F (°C).

η_r = as defined in section 6.2.2.

The energy required to heat the same quantity of water over a 67 °F (37.3 °C) temperature rise is:

$$Q_{HW,67°F} = \sum_{i=1}^{N} \frac{M_i C_{pi}(125°F - 58°F)}{\eta_r}$$

or

$$Q_{HW,37.3°C} = \sum_{i=1}^{N} \frac{M_i C_{pi}(51.7°C - 14.4°C)}{\eta_r}$$

Where:

N = total number of draws in the draw pattern

M_i = the mass withdrawn during the *i*th draw, lb (kg)

C_{pi} = the specific heat of water of the *i*th draw, Btu/(lb·°F) (kJ/(kg·°C))

η_r = as defined in section 6.2.2.

The difference between these two values is:

$Q_{HWD} = Q_{HW,67°F} - Q_{HW}$

or $Q_{HWD} = Q_{HW,37.3°C} - Q_{HW}$

This difference (Q_{HWD}) must be added to the adjusted daily water heating energy consumption value. Thus, the daily energy consumption value, which takes into account that the temperature difference between the storage tank and ambient temperature may not be 57.5 °F (32.0 °C) and that the temperature rise across the storage tank may not be 67 °F (37.3 °C), is:

$Q_{dm} = Q_d + Q_{HWD}$

6.2.4 *Energy Factor.* The energy factor, E_f, is computed as:

$$E_f = \sum_{i=1}^{N} \frac{M_i C_{pi}(125°F - 58°F)}{Q_{dm}}$$

or,

$$E_f = \sum_{i=1}^{N} \frac{M_i C_{pi}(51.7°C - 14.4°C)}{Q_{dm}}$$

Where:

N = total number of draws in the draw pattern

Q_{dm} = the modified daily water heating energy consumption as computed in accordance with section 6.2.3, Btu (kJ)

M_i = the mass withdrawn for the *i*th draw (i = 1 to N), lb (kg)

C_{pi} = the specific heat of the water at the *i*th draw, evaluated at (125 °F + 58 °F)/2 = 91.5 °F ((51.7 °C + 14.4 °C)/2 = 33 °C), Btu/(lb· °F) (kJ/(kg· °C)).

6.2.5 *Annual Energy Consumption.* The annual energy consumption for instantaneous-type water heaters, E_{annual}, is computed as:

$$E_{annual} = 365 \times \frac{(V)(\rho)(C_p)(67)}{E_f}$$

Where:

E_f = the energy factor as computed in accordance with section 6.2.4

365 = the number of days in a year.

V = tbe volume of hot water drawn during the applicable draw pattern, gallons
= 10 for the point-of-use draw pattern
= 38 for the low usage draw pattern
= 55 for the medium usage draw pattern
= 84 for high usage draw pattern

ρ = 8.24 lb_m/gallon, the density of water at 125 °F

C_P = 1.00 Btu/lb_m °F, the specific heat of water at 91.5 °F

67 = the nominal temperature difference between inlet and outlet water

6.2.6 *Annual Electrical Energy Consumption.* The annual electrical energy consumption in kilowatt-hours for instantaneous-type water heaters, $E_{annual,e}$, is computed as:

$E_{annual,e} = E_{annual} * (Q_e/Q)/3412$

Where:

Q_e = the daily electrical energy consumption as defined in section 6.2.3, Btu (kJ)

E_{annual} = the annual energy consumption as determined in accordance with section 6.2.5, Btu (kJ)

Q = total energy used by the water heater during the 24-hour simulated use test in accordance with section 6.2.3, Btu (kJ)

Q_{dm} = the modified daily water heating energy consumption as computed in accordance with section 6.2.3, Btu (kJ)

3412 = conversion factor from Btu to kWh

6.2.7 *Annual Fossil Fuel Energy Consumption.* The annual fossil fuel energy consumption for instantaneous-type water heaters, $E_{annual,f}$, is computed as:

$E_{annual,f} = E_{annual} - (E_{annual,e} \times 3412)$

Where:

$E_{annual,e}$ = the annual electrical energy consumption as defined in section 6.2.6, kWh.

E_{annual} = the annual energy consumption as defined in section 6.2.5, Btu (kJ)

3412 = conversion factor from kWh to Btu

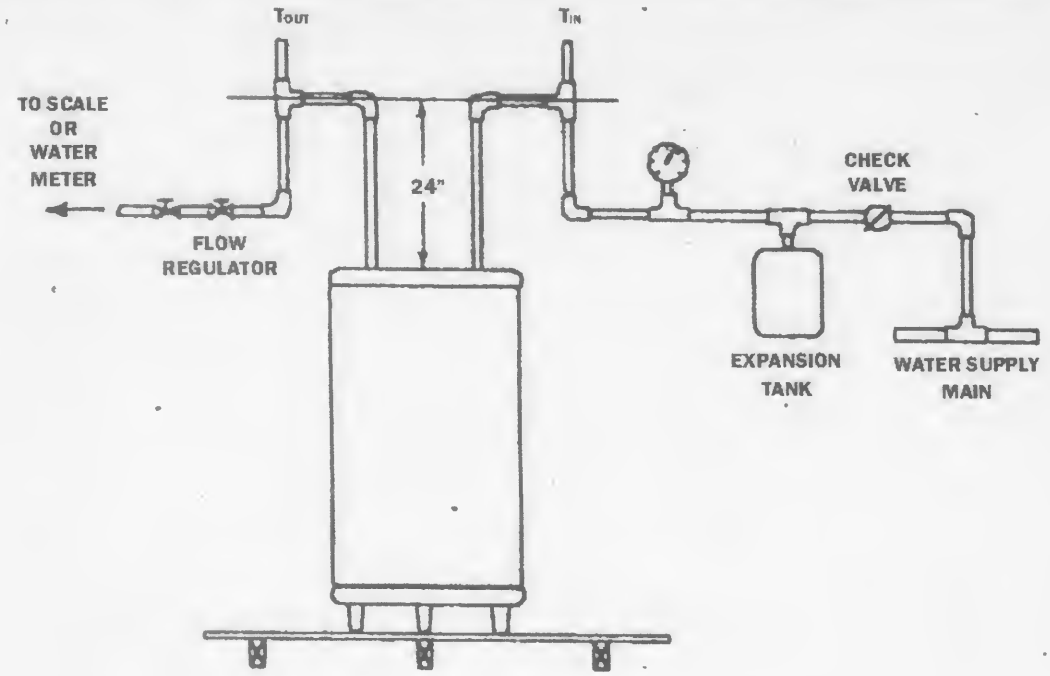


Figure 1.

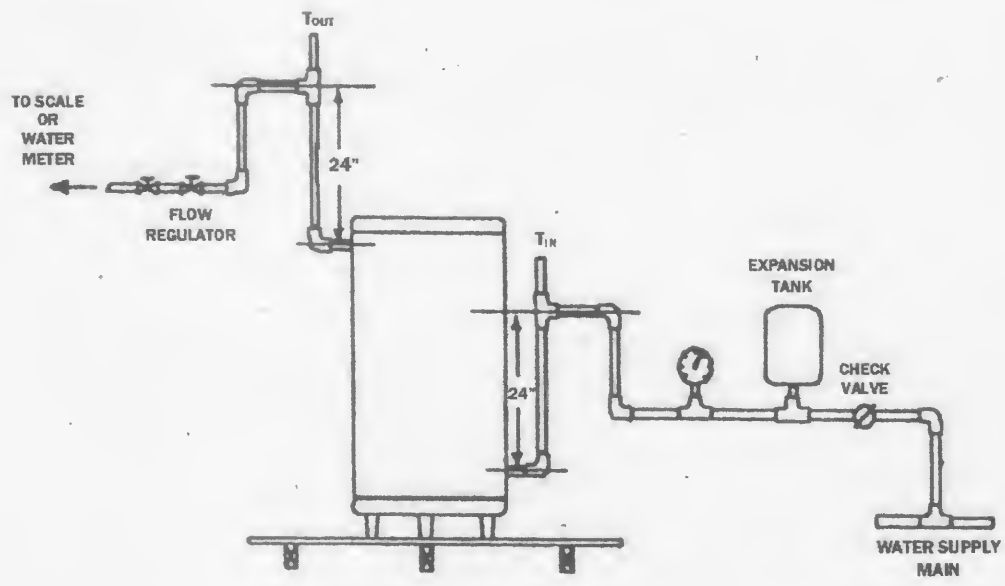


Figure 2.

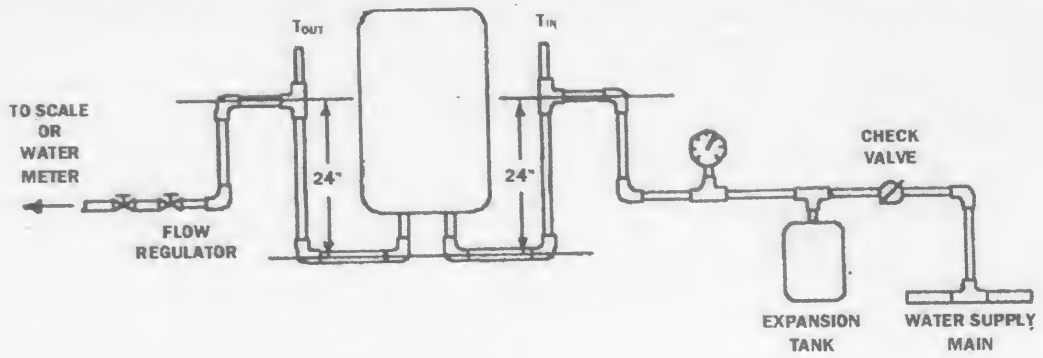


Figure 3.

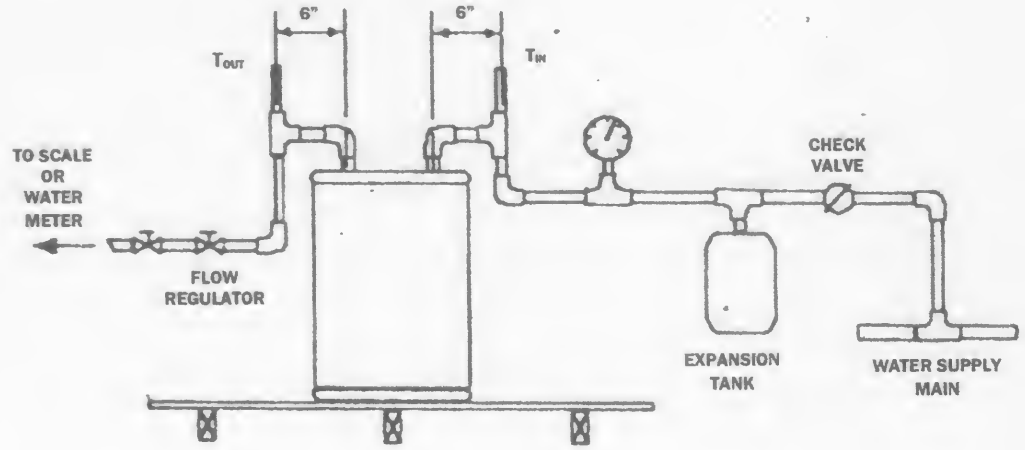


Figure 4.

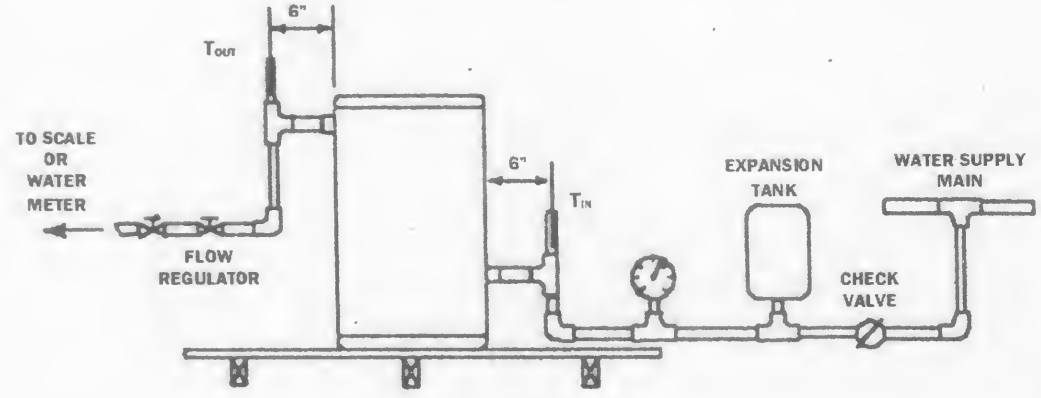


Figure 5.

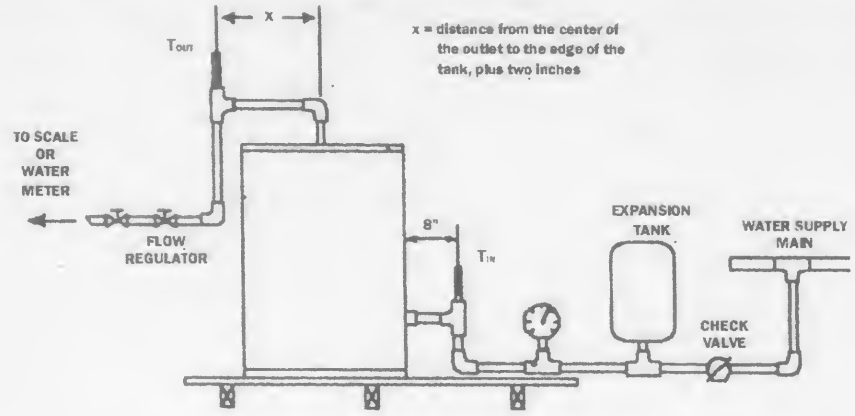
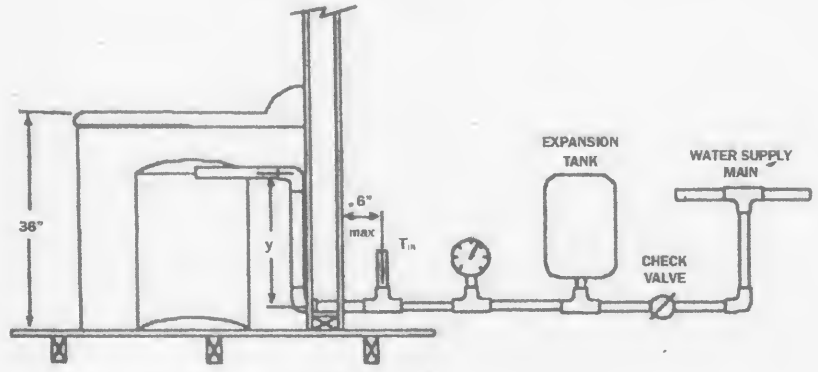
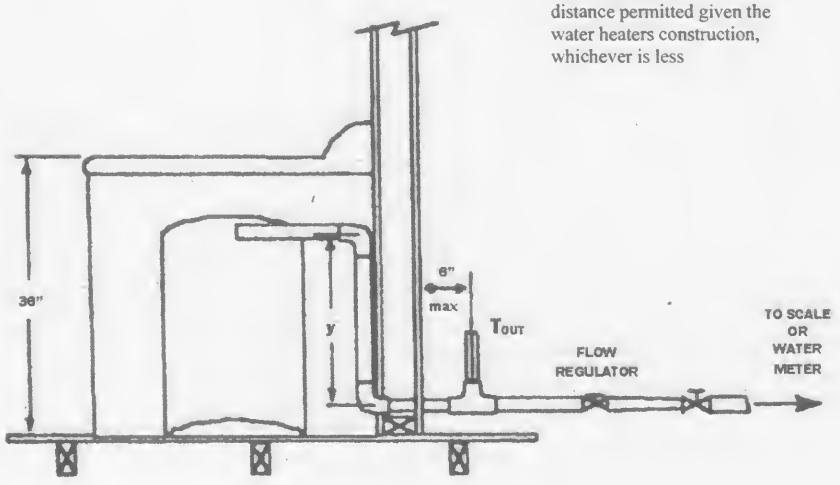


Figure 6.



(a)

y = 24 inches or the maximum distance permitted given the water heaters construction, whichever is less



(b)

Figure 7.

* * * * *

■ 10. Section 430.32 is amended by revising paragraph (d) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(d) *Water heaters.* The energy factor of water heaters shall not be less than the following for products manufactured on or after the indicated dates.

Product class	Storage volume	Energy factor as of January 20, 2004	Energy factor as of April 16, 2015
Gas-fired Storage Water Heater.	≥ 20 gallons and ≤ 100 gallons.	0.67 – (0.0019 × Rated Storage Volume in gallons).	For tanks with a Rated Storage Volume at or below 55 gallons: EF = 0.675 – (0.0015 × Rated Storage Volume in gallons). For tanks with a Rated Storage Volume above 55 gallons: EF = 0.8012 – (0.00078 × Rated Storage Volume in gallons).
Oil-fired Storage Water Heater.	≤ 50 gallons	0.59 – (0.0019 × Rated Storage Volume in gallons).	EF = 0.68 – (0.0019 × Rated Storage Volume in gallons).
Electric Storage Water Heater.	≥ 20 gallons and ≤ 120 gallons.	0.97 – (0.00132 × Rated Storage Volume in gallons).	For tanks with a Rated Storage Volume at or below 55 gallons: EF = 0.960 – (0.0003 × Rated Storage Volume in gallons). For tanks with a Rated Storage Volume above 55 gallons: EF = 2.057 – (0.00113 × Rated Storage Volume in gallons).
Tabletop Water Heater	≥ 20 gallons and ≤ 120 gallons.	0.93 – (0.00132 × Rated Storage Volume in gallons).	EF = 0.93 – (0.00132 × Rated Storage Volume in gallons).
Instantaneous Gas-fired Water Heater.	< 2 gallons	0.62 – (0.0019 × Rated Storage Volume in gallons).	EF = 0.82 – (0.0019 × Rated Storage Volume in gallons).
Instantaneous Electric Water Heater.	< 2 gallons	0.93 – (0.00132 × Rated Storage Volume in gallons).	EF = 0.93 – (0.00132 × Rated Storage Volume in gallons).

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

Exclusions. The energy conservation standards shown in this paragraph do not apply to the following types of water heaters: gas-fired, oil-fired, and electric water heaters at or above 2 gallons storage volume and below 20 gallons storage volume; gas-fired water heaters above 100 gallons storage volume; oil-fired water heaters above 50 gallons storage volume; electric water heaters above 120 gallons storage volume; gas-fired instantaneous water heaters at or below 50,000 Btu/h.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 11. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 12. Section 431.102 is amended by adding the definition of "Light commercial water heater," in alphabetical order, to read as follows:

§ 431.102 Definitions concerning commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

* * * * *

Light commercial water heater means any gas-fired, electric, or oil storage or instantaneous commercial water heater that meets the following conditions:

(1) For models requiring electricity, uses single-phase external power supply;

(2) Is not capable of delivering hot water at temperatures of 180 °F or above; and

(3) Does not bear a Code Symbol Stamp signifying compliance with the requirements of the ASME Boiler and Pressure Vessel Code.

* * * * *

■ 13. In § 431.106, paragraph (b), Table 2, is revised to read as follows:

§ 431.106 Uniform test method for the measurement of energy efficiency of commercial water heaters and hot water supply boilers (other than commercial heat pump water heaters).

* * * * *

(b) * * *

TABLE 2 TO § 431.106—TEST PROCEDURES FOR COMMERCIAL WATER HEATERS AND HOT WATER SUPPLY BOILERS

[Other than commercial heat pump water heaters]

Equipment type	Energy efficiency descriptor	Use test set-up, equipment, and procedures in subsection labeled "Method of Test" of	Test procedure required for compliance on and after	With these additional stipulations
Light Commercial Water Heater.	Energy Factor	10 CFR 430, Subpt. B, App. E.	*(insert date 365 days after publication of the final rule in the* **Federal Register** *that establishes a conversion factor, or December 31, 2015, whichever is later).*	None.
Gas-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers*.	Thermal Efficiency	ANSI Z21.10.3–2011**, Exhibit G1.	May 13, 2013	A. For all products, the duration of the standby loss test shall be until whichever of the following occurs first after you begin to measure the fuel and/or electric consumption: (1) The first cutout after 24 hours or (2) 48 hours, if the water heater is not in the heating mode at that time.
	Standby Loss	ANSI Z21.10.3–2011**, Exhibit G2.	May 13, 2013.	
Oil-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers*.	Thermal Efficiency	ANSI Z21.10.3–2011**, Exhibit G1.	May 13, 2013	B. For oil and gas products, the standby loss in Btu per hour must be calculated as follows: SL (Btu per hour) = S (% per hour) × 8.25 (Btu/gal-F) × Measured Volume (gal) × 70 (degrees F).
	Standby Loss	ANSI Z21.10.3–2011**, Exhibit G2.	May 13, 2013.	
Electric Storage and Instantaneous Water Heaters.	Standby Loss	ANSI Z21.10.3–2011**, Exhibit G2.	May 13, 2013	C. For oil-fired products, apply the following in conducting the thermal efficiency and standby loss tests: (1) Venting Requirements—Connect a vertical length of flue pipe to the flue gas outlet of sufficient height so as to meet the minimum draft specified by the manufacturer. (2) Oil Supply—Adjust the burner rate so that: (a) The hourly Btu input rate lies within ±2 percent of the manufacturer's specified input rate, (b) the CO_2 reading shows the value specified by the manufacturer, (c) smoke in the flue does not exceed No. 1 smoke as measured by the procedure in ASTM–D–2156–80, and (d) fuel pump pressure lies within ±10 percent of manufacturer's specifications. D. For electric products, apply the following in conducting the standby loss test: (1) Assume that the thermal efficiency (Et) of electric water heaters with immersed heating elements is 98 percent. (2) Maintain the electrical supply voltage to within ±5 percent of the center of the voltage range specified on the water heater nameplate. (3) If the set up includes multiple adjustable thermostats, set the highest one first to yield a maximum water temperature in the specified range as measured by the topmost tank thermocouple. Then set the lower thermostat(s) to yield a maximum mean tank temperature within the specified range. E. Install water-tube water heaters as shown in Figure 2, "Arrangement for Testing Water-tube Type Instantaneous and Circulating Water Heaters."

* As to hot water supply boilers with a capacity of less than 10 gallons, these test methods become mandatory on October 21, 2005. Prior to that time, you may use for these products either (1) these test methods if you rate the product for thermal efficiency, or (2) the test methods in Subpart E if you rate the product for combustion efficiency as a commercial packaged boiler.

** Incorporated by reference, *see* § 431.105.

■ 14. Section 431.107 is added to read as follows:

§ 431.107 Uniform test method for the measurement of energy efficiency of commercial heat pump water heaters.

TABLE 1 TO § 431.107—TEST PROCEDURES FOR COMMERCIAL HEAT PUMP WATER HEATERS

Equipment type	Energy efficiency descriptor	Use test set-up, equipment, and procedures in subsection labeled "Method of Test" of	Test procedure required for compliance on and after
Light Commercial Heat Pump Water Heater with Integrated Storage Tank.	Energy Factor	10 CFR 430, Subpt. B, App. E.	*(insert date 365 days after publication of the final rule in the* **Federal Register** *that establishes a conversion factor, or December 31, 2015, whichever is later)*
All Other Types	[Reserved]	[Reserved]	[Reserved]

[FR Doc. 2013–26268 Filed 11–1–13; 8:45 am]
BILLING CODE 6450–01–P

Reader Aids

Federal Register

Vol. 78, No. 213

Monday, November 4, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

65515–65868 1
65869–66248 4

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Notices:
Notice of October 30, 2013 65867

7 CFR

271 65515
274 65515
761 65523
762 65523
765 65523
766 65523
772 65523
Proposed Rules:
245 65890
3550 65582

10 CFR

Proposed Rules:
51 65903
429 66202
430 66202
431 66202

12 CFR

652 65541
Proposed Rules:
702 65583

14 CFR

34 65554
39 ..... 65869, 65871
45 65554
71 ..... 65554, 65555, 65556

16 CFR

1 65557

21 CFR

Proposed Rules:
20 65904
310 65904
314 65904
600 65904
Ch. I 65588
1308 65923

25 CFR

Proposed Rules:
226 65589

26 CFR

Proposed Rules:
300 65932

29 CFR

Proposed Rules:
1910 65932
1926 65932

33 CFR

117 ..... 65873, 65874
165 65874

34 CFR

668 65768
674 65768
682 65768
685 65768

40 CFR

52 ..... 65559, 65875, 65877
180 ..... 65561, 65565
721 65570
Proposed Rules:
52 ..... 65590, 65593
63 66108

44 CFR

64 65882

45 CFR

170 65884
Proposed Rules:
1613 65933

47 CFR

Proposed Rules:
Ch. I 65601
90 65594

50 CFR

10 65844
20 65573
21 ..... 65576, 65578, 65844
223 66140
224 66140
300 65887
648 65888
Proposed Rules:
17 ..... 65936, 65938
21 ..... 65953, 65955
226 65959
679 65602

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List October 18, 2013

Public Laws Electronic Notification Service (PENS)

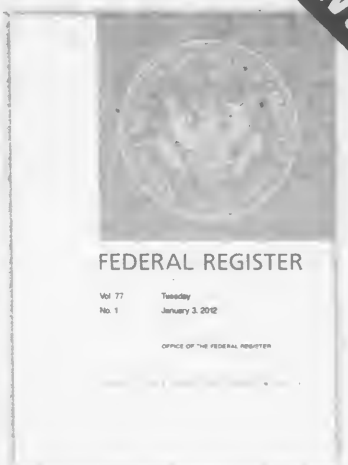
PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Subscribe to the Federal Register and receive

ORDER NOW!

- **Official and authentic legal citations of Federal regulations**
- **Quick retrieval of specific regulations**
- **Invaluable research and reference tools**



The **Federal Register** (FR) is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents. It is updated daily by 6 a.m. and published Monday through Friday, except Federal holidays.

The Unified Agenda (also known as the Semiannual Regulatory Agenda), published twice a year (usually in April and October) in the **FR**, summarizes the rules and proposed rules that each Federal agency expects to issue during the next year.

The **FR** has two companion publications. **The List of CFR Sections Affected (LSA)** lists proposed, new, and amended Federal regulations published in the **FR** since the most recent revision date of a **CFR** title. Each monthly **LSA** issue is cumulative and contains the **CFR** part and section numbers, a description of its status (e.g., amended, confirmed, revised), and the **FR** page number for the change. **The Federal Register Index (FRI)** is a monthly itemization of material published in the daily **FR**.

The **FR** is available as an annual subscription, which also includes the **LSA** and the **FRI**. To subscribe, use the order form below or go to the U.S. Government Online Bookstore:

http://bookstore.gpo.gov/actions/GetPublication.do?stocknumber=769-004-00000-9

GPO U.S. GOVERNMENT PRINTING OFFICE
KEEPING AMERICA INFORMED

Order Processing Code: 3569

Easy Secure Internet: bookstore.gpo.gov

Toll Free: 866 512–1800
DC Area: 202 512–1800
Fax: 202 512–2104

Mail: US Government Printing Office
P.O. Box 979050
St. Louis, MO 63197–9000

Qty	Stock Number	Publication Title	Unit Price	Total Price
	769-004-00000-9	Federal Register (FR)	$929.00	
			Total Order	

Check Method of Payment

VISA MasterCard NOVUS

❑ **Check payable to *Superintendent of Documents***

❑ SOD Deposit Account ☐☐☐☐☐☐ — ☐

❑ VISA ❑ MasterCard ❑ Discover/NOVUS ❑ American Express

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (expiration date)

Thank you for your order!

Personal name (Please type or print)

Company name

Street address

City, State, Zip code

Daytime phone including area code

AUTHORIZING SIGNATURE

07/10

Printed on recycled paper
with vegetable-based ink